

1 Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Melissa Grant (SBN 205633)
Melissa.Grant@capstonelawyers.com
3 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
4 Suzy E. Lee (SBN 271120)
Suzy.Lee@capstonelawyers.com
5 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
6 Capstone Law APC
1840 Century Park East, Suite 450
7 Los Angeles, California 90067
Telephone: (310) 556-4811
8 Facsimile: (310) 943-0396

9 Attorneys for Plaintiff Donna Holley

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF RIVERSIDE
12

13 DONNA HOLLEY, as an aggrieved
14 employee pursuant to the Private Attorneys
15 General Act ("PAGA"),

16 Plaintiff,

17 vs.

18 24 HOUR FITNESS USA, INC., a
19 California corporation; and DOES 1
through 10, inclusive,

20 Defendants.

Case No.: **RIC 160 2246**

PAGA ENFORCEMENT ACTION

COMPLAINT

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

Jury Trial Demanded

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 24 2016

E. OLIVAS

1 Plaintiff Donna Holley (“Plaintiff”), as an aggrieved employee and on behalf of all
2 other non-party aggrieved employees as set forth herein, 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 section 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 non-exempt, hourly
8 employees who received at least one wage statement during their employment, excluding
9 Kids Club Attendants, and against whom one or more violations of any provision in Division
10 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in
11 the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
12 forth in this complaint, at any time between one year prior to the filing of this complaint until
13 judgment (“Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action
14 does not exceed \$75,000.

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

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

1 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
4 transactions and occurrences related to this action occurred in this county.

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

9 **THE PARTIES**

10 6. Plaintiff DONNA HOLLEY is a resident of Eastvale, California. Defendants
11 employed Plaintiff as an hourly-paid, non-exempt Group Exercise Instructor and as a
12 Personal Trainer from approximately June 2008 to May 2015. During her employment,
13 Plaintiff worked for Defendants at their fitness club locations in Glendora (Club No. 910)
14 and Eastvale (Club No. 893), California. As a Group Exercise Instructor and Personal
15 Trainer, Plaintiff typically worked 6 to 8 hours per day, and approximately 30 or more hours
16 per week. At times, Plaintiff worked up to 12 hours a day. At the time Plaintiff’s employment
17 ended with 24 Hour Fitness, she earned minimum wage, commissions for fitness packages
18 she sold, and a piece-rate of \$22.00 per group fitness class.

19 7. Defendant 24 HOUR FITNESS USA, INC. (“24 HOUR FITNESS”) is, on
20 information and belief, a California corporation doing business in California, with its
21 principal place of business in San Ramon, California, and at all times hereinafter mentioned,
22 an employer whose employees are engaged throughout this county, the State of California,
23 and/or the various states of the United States of America.

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

28 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

are the partners, agents, owners, shareholders, managers or employees of 24 HOUR FITNESS USA, INC. at all relevant times.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, 24 HOUR FITNESS USA, INC. and/or DOES 1 through 10 (collectively “Defendants”), each acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

11. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the violations herein alleged.

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

PAGA REPRESENTATIVE ALLEGATIONS

13. Defendants are a fitness center chain providing personal training, exercise classes, and other related services. Defendants operate fitness studios and gyms throughout California.

14. According to Defendants’ “Statement of Information” filed with the California Secretary of State office and Defendants’ website, Defendants maintain their corporate headquarters in San Ramon, California.¹ Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in San Ramon, California, which is responsible for conducting Defendants’ recruiting and hiring of new employees, as well as communicating and implementing Defendants’

¹ California Secretary of State, Business Filings, <https://businessfilings.sos.ca.gov/> (last visited Feb. 9, 2016); 24 Hour Fitness, “About Us,” http://www.24hourfitness.com/company/about_us/ (last visited Feb. 9, 2016).

1 company-wide policies, including timekeeping policies, to employees throughout California.
2 In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief,
3 received the same standardized documents and/or written policies. Upon information and
4 belief, the use of standardized documents and/or written policies, including new hire
5 documents, indicate that Defendants dictated policies at the corporate-level and implemented
6 them company-wide, regardless of their employees' assigned locations or positions. On
7 information and belief, all transactions regarding hiring, terminations, promotions, pay
8 increases, and employee transfers, etc., relating to Defendants' California employees were
9 submitted to and processed by Defendants' HR department in San Ramon, California

10 15. On information and belief, Defendants' corporate records, business records,
11 data, and other information related to 24 HOUR FITNESS, including, in particular, HR
12 records pertaining to Defendants' California employees, are also maintained at 24 HOUR
13 FITNESS's corporate headquarters in San Ramon, California.

14 16. Upon information and belief, Defendants set forth uniform policies and
15 procedures in several documents provided at an employee's time of hire. At the time Plaintiff
16 was hired, she received documents including, but not limited to, New Team Member
17 Handbook and Group X Manual, informing her that she would be subject to the policies and
18 rules set forth in the documents provided. At the time Plaintiff was hired, she received a New
19 Team Member Handbook Acknowledgment Form for her signature, informing her that she
20 would be subject to the company-wide policies and rules.

