

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/26/2022 1:06 PM
Reviewed By: R. Walker
Case #21CV390545
Envelope: 8144018**

ABRAMSON LABOR GROUP
WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)
Wza@abramsonlabor.com
3580 Wilshire Blvd., Ste 1260
Los Angeles, CA 90010-2513
Tel: (213) 493-6300, Fax (213) 382-4083

Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

DOMINIC HILL, an individual, on behalf of
the State of California, as a private attorney
general,

PLAINTIFF,

v.

S.I.M. INVESTMENT CORPORATION;
FITNESS 19 CA 270, LLC; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 21CV390545

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Penalties Pursuant to Labor Code §2699,
et seq.

1 Plaintiff DOMINIC HILL, an individual, on behalf of himself, and all the people of the
2 State of California and as an “aggrieved employee” under Labor Code Private Attorneys General
3 Act of 2004, §2699, et seq. (hereafter “PAGA”), complains of Defendants S.I.M. INVESTMENT
4 CORPORATION; FITNESS 19 CA 270, LLC (“Defendants”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Representative Action, pursuant to Labor Code §2699, et seq., on behalf
8 of the following individuals:

9 All persons who are employed or have been employed as a non-
10 exempt employee by S.I.M. INVESTMENT CORPORATION;
11 FITNESS 19 CA 270, LLC, in the State of California who worked
12 one or more pay periods since one (1) year prior to the date of
13 Plaintiff’s notice letter to the Labor & Workforce Development
14 Agency (“LWDA”) and continuing to the present plus any
additional time during which the statutes of limitation for the causes
of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19’. (“Aggrieved Employees”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
24 and Development Agency (“LWDA”) and Defendants giving notice of this claim pursuant to
25 PAGA and continuing to the present, Defendants have failed to properly comply with Labor Code
26 §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802.

27 4. Defendants have had a consistent policy of failing to pay wages and/or overtime to
28 all Aggrieved Employees when they work more than eight (8) hours in a day or forty (40) hours

1 in a week. Plaintiff and the Aggrieved Employees were not properly compensated at the
2 appropriate rate of pay because Defendants failed to include commission and piece rate pay when
3 calculating Plaintiff and all Aggrieved Employees' regular rate of pay for the purpose of
4 determining the correct overtime rate in pay periods where they were paid premium pay and were
5 also paid overtime. As such, Plaintiff and the Aggrieved Employees were paid at an overtime rate
6 less than the rate required under California law.

7 5. Defendants failed to apprise Plaintiff and the Aggrieved Employees of their rights
8 associated with meal periods and failed to provide compliant meal periods. Defendants have had
9 a consistent policy of requiring Plaintiff and the Aggrieved Employees to take late meal breaks
10 that occurred after the first five hours of each shift and failing to pay such employees one (1) hour
11 of pay at the employees' regular rate of compensation for each workday that the first meal period
12 was not provided within the first (5) hours of the shift. On a regular and consistent basis,
13 Defendants scheduled Plaintiff and the aggrieved employees in a way that prevented them from
14 taking lawful meal periods.

15 6. Defendants failed to apprise Plaintiff and the Aggrieved Employees of their rights
16 associated with rest periods and failed to provide compliant rest periods. Defendants have had a
17 consistent policy of failing to provide all required rest periods of at least ten (10) minutes per four
18 (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay
19 at the employee's regular rate of compensation for each workday that the rest period was not
20 provided, as required by California state wage and hour laws.

21 7. Defendants have failed to reimburse Plaintiff and the Aggrieved Employees for
22 business-related expenses. Defendants have failed to reimburse Plaintiff and the Aggrieved
23 Employees for their mileage and the cost of using their personal cell phones for business purposes.
24 These are both necessary business expenditures under California law and Defendants failed to
25 reimburse the Aggrieved Employees.

26 8. Defendants have failed to comply with Labor Code § 226(a). Plaintiff and the
27 Aggrieved Employees are issued wage statements in violation of Labor Code §226(a)(2) and do
28 not accurately show the number of total hours worked at each applicable hourly rate in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by
2 Plaintiff and the Aggrieved Employees in violation of Labor Code §226(a)(9). Further, Plaintiff
3 and the Aggrieved Employees are issued wage statements that do not include meal and rest
4 premiums as a result of the claims alleged above and when they do, they are not the accurate rate.

5 9. Defendants have failed to pay all wages due at the time of termination or resignation
6 to Plaintiff and the Aggrieved Employees.

7 10. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly
8 employed by Defendants during the liability period, brings this representative action pursuant to
9 Labor Code §§ 2699, et seq. seeking penalties for Defendants' violation of §§ 201, 202, 203,
10 226(a), 226.7, 510, 512, 1194, 1199, and 2802.

11 II.

12 JURISDICTION AND VENUE

13 11. This Court has subject matter jurisdiction over all causes of action asserted herein
14 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
15 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
16 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
17 State of California or is subject to adjudication in the courts of the State of California.

18 12. This Court has personal jurisdiction over Defendants because Defendants have
19 caused injuries in the County of Santa Clara and the State of California through their acts, and by
20 their violation of the California Labor Code, California state common law, and California Business
21 & Professions Code § 17200, et seq.

22 13. At all times set forth herein, Defendants are and were, based upon information and
23 belief, a California corporation doing business in Santa Clara County and in the State of California
24 with S.I.M. INVESTMENT CORPORATION's California address at 1730 W Campbell Ave,
25 Campbell, CA 95008 and FITNESS 19 CA 270, LLC's California address at 3000 Story Road,
26 San Jose, CA 95127. At all relevant times, Defendants employed Plaintiff in the State of California.

27 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
28 Civil Procedure § 395. Defendants operate within California and do business within Santa Clara

County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Aggrieved Employees within the State of California and the county of Santa Clara.

15. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code §2699, et seq. as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

16. Plaintiff DOMINIC HILL is a resident of California.

17. Upon information and belief, Plaintiff and all Aggrieved Employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 2-2001 (Title 8 Cal. Code of Regs. § 11020.)

18. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are Aggrieved Employees within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

19. Defendants S.I.M. INVESTMENT CORPORATION; FITNESS 19 CA 270, LLC are believed to be California corporations operating within the State of California. Defendant S.I.M. INVESTMENT CORPORATION's corporate address is believed to be 1730 W Campbell Ave, Campbell, CA 95008. Defendant FITNESS 19 CA 270, LLC's corporate address is believed to be 3000 Story Road, San Jose, CA 95127. Upon information and belief, Defendants employed Plaintiff and similarly situated persons as hourly employees within California. Defendants have done and do business throughout the State of California.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Aggrieved Employees.

22. Furthermore, Defendants acted in all respects as the employers or joint employers of the Aggrieved Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Aggrieved Employees, or suffered or permitted the Aggrieved Employees to work, or engaged, thereby creating a common law employment relationship, with the Aggrieved Employees. Therefore, Defendants, and each of them, employed or jointly employed the Aggrieved Employees.

IV.

FACTUAL BACKGROUND

23. Plaintiff and the Aggrieved Employees are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendants. Defendants hire employees who work as hourly employees who are paid on an hourly basis.

24. Upon information and belief, Plaintiff and the Aggrieved Employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 2-2001 (Title 8 Cal. Code of Regs. § 11020).

25. On a regular and consistent basis, for all Aggrieved Employees employed by Defendants, Defendants have failed to comply with Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802 as alleged herein.

///

///

///

1 V.

2 FIRST CAUSE OF ACTION

3 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
4 FOR PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR VIOLATIONS
5 OF LABOR CODE §§ 201, 202, 203, 226(A), 226.7, 510, 512, 1194, 1199, AND 2802

6 26. Plaintiff, on behalf of himself and the Aggrieved Employees, realleges and
7 incorporates by reference all previous paragraphs.

8 27. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
9 Development Agency and Defendants giving notice of these PAGA claims and continuing to the
10 present, Defendants have violated Labor Code §§ 1194 and 1199, with respect to Plaintiff and all
11 Aggrieved Employees. Labor Code §§ 1194 and 1199 require an employer to pay its employees
12 the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a)
13 states that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8)
14 hours in one workday and any work in excess of forty (40) hours in any one workweek must be
15 compensated at the rate of no less than one and one-half times the regular rate of pay for an
16 employee. Any work in excess of twelve (12) hours in one day shall be compensated at the rate
17 of no less than twice the regular rate of pay. California law also requires that any compensation
18 must be included in the regular rate of pay for the purposes of determining the correct overtime
19 and double-time rates.

20 28. Plaintiff and the Aggrieved Employees were forced to work on a regular and
21 consistent basis without receiving compensation for all hours worked at proper overtime rate when
22 they were working more than eight (8) hours in one day or forty (40) hours in one week.