21 17. Upon information and belief, Defendants maintain a centralized Payroll
22 department at their corporate headquarters in San Ramon, California, which processes payroll
23 for all non-exempt, hourly-paid Group Exercise Instructors and Personal Trainers working for
24 Defendants at their various locations in California, including Plaintiff and other non-party
25 Aggrieved Employees.

26 18. Based upon information and belief, Defendants issue the same formatted wage
27 statements to all non-exempt, hourly paid employees in California, irrespective of their work
28 location. Upon further information and belief, during the relevant time period, Defendants

1 used third party ADP National Account Services to process and issue uniform, standardized
2 wage statements to Plaintiff and other non-party Aggrieved Employees. Thus, Plaintiff is
3 informed and believes that other non-party Aggrieved Employees throughout California were
4 also affected by Defendants' alleged noncompliance with wage statement reporting
5 requirements.

6 19. Upon information and belief, Defendants process payroll for departing
7 employees in the same manner throughout the State of California, regardless of the manner in
8 which the employees' employment ends.

9 20. Defendants continue to employ non-exempt, hourly-paid employees throughout
10 California.

11 21. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
13 and advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

15 22. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
16 non-party Aggrieved Employees were not paid for all hours worked, because all hours
17 worked were not recorded.

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

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 be paid at a regular rate of pay, and corresponding overtime rate of pay, that included all
25 forms of remuneration paid to Plaintiff and other non-party Aggrieved Employees, including
26 commissions, nondiscretionary bonuses, and/or other forms of compensation.

27 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive at least minimum wages for compensation and that, in violation of the California
2 Labor Code, they were not receiving at least minimum wages and overtime wages for work
3 that Defendants knew or should have known was performed off-the-clock.

4 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
7 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
8 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
9 not provided with all meal periods or payment of one (1) additional hour of pay at their
10 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute
11 meal period.

12 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
15 of one (1) additional hour of pay at their regular rates of pay when they were not provided
16 with a compliant rest period and that Plaintiff and other non-party Aggrieved Employees
17 were not provided compliant rest periods or payment of one (1) additional hour of pay at
18 their regular rates of pay when they were not provided a compliant rest period.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they were obligated to separately compensate Plaintiff and other
21 non-party Aggrieved Employees for rest periods when paying them on a piece-rate basis. In
22 violation of California law, Defendants did not separately compensate Plaintiff and other
23 non-party Aggrieved Employees for rest periods.

24 29. 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 receive complete and accurate wage statements in accordance with California law. In
27 violation of the California Labor Code, Defendants did not provide Plaintiff and other non-
28 party Aggrieved Employees with complete and accurate wage statements.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of wages upon termination of employment. In violation of the California
4 Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved Employees all
5 wages due, including, but not limited to, overtime wages, minimum wages, and meal and rest
6 period premium wages, within permissible time periods.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of wages during their employment. In violation of the California Labor
10 Code, Defendants did not pay Plaintiff and other non-party Aggrieved Employees all wages,
11 including, but not limited to, overtime wages, minimum wages, and meal and rest period
12 premium wages, within permissible time periods.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive full reimbursement for all business-related expenses and costs they incurred during
16 the course and scope of their employment, and that they did not receive full reimbursement
17 of applicable business-related expenses and costs they incurred.

18 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
20 and other non-party Aggrieved Employees with written notice of the material terms of their
21 employment with Defendants as required by the California Wage Theft Prevention Act, but
22 willfully, knowingly, and intentionally failed to do so.

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

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

7 36. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the
9 alleged violations was committed.”

10 37. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

13 38. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees,
14 including Plaintiff, may pursue a civil action arising under PAGA after the following
15 requirements have been met:

- 16 a) The aggrieved employee shall give written notice by certified mail
17 (hereinafter “Employee’s Notice”) to the LWDA and the employer of
18 the specific provisions of the California Labor Code alleged to have
19 been violated, including the facts and theories to support the alleged
20 violations.
- 21 b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
22 employer and the aggrieved employee by certified mail that it does not
23 intend to investigate the alleged violation within thirty (30) calendar
24 days of the postmark date of the Employee’s Notice. Upon receipt of
25 the LWDA Notice, or if the LWDA Notice is not provided within thirty-
26 three (33) calendar days of the postmark date of the Employee’s Notice,
27 the aggrieved employee may commence a civil action pursuant to
28 California Labor Code section 2699 to recover civil penalties in addition

1 to any other penalties to which the employee may be entitled.

2 39. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
3 including Plaintiff, may pursue a civil action arising under PAGA for violations of any
4 provision other than those listed in Section 2699.5 after the following requirements have been
5 met:

6 (a) The aggrieved employee or representative shall give written notice by
7 certified mail to the LWDA and the employer of the specific
8 provisions of the California Labor Code alleged to have been violated
9 (other than those listed in Section 2699.5), including the facts and
10 theories to support the alleged violation.

11 (b) The employer may cure the alleged violation within 33 calendar days
12 of the postmark date of the notice. The employer shall give written
13 notice by certified mail within that period of time to the aggrieved
14 employee or representative and the agency if the alleged violation is
15 cured, including a description of actions taken, and no civil action
16 pursuant to Section 2699 may commence. If the alleged violation is
17 not cured within the 33-day period, the employee may commence a
18 civil action pursuant to Section 2699.

19 40. On January 21, 2016, Plaintiff provided written notice by certified mail to the
20 LWDA and Defendant 24 HOUR FITNESS of the specific provisions of the California Labor
21 Code alleged to have been violated, including facts and theories to support the alleged
22 violations, in accordance with California Labor Code section 2699.3. A true and correct
23 copy of Plaintiff's written notice to the LWDA and 24 HOUR FITNESS dated January 21,
24 2016 is attached hereto as "Exhibit 1."

25 41. As of the filing date of this amended complaint, over 33 days have passed since
26 Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it
27 intends to investigate Plaintiff's claims.

28 42. Thus, Plaintiff has satisfied the administrative prerequisites under California

1 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
2 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
3 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and
4 2810.5.

5 43. Labor Code section 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare
8 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
9 dollars (\$50) for each underpaid employee for each pay period for which the employee was
10 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
11 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
12 period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided for in
14 this section are in addition to any other civil or criminal penalty provided by law.”

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

19 45. As set forth below, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
21 Order.

22 46. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),
23 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney
24 general, seeks assessment and collection of civil penalties for herself, all other non-party
25 Aggrieved Employees, and the State of California against Defendants, in addition to other
26 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
27 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

28 //

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 47. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
5 various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor
6 Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204,
7 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198 and 2802. Labor Code section
8 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
9 violations of Labor Code sections 1182.12 and 2810.5.

10 48. Defendants’ conduct, as alleged herein, violates the applicable IWC Wage
11 Order and numerous sections of the California Labor Code, including, but not limited to, the
12 following:

- 13 (a) Violations of Labor Code sections 510, 1198, and the applicable IWC
14 wage order for Defendants’ failure to compensate Plaintiff and other
15 non-party Aggrieved Employees with overtime wages for all hours
16 worked in excess of eight (8) in one day or forty (40) in one week, as set
17 forth below;
- 18 (b) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198
19 and the applicable IWC wage order for Defendants’ failure to
20 compensate Plaintiff and other non-party Aggrieved Employees with at
21 least minimum wages for all hours worked as set forth below;
- 22 (c) Violations of Labor Code sections 226.7, 512(a), 1198 and the
23 applicable IWC wage order for Defendants’ failure to provide Plaintiff
24 and other non-party Aggrieved Employees with meal and/or rest
25 periods, as set forth below;
- 26 (d) Violations of Labor Code sections 226(a), 1198 and the applicable IWC
27 wage order for failure to provide accurate and complete wage statements
28 to Plaintiff and other non-party Aggrieved Employees as set forth

below;

- (e) Violations of Labor Code sections 1174(d), 1198 and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (f) Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (g) Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violations of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for business expenses necessarily incurred, as set forth below; and
- (i) Violations of Labor Code section 2810.5 for failure to provide written notice of information material to Plaintiff and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

49. California 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.”

50. 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.

51. 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

1 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
2 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty
3 (40) hours in a workweek.

4 52. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiff and other non-party Aggrieved Employees working more than
6 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
7 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
8 or on behalf of, the employee, including commissions, non-discretionary bonuses, and
9 incentive pay.

10 53. California Labor Code section 510 codifies the right to overtime compensation
11 at one-and-one-half times the regular rate of pay for hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
13 seventh day of work, and to overtime compensation at twice the employees regular rate of
14 pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
15 in a day on the seventh day of work.

16 54. During the relevant time period, Defendants willfully failed to pay all overtime
17 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
18 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
19 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
20 hours in a day, in excess of eight (8) hours on the seventh (7th) consecutive day of a work in
21 a workweek, and/or in excess of forty (40) hours in a week, because all hours worked were
22 not recorded.

23 55. Defendants have, on a company-wide basis, failed to implement any policies to
24 authorize and permit physical trainers to take meal periods and instead, engaged in a practice
25 of discouraging and impeding physical trainers from taking meal periods by requiring that they
26 work a minimum of 30 physical training sessions per week, or 120 physical training sessions
27 per month. Defendants have, on a company-wide basis, failed to schedule physical trainers for
28 meal periods even though it was aware and knows that employees were entitled to such meal

1 periods. For example, within the relevant time period, Plaintiff frequently worked 6 or more
2 60-minute training sessions back-to-back without being relieved of her duties to take a meal
3 period. As a result of this company-wide failure to schedule meal periods, Plaintiff and other
4 non-party Aggrieved Employees were rarely, if ever, permitted and authorized to take
5 uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a
6 meal period.

7 56. Upon information and belief, Defendants have, and continues to have a
8 company-wide policy of requiring that new hires sign blanket meal period waivers during the
9 new-hire process. Upon further information and belief, Defendants took the position that
10 hourly employees had waived their rights to first meal periods for the entirety of their
11 employment and on that basis did not provide them with first meal periods.