23 29. Plaintiff and the Aggrieved Employees were not properly compensated at the
24 appropriate overtime rate of pay because Defendants failed to include commission and piece rate
25 pay when calculating Plaintiff and all Aggrieved Employees' regular rate for the purpose of
26 determining the correct overtime rate in pay periods where they were paid premium pay and were
27 also paid overtime. As such, Plaintiff and the Aggrieved Employees were paid at a regular rate
28 less than the rate required under California law for all work in excess of eight (8) hours in a

workday and/or forty (40) hours in a workweek.

30. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendants giving notice of these PAGA claims and continuing to the present, Defendants have violated Labor Code §§ 226.7 and 512, with respect to Plaintiff and all Aggrieved Employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift.

31. Defendants failed to maintain a policy informing Plaintiff and the Aggrieved Employees of these rights.

32. Plaintiff and the Aggrieved Employees consistently worked shifts over five (5) hours. Defendants failed to provide Plaintiff and the Aggrieved Employees with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. On a regular and consistent basis, Defendants scheduled Plaintiff and the aggrieved employees in a way that prevented them from taking lawful meal periods.

33. Defendants have had a consistent policy of failing to pay Plaintiff and the Aggrieved Employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of paying meal period premiums at the base rate and not the appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

34. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendants giving notice of these PAGA claims and continuing to the present, Defendants have violated Labor Code § 226.7, with respect to Plaintiff and all Aggrieved

Employees. Labor Code § 226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).

35. Defendants failed to maintain an accurate policy informing Plaintiff and the Aggrieved Employees of their rights with respect to rest periods.

36. Defendants failed to provide Plaintiff and the Aggrieved Employees with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period. Defendants consistently failed to schedule rest breaks for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees were not able to take rest periods.

37. During the relevant period, Plaintiff and the Aggrieved Employees consistently worked over 3 1/2 hours without being provided with paid rest breaks while working on a piece rate basis as matter of common policy and practice. Under a piece-rate system rest periods must be separately compensated.

38. Further, Plaintiff and the Aggrieved Employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Defendants have had a regular and consistent policy of paying rest period premiums at amounts under \$5.00. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, piece rate, etc.), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

39. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendants giving notice of these PAGA claims and continuing to the present, Defendants have violated Labor Code § 2802, with respect to Plaintiff and all Aggrieved Employees. Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the

1 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
2 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful.

4 40. Plaintiff and the Aggrieved Employees were required to use their own vehicles to
5 travel from job site to job site. Defendants have failed to reimburse Plaintiff and the Aggrieved
6 Employees for the cost of mileage necessary for the performance of Plaintiff and the Aggrieved
7 Employees' job duties.

8 41. Plaintiff and the Aggrieved Employees were required to use their person cell
9 phones as a necessary part of their jobs. Defendants required that Plaintiff and the Aggrieved
10 Employees be available by cell phone and answer/use their cell phones while working and this was
11 necessary to perform their job duties. These cell phones were not provided by Defendants and
12 Defendants failed to reimburse Plaintiff and the Aggrieved Employees for the costs associated
13 with using these personal cell phones necessary for the performance of Plaintiff and the Aggrieved
14 Employees' job duties.

15 42. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
16 Development Agency and Defendants giving notice of these PAGA claims and continuing to the
17 present, Defendants have violated Labor Code § 226(a), with respect to Plaintiff and all Aggrieved
18 Employees. Labor Code § 226(a) requires employers to furnish accurate itemized wage statements
19 in writing that show total hours worked by the employee and all applicable hourly rates in effect
20 during the pay period and the corresponding number of hours worked at each hourly rate by the
21 employee. (Labor Code §§ 226(a)(2) and (9) respectively.) Defendants furnish Plaintiff and the
22 Aggrieved Employees with itemized wage statements that do not accurately show total hours
23 worked or all applicable hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate.

25 43. Further, Plaintiff and the Aggrieved Employees are issued wage statements that do
26 not include accurate meal and rest premiums as a result of the claims alleged above.

27 44. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
28 Development Agency and Defendants giving notice of these PAGA claims and continuing to the

1 present, Defendants have violated Labor Code §§ 201-203.

2 45. Numerous Aggrieved Employees including the Plaintiff are no longer employed by
3 Defendants. They were either fired or quit Defendants' employ.

4 46. Defendants' failure to pay wages, as alleged above was willful in that Defendants
5 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Aggrieved Employees
6 to penalties under Labor Code § 203, which provides that an employee's wages shall continue as
7 a penalty until paid for a period of up to thirty (30) days from the time they were due.

8 47. Defendants' violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512,
9 1194, 1199, and 2802 was all done on a regular and consistent basis.