12 57. During the relevant time, Plaintiff often barely had enough time to run to the
13 restroom between back-to-back training sessions during a 6-hour shift, and did not receive 30
14 minute meal periods on days she worked 6-hour shifts. Instead, Plaintiff and other non-party
15 Aggrieved Employees were required to complete their assigned tasks during meal periods,
16 such as processing paperwork and cleaning up the workout area between client training
17 sessions. As a result of Defendants' scheduling practices and/or policies, or lack thereof,
18 Plaintiff and other non-party Aggrieved Employees routinely missed meal periods. In
19 addition, Defendants did not provide Plaintiff and other non-party Aggrieved Employees
20 with second 30 minute meal periods on days that they worked in excess of 10 hours in one
21 day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal break
22 waivers on days that they were entitled to meal periods but were not relieved of all duties.

23 58. Further, Defendants required Plaintiff and other non-party Aggrieved Employees
24 to complete assigned tasks while not clocked in, including filing paperwork and contacting
25 client members, and were required to complete them under the threat of not being assigned
26 additional clients. This practice was company-wide and discouraged and impeded Plaintiff
27 and other non-party Aggrieved Employees from taking compliant breaks and led them to
28 working off-the-clock in order to meet the required performance expectations set by

1 Defendants. For example, Plaintiff was at times required to clock out at the end of her
2 scheduled shift and complete paperwork for her clients, because Defendants refused to
3 allocate and schedule her for the additional hours to finish these assigned tasks. At times,
4 Plaintiff had to continue to work for approximately two (2) hours total off-the-clock per
5 week after her shifts ended.

6 59. Defendants also had a company-wide practice and/or policy of requiring
7 Plaintiff and other non-party Aggrieved Employees to communicate with Defendants and/or
8 Defendants' personal training clients via their own personal cellular phones, including on
9 their days off and outside of their scheduled shifts. Defendants required Plaintiff and other
10 non-party Aggrieved Employees to complete paperwork for client members and contacting
11 client members when they were not on the clock, under the threat of not being assigned
12 additional clients. Defendants knew or should have known that Plaintiff and other non-party
13 Aggrieved Employees were being made to communicate with members while off-the-clock in
14 order to meet Defendants' expectations, but failed to compensate them for this off-the-clock
15 work. And, although Defendants' managers regularly contacted Plaintiff on her personal
16 cellular phone while she was off-the-clock and not at the gym to discuss work-related
17 matters, Defendants failed to pay her for this time.

18 60. Because Plaintiff and other non-party Aggrieved Employees sometimes worked
19 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
20 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party
21 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
22 worked. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the
23 balance of overtime compensation, as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198.

25 61. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
26 Employees the correct overtime rate for the recorded overtime hours that they generated. In
27 addition to an hourly wage, Defendants paid other aggrieved employees commissions,
28 incentive pay, and/or nondiscretionary bonuses. However, in violation of the California

1 Labor Code, Defendants failed to incorporate all remunerations, including commissions,
2 incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay
3 for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff
4 and other non-party Aggrieved Employees worked overtime and received these other forms of
5 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
6 required.

7 62. For example, during the relevant time period, Defendants has paid Plaintiff
8 commissions on sales of personal training session packages which appear on her wage
9 statement(s) as "PT Comm On Sales for FS." In addition, Defendants paid Plaintiff and other
10 non-party Aggrieved Employees incentive pay if they booked and completed 120 personal
11 training in a single month. On information and belief, Plaintiff received this incentive pay
12 during the relevant time period. In the same pay periods in which these commissions,
13 incentive payments, and/or nondiscretionary bonuses were earned, Plaintiff and/or other non-
14 party Aggrieved Employees also worked overtime hours for which they were paid overtime
15 wages. However, Defendants failed to incorporate these other forms of pay earned into
16 Plaintiff's regular rate of pay and, as a result, paid her at an incorrect and lower rate of pay
17 for overtime hours worked. Specifically, for example, Defendants paid her at 1.5 times her
18 hourly rate of pay (which was \$9.00 per hour), or \$13.50, instead of at 1.5 times her regular
19 rate of pay. Defendants' failure to properly calculate the overtime rate of pay based on all
20 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other
21 non-party Aggrieved Employees.

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

28 //

1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1 AND 1198**

3 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
4 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
5 minimum wage to be paid to employees, and the payment of a wage less than the minimum
6 so fixed is unlawful.

7 65. As described above, due to Defendants' company-wide scheduling and staffing
8 practices, Plaintiff and other non-party Aggrieved Employees were forced to forego meal
9 breaks and/or have their meal breaks interrupted by work and were not relieved of all duties
10 for unpaid meal periods and were not relieved of all duties for unpaid meal periods. Plaintiff
11 and other non-party Aggrieved Employees were also required to perform work off-the-clock
12 before and after their scheduled shifts to complete their assigned duties, including processing
13 paperwork and communicating with Defendants' management and gym members. Defendants
14 did not pay at least minimum wages for off-the-clock hours that qualified for overtime
15 premium payment. Also, to the extent that these off-the-clock hours did not qualify for
16 overtime premium payment, Defendants did not pay at least minimum wages for those hours
17 worked off-the-clock.

18 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
20 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
21 civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE MEAL PERIODS**

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

24 67. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
25 California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and other
26 non-party Aggrieved Employees' employment by Defendants.

27 68. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a

1 period of more than five (5) hours per day without providing the employee with a meal
2 period of not less than thirty (30) minutes, except that if the total work period per day of the
3 employee is not more than six (6) hours, the meal period may be waived by mutual consent
4 of both the employer and the employee. Under California law, first meal periods must start
5 after no more than five (5) hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004,
6 1041-1042 (Cal. 2012).

7 69. At all relevant times herein set forth, California Labor Code section 226.7 and
8 512(a) provide that no employer shall require an employee to work during any meal period
9 mandated by an applicable order of the IWC.

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

17 71. During the relevant time period, Defendants had a company-wide policy and/or
18 practice of failing to schedule meal breaks for Plaintiff and other non-party Aggrieved
19 Employees. As a result of this practice and/or policy, Plaintiff and other non-party
20 Aggrieved Employees were impeded from taking meal periods and were instead required to
21 continue to perform their duties without being able to take timely, compliant meal periods.
22 At all times herein mentioned, Defendants knew or should have known that as a result of
23 these policies, Plaintiff and other non-party Aggrieved Employees were prevented from
24 being relieved of all duties and required to perform some of their assigned duties during meal
25 periods and that Defendants did not pay Plaintiff and other non-party Aggrieved Employees
26 meal period premium wages when they were missed or taken late. As a result, Plaintiff and
27 other non-party Aggrieved Employees had to work through some or all of their meal periods,
28 have their meal periods interrupted, and/or wait extended periods of time before taking meal

1 periods. For example, Plaintiff worked over 12 hours straight on at least one occasion
2 without being relieved of her duties by Defendants such that she could take a meal period.

3 72. Furthermore, Defendants did not provide Plaintiff and other non-party
4 Aggrieved Employees with second 30-minute meal periods on days that they worked in
5 excess of ten (10) hours in one day. Defendants knew or should have known that its failure
6 to schedule meal periods would result in a failure to provide Plaintiff and other non-party
7 Aggrieved Employees with full and timely meal periods as required by the applicable IWC
8 Wage Order and Labor Code sections 226.7 and 512(a).

9 73. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
10 break waivers on days that they were entitled to meal periods but were not relieved of all
11 duties. Instead, and as stated, Defendants' required Plaintiff and other non-party Aggrieved
12 Employees to sign blanket meal period waivers during the new-hire process, which are invalid.

13 74. Moreover, Defendants engaged in a systematic, company-wide policy to not
14 pay meal period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and
15 other non-party Aggrieved Employees one (1) additional hour of premium pay for missed
16 meal periods, Defendants did not pay Plaintiff and other non-party Aggrieved Employees at
17 the correct rate of pay for premium wages because Defendants failed to include all forms of
18 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
19 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other non-party
20 Aggrieved Employees premium pay for missed meal periods, it did so at a lower rate than
21 required by law. As a result, Defendants failed to provide Plaintiff and other non-party
22 Aggrieved Employees compliant meal periods and failed to pay the full meal period
23 premiums due.

24 75. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a) and 1198. Plaintiff and other non-party Aggrieved
26 Employees are therefore entitled to recover civil penalties pursuant to sections 558 and/or
27 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE REST PERIODS**

2 **VIOLATION OF LABOR CODE SECTION 226.7 AND 1198**

3 76. At all relevant times, the applicable IWC Wage Order and California Labor
4 Code sections 226.7 and 1198 were applicable to Plaintiff and other non-party Aggrieved
5 Employees' employment by Defendants.

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

12 78. At all relevant times, California Labor Code section 226.7 provides that no
13 employer shall require an employee to work during any rest period mandated by an applicable
14 order of the California IWC. Pursuant to the applicable IWC Wage Order, Wage Order
15 11020(12)(A), "[a]uthorized rest period time shall be counted as hours worked for which there
16 shall be no deduction from wages." Because rest periods are considered hours worked, they
17 must be compensated.

18 79. Under California law, employers that utilize a piece-rate compensation system
19 must compensate employees separately for their rest periods. *Armenta v. Osmose, Inc.* (2005)
20 135 Cal.App.4th 315, 323. A piece-rate compensation system that does not separately
21 compensate employees for rest periods does not comply with California's minimum wage law.
22 *Bluford v. Safeway* (2013) 216 Cal.App.4th 864, 872.