10 48. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
11 seeks penalties under Labor Code § 2699, et seq use of Defendants' violation of Labor Code §§
12 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802; Wage Order 2-2001; and California
13 Code of Regulations, Title 8, Section 11020, which call for civil penalties.

14 49. For each such penalty, Plaintiff and the aggrieved employees are entitled to
15 penalties in an amount to be shown at trial, subject to the following formula:

- 16 a. For statutes that specifically provide for a civil penalty, the amount of the penalty
17 provided for by such statute;
- 18 b. For statutes that do not specifically provide for a civil penalty:
- 19 i. \$100 for the initial violation per employee per pay period.
- 20 ii. \$200 for each subsequent violation per employee per pay period.

21 50. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
22 twenty-five percent (25%) to the affected employees.

23 51. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
24 LWDA¹ and mailed a letter by certified mail to Defendant S.I.M. Investment Corporation's entity
25 address, which is 1730 W Campbell Ave, Campbell, CA 95008 and Defendant Fitness 19 CA 270,
26 LLC's entity address, which is 3000 Story Road, San Jose, CA 95127, as proscribed by the Code

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

on November 18, 2021, describing Defendants' conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802. (see Exhibit "1.") On November 22, 2021, Plaintiff received signed green return receipts from Defendants, indicating that they received Plaintiff's notice letter. (see Exhibit "2.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "3").

52. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

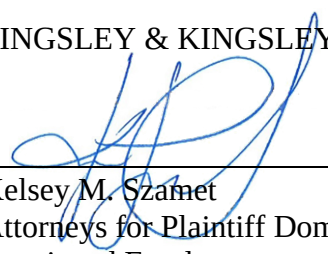
1. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff and all other Aggrieved Employees for Defendants' violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, 2802; Wage Order 2-2001; and California Code of Regulations, Title 8, Section 11020.
2. An award providing for payment of costs of suit;
3. An award of attorneys' fees; and
4. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: January 26, 2022

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff Dominic Hill and the
Aggrieved Employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

November 18, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

S.I.M. INVESTMENT CORPORATION
P.O. BOX 110307
Campbell, CA 95011
Via Certified Mailing No.: 7020 0640 0002 1439 7809

S.I.M. INVESTMENT CORPORATION
c/o Agent for Service of Process
Laurinda Hein
1730 W Campbell Ave
Campbell, CA 95008
Via Certified Mailing No.: 7020 0640 0002 1439 7786

FITNESS 19 CA 270, LLC
3000 Story Road
San Jose, CA 95127
Via Certified Mailing No.: 7020 0640 0002 1439 7779

FITNESS 19 CA 270, LLC
4810 Point Fosdick Dr. NW #7
Gig Harbor, WA 98335
Via Certified Mailing No.: 7020 0640 0002 1439 7762

FITNESS 19 CA 270, LLC
c/o Agent for Service of Process
InCorp Services, Inc.
Steven Pickett
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362
Via Certified Mailing No.: 7020 0640 0002 1439 7793

Re: DOMINIC HILL v. S.I.M. INVESTMENT CORPORATION; FITNESS 19 CA
270, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents DOMINIC HILL (“Plaintiff”) and a proposed group of current and former employees working for S.I.M. INVESTMENT CORPORATION; FITNESS 19 CA 270, LLC (“Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by S.I.M. INVESTMENT CORPORATION; FITNESS 19 CA 270, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendants have violated Labor Code §§ 510, 1194, and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight (8) hours of labor constitutes a day’s work and any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purpose of determining the correct overtime and double-time rates.

Defendants have had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and the aggrieved employees were not properly compensated at the appropriate rate of pay because Defendants failed to include Plaintiff’s and the aggrieved employees’ commissions and piece rate pay when calculating their regular rate for the purpose of

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 18, 2021

Page 3 of 5

determining the correct overtime rate in pay periods where they were paid premium pay and were also paid overtime. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the complaint meal period was not provided. Defendants scheduled Plaintiff and the aggrieved employees in a way that prevented them from taking lawful meal periods. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with rest periods and failed to provide all required rest periods. Pursuant to Labor Code § 226.7 and Wage Order 2-2001, Defendants are required to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendants failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Defendants have had a regular and consistent policy of paying rest period premiums at amounts under \$5.00. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. In addition, even though Plaintiff and members of the Proposed Class consistently worked over 3 1/2 hours, Defendants failed to provide paid rest breaks while working on a piece rate basis as matter of common policy and practice. Under a piece-rate system rest periods must be separately compensated