23 80. During the relevant time period, Defendants compensated Plaintiff and other
24 non-party Aggrieved Employees in various ways, including on a piece-rate basis only for
25 certain activities. For example, Defendants paid Plaintiff a flat rate of \$22.00 for each group
26 fitness class that she taught. Defendants also paid other non-party Aggrieved Employees who
27 taught group fitness classes, or other types of fitness classes on a piece-rate or flat rate basis.
28 However, Defendants did not separately compensate Plaintiff and other non-party Aggrieved

1 Employees for rest periods during the times they were compensated on a piece-rate basis, as
2 required. Defendants' failure to separately compensate Plaintiff and other non-party
3 Aggrieved Employees for rest breaks when paying them on a piece-rate basis violates
4 California law.

5 81. During the relevant time period, Defendants regularly failed to authorize and
6 permit Plaintiff and other non-party Aggrieved Employees to take 10 minute rest period per
7 each four (4) hour period worked or major fraction thereof. As with meal periods,
8 Defendants similarly had no practice or policy of scheduling rest periods for Plaintiff and other
9 non-party Aggrieved Employees. Also, in the time between training sessions and/or group
10 exercise classes, Plaintiff and other non-party Aggrieved Employees would be required to
11 complete assigned tasks, including, but not limited to processing paperwork, cleaning up the
12 workout area, and responding to member questions. As a result, Plaintiff and other non-party
13 Aggrieved Employees would work shifts in excess of 3.5 hours without 10 minute rest periods to
14 which they were entitled. Throughout her employment, Plaintiff regularly worked straight
15 through her shifts without taking 10 minute rest periods.

16 82. At the same time, Defendants implemented a company-wide policy to not pay
17 rest period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other
18 non-party Aggrieved Employees one (1) additional hour of premium pay for missed rest
19 periods, Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the
20 correct rate of pay for premium wages because Defendants failed to include all forms of
21 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
22 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other non-party
23 Aggrieved Employees premium pay for missed rest periods, it did so at a lower rate than
24 required by law. As a result, Plaintiff and other non-party Aggrieved Employees were
25 denied rest periods and failed to pay the full rest period premiums due, in violation of Labor
26 Code section 226.7 and the applicable IWC Wage Order.

27 83. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7 and 1198. Plaintiff and other non-party Aggrieved Employees are

1 therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

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

4 84. At all relevant times herein, California Labor Code section 226(a) provides that
5 every employer shall furnish each of his or her employees an accurate and complete itemized
6 wage statement in writing, including, but not limited to, the name and address of the legal
7 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
8 applicable rates of pay.

9 85. During the relevant time period, Defendants have knowingly and intentionally
10 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete and
11 inaccurate wage statements. For example, Defendants issued uniform wage statements to
12 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
13 earned; net wages earned; and all applicable hourly rates in effect during the pay period,
14 including overtime rates of pay, and the corresponding number of hours worked at each
15 hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(5), 226(a)(8), and
16 226(a)(9). Because Defendants did not calculate Plaintiff and other non-party Aggrieved
17 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not
18 list the correct amount of gross wages earned by Plaintiff and other non-party Aggrieved
19 Employees in compliance with section 226(a)(1). For the same reason, Defendants failed to
20 list the correct amount of net wages earned by Plaintiff and other non-party Aggrieved
21 Employees in violation of section 226(a)(5). Defendants also failed to correctly list all
22 applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay
23 and correct rates of pay for premium wages, in violation of section 226(a)(9). First,
24 Defendants listed an overtime rate of \$5.19 per hour, as "Overtime Premium .5," which is not
25 the actual overtime rate. Second, Defendants calculated and utilized an overtime rate of
26 \$10.80 per hour on Plaintiff's paystub dated January 2, 2015, when her correct overtime rate
27 of pay was higher based on her regular rate of pay.

28 86. Furthermore, has knowingly provided Plaintiff and other non-party Aggrieved

1 Employees with uniform, standardized wage statements that list the incorrect address for 24
2 HOUR FITNESS in violation of Labor Code section 226(a)(8). Specifically, according to
3 Plaintiff's wage statements, the address for 24 HOUR FITNESS is listed as "1265 Laurel
4 Tree Lane Ste 200 Carlsbad, CA 92011." However, according to the California Secretary of
5 State's website, the correct address for 24 HOUR FITNESS is 12647 Alcosta Boulevard,
6 Suite 500 San Ramon CA 94583.

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

15 88. California Labor Code section 1198 provides that the maximum hours of work
16 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
17 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
18 employment of any employees for longer hours than those fixed by the order or under
19 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
20 Wage Order, employers are required to keep accurate time records showing when the
21 employee begins and ends each work period and meal period. During the relevant time
22 period, Defendants failed, on a company-wide basis, to keep records of meal period start and
23 stop times for Plaintiff and other non-party Aggrieved Employees in violation of section
24 1198.

25 89. California Labor Code section 1174(d) provides that "[e]very person employing
26 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors" and "[keep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the

1 hours worked daily by and the wages paid to, and the number of piece-rate units earned by
2 and any applicable piece rate paid to, employees employed at the respective plants or
3 establishments...” During the relevant time period, and in violation of Labor Code section
4 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
5 other non-party Aggrieved Employees showing the daily hours they worked and the wages
6 paid thereto as a result of failing to record the off-the-clock hours that they worked.

7 90. Because Defendants’ violations of 226(a) and 1174(d) were committed against
8 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
9 Employees are entitled to recover civil penalties pursuant to sections 226.3, 1174.5, and/or
10 2699(a), (f), and (g).

11 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

20 92. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 other non-party Aggrieved Employees who are no longer employed by Defendants the earned
22 and unpaid wages set forth above, including but not limited to, overtime wages, minimum
23 wages, and meal and rest period premium wages, either at the time of discharge, or within
24 seventy-two (72) hours of their leaving Defendants’ employ.

25 93. Defendants’ failure to pay Plaintiff and those non-party Aggrieved Employees
26 who are no longer employed by Defendants their wages earned and unpaid at the time of
27 discharge, or within seventy-two (72) hours of their leaving Defendants’ employ, violates
28 Labor Code sections 201 and 202.

1 94. In addition, on May 28, 2015, Plaintiff was terminated. Plaintiff's last day of
2 work was on May 28, 2015, but she did not receive her entire final wages until one (1) week
3 after her last day of work. Plaintiff received one check on May 28, 2015, and a second check
4 for her wages later on, in June 2015. On information and belief, Defendants had a company-
5 wide practice or policy of paying departing employees the entirety of their final wages on the
6 next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code
7 sections 201 and 202. Although Plaintiff was terminated on May 28, 2015, Defendants failed
8 to pay Plaintiff her final wages on her last day of work, in violation of Labor Code section
9 201.

10 95. Therefore, Plaintiff and other non-party Aggrieved Employees are entitled to
11 recover civil penalties pursuant to section 2699(a), (f), and (g).

12 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
13 **VIOLATION OF LABOR CODE SECTION 204**

14 96. At all relevant times herein, Labor Code section 204 provides that all wages
15 earned by any person in any employment between the 1st and the 15th days, inclusive, of any
16 calendar month, other than those wages due upon termination of an employee, are due and
17 payable between the 16th and the 26th day of the month during which the labor was
18 performed. Labor Code section 204 further provides that all wages earned by any person in
19 any employment between the 16th and the last day, inclusive, of any calendar month, other
20 than those wages due upon termination of an employee, are due and payable between the 1st
21 and the 10th day of the following month.

22 97. At all relevant times herein, Labor Code section 204 provides that all wages
23 earned for labor in excess of the normal work period shall be paid no later than the payday
24 for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code
25 section 204 provides that the requirements of this section are deemed satisfied by the
26 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
27 more than seven (7) calendar days following the close of the payroll period.

28 98. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
2 wages, minimum wages, and meal and rest period premium wages, within the time periods
3 specified by California Labor Code section 204. Plaintiff and other non-party Aggrieved
4 Employees are therefore entitled to recover civil penalties pursuant to sections 210 and/or
5 2699(a), (f), and (g).

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **VIOLATION OF LABOR CODE SECTION 2802**

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

19 100. During the relevant time period, Plaintiff and other non-party Aggrieved
20 Employees incurred necessary business-related expenses and costs that were not fully
21 reimbursed by Defendants. Defendants required that Plaintiff and other non-party Aggrieved
22 Employees utilize their own personal cellular phones and cellular phone data plans to carry
23 out their job duties, but Defendants failed to reimburse them for the costs of their cell phone
24 plans and/or data plans. For example, Plaintiff was regularly required to use her personal
25 cellular phone in order to carry out her work, such as receiving and answering emails, text
26 messages, and/or phone calls from supervisors and co-workers regarding her schedule and
27 work assignments, Yet Defendants failed to reimburse her for this cost. Also, Plaintiff was
28 regularly required to respond to text messages from clients regarding their sessions.

1 Although Defendants required Plaintiff to regularly utilize her personal cellular phone to
2 carry out work-related responsibilities, Defendants failed to reimburse her for this cost.
3 Defendants could have provided Plaintiff and other non-party Aggrieved Employees with
4 phones, to be used for fulfilling work-related tasks, but instead, Defendants passed this
5 operating cost off onto Plaintiff and other non-party Aggrieved Employees.

6 101. Defendants' policy and/or practice of passing its operating costs on to Plaintiff
7 and other non-party Aggrieved Employees by requiring that they use their own personal
8 cellular phones for business is in violation of California Labor Code section 2802.
9 Defendants have intentionally and willfully failed to fully reimburse Plaintiff and other non-
10 party Aggrieved Employees for necessary business-related expenses and costs.

11 102. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
12 penalties pursuant to Labor Code section 2699(f)-(g).

13 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
14 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

15 103. California's Wage Theft Prevention Act was enacted to ensure that employers
16 provide employees with basic information material to their employment relationship at the
17 time of hiring, and to ensure that employees are given written and timely notice of any
18 changes to basic information material to their employment. Codified at California Labor
19 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
20 employer must provide written notice to employees containing basic and material payroll
21 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
22 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
23 overtime, the regular payday designated by the employer, and any allowances claims as part
24 of the minimum wage, including meal or lodging allowances. Labor Code section
25 2810.5(a)(1)(A)-(C).