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 18, 2021

Page 4 of 5

expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendants required Plaintiff and all aggrieved employees to travel between job sites to perform work tasks. Because Defendants did not provide buses or other transportation to workers so that they could travel from job sites to job sites in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel from job site to job site. Defendants did not fully cover the costs for mileage in violation of California law. Defendants have failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendants required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Defendants also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including all hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants have failed to furnish accurate itemized wage statements that include all hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Further, Plaintiff and all aggrieved employees are issued wage statements that do not include accurate meal and rest premiums as a result of the claims alleged above.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendants’ employ. As such, Plaintiff is an aggrieved employee and Defendants failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 18, 2021

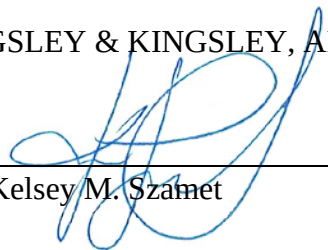
Page 5 of 5

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szamet



KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

S.I.M. Investment Corporation
c/o Agent for Service of Process
Laurinda Hein
1730 W Campbell Ave
Campbell, CA 95008



9590 9402 7019 1225 1723 48

2. Article Number (Transfer from service label)

7020 0640 0002 1439 7786

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X RP Rt 25

- ☒ Agent
☐ Addressee

B. Received by (Printed Name)

C-19

C. Date of Delivery

11/22/2

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

00)

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1723 48

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Letter

S.I.M. Investment Corporation

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fitness 19 CA 270, LLC
3000 Story Road
San Jose, CA 95127



9590 9402 7019 1225 1723 31

2. Article Number (Transfer from service label)

7020 0640 0002 1439 7779

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted

Delivery

☐ Signature Confirmation™☐ Signature Confirmation

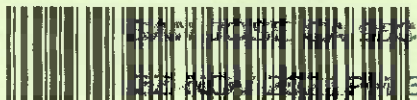
Restricted Delivery

Mail

Mail Restricted Delivery

(00)

USPS TRACKING#



ENCINO, CA 9402

PM 5 L



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1723 31

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Letter

S.I.M. Investment Corporation

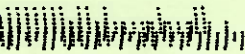


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Dominic Hill

Plaintiff/Aggrieved Employee Occupation *

Trainer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

S.I.M. Investment Corporation

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

P.O. Box 110307

Employer City *

Campbell

Employer State *

California



Employer Zip/Postal Code *

95011

Employer Industry *

Other



Employer Industry for "Other" *

Fitness

Add additional defendants☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Corporation



Employer Name *

S.I.M. Investment Corporation

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

1730 W Campbell Ave

Employer City *

Campbell

Employer State *

California



Employer Zip/Postal Code *

95008

Employer Industry *

Other



Employer Industry for "Other" *

Fitness

Additional Employer Information (Corporation/General Partnership)

[Remove](#)

Employer Entity Type

Other/Don't Know



Employer Name *

Fitness 19 CA 270, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

3000 Story Road

Employer City *

San Jose

Employer State *

California



Employer Zip/Postal Code *

95127

Employer Industry *

Other



Employer Industry for "Other" *

Fitness

Additional Employer Information (Corporation/General Partnership)

[Remove](#)

Employer Entity Type

Other/Don't Know



Employer Name *

Fitness 19 CA 270, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

4810 Point Fosdick Dr. NW #7	Gig Harbor
Employer State *	Employer Zip/Postal Code *
Washington	98335
Employer Industry *	Employer Industry for "Other" *
Other	Fitness

Additional Employer Information (Corporation/General Partnership) [Remove](#)

Employer Entity Type	Employer Name *
Other/Don't Know	Fitness 19 CA 270, LLC
	Maximum 80 Character Limit
Employer Street Name, Number and Suite/Apt *	Employer City *
5716 Corsa Ave., Suite 110	Westlake Village
Employer State *	Employer Zip/Postal Code *
California	91362
Employer Industry *	Employer Industry for "Other" *
Other	Fitness

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *
50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

PAGA Letter- ... 270, LLC.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 18, 2021 4:02 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

11/18/2021

LWDA Case No. LWDA-CM-852846-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Dominic Hill
Employer: S.I.M. Investment Corporation
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CJulie%40kingsleykingsley.com%7C9767c2713ea7411a965808d9aaf096d9%7C121a7875db4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637728772578795411%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 18, 2021 4:03 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-852846-21

Order Number: ORD-000143155

Total:\$75.00

Card Type: Master Card

Date: 11/18/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436