26 104. During the relevant time period, Defendants failed to provide written notice to
27 Plaintiff and other non-party Aggrieved Employees that lists the requisite information set
28 forth in Labor Code section 2810.5 on a company-wide basis.

105. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of 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).

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime wages); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide meal or rest periods); 226(a) and 1198 (by failing to provide accurate and complete wage statements); 1174(d) and 1198 (by failing to maintain accurate and complete payroll records); 201, 202, 203 (by failing timely to pay all unpaid wages upon termination); 204 (by failing timely to pay all earned wages during employment); 2802 (by failing to reimburse employees for business expenses necessarily incurred); and 2810.5 (by failing to provide written notice of material terms of employment);

3. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5;

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), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5;

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

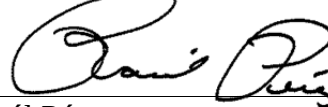
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 24 , 2016

Respectfully submitted,

Capstone Law APC

By: _____



Raúl Pérez
Melissa Grant
Arnab Banerjee
Suzy E. Lee
Ruhandy Glezakos

Attorneys for Plaintiff Donna Holley

EXHIBIT 1



1840 Century Park East, Suite 450
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Green@capstonelawyers.com

January 21, 2016

VIA U.S. CERTIFIED MAIL

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94162

Subject: *Donna Holley v. 24 Hour Fitness USA, Inc.*

Dear PAGA Administrator:

This office represents Donna Holley in connection with her claims under the California Labor Code. Ms. Holley was an employee of 24 HOUR FITNESS USA, INC. ("24 HOUR FITNESS").

The employer may be contacted directly:

24 HOUR FITNESS USA, INC.
12647 ALCOSTA BOULEVARD, SUITE 500
SAN RAMON CA 94583

Ms. Holley 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"). Ms. Holley seeks relief on behalf of herself, the State of California, and other persons who were employed by 24 HOUR FITNESS in California as a non-exempt, hourly-paid Group Exercise Instructor and/or Personal Trainer ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3. A copy of Ms. Holley's proposed complaint is enclosed and incorporated herewith.

24 HOUR FITNESS employed Ms. Holley as an hourly, non-exempt Group Exercise Instructor and Personal Trainer from approximately June 2008 to May 2015. Ms. Holley worked for 24 HOUR FITNESS at their fitness club locations in Glendora (Club No. 910) and Eastvale (Club No. 893), California. As a Group Exercise Instructor and Personal Trainer, Ms. Holley typically worked 6 to 8 hours per day, 6 days per week, and approximately 30 or more hours per week. At times, Ms. Holley worked up to 12 hours a day. At the time Ms. Holley's employment ended with 24 HOUR FITNESS, she earned \$9.00 per hour, plus commission, and a piece-rate of \$22.00 per group fitness class. Ms. Holley's relevant claims are as follows:

24 HOUR FITNESS' Company-Wide and Uniform Payroll and HR Practices

24 HOUR FITNESS is a California corporation and a fitness center chain providing personal training, exercise classes, and other related services. 24 HOUR FITNESS operates gyms throughout California. Upon information and belief, 24 HOUR FITNESS maintains a single, centralized Human Resources (HR) department at their corporate headquarters in San Ramon, California, for all non-exempt, hourly paid employees working for 24 HOUR FITNESS in California, including Ms. Holley and other aggrieved employees. At all relevant times, 24 HOUR FITNESS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Ms. Holley and other aggrieved employees, regardless of their location or position. All transactions regarding hiring, terminations, promotions, pay increases, and employee transfers, etc., were submitted to and processed by 24 HOUR FITNESS' HR department in San Ramon, California.

Upon information and belief, 24 HOUR FITNESS maintains a centralized Payroll department at their corporate headquarters in San Ramon, California, which processes payroll for all non-exempt, hourly paid employees working for 24 HOUR FITNESS at their various locations in California, including Ms. Holley and other aggrieved employees. At all relevant times, 24 HOUR FITNESS has processed payroll and issued the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Holley and other aggrieved employees, regardless of their location, position, or manner in which each employee's employment ended. 24 HOUR FITNESS has utilized third party ADP National Account Services to process its uniform, standardized wage statements to Ms. Holley and other aggrieved employees during the relevant time period.

Violation of California Labor Code §§ 510 and 1198

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 commissions, non-discretionary bonuses and incentive pay.

24 HOUR FITNESS willfully failed to pay all overtime wages owed to Ms. Holley and other aggrieved employees. During the relevant time period, Ms. Holley and other aggrieved 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 Ms. Holley and other aggrieved employees worked were not recorded. 24 HOUR FITNESS has, on a company-wide basis, failed to implement any policies to authorize and permit physical trainers to take meal periods and instead, engages in a practice of discouraging and impeding physical trainers from taking meal periods by requiring that they work a minimum of 30 physical training sessions per week, or 120 physical training sessions per month. 24 HOUR FITNESS has, on a company-wide basis, failed to schedule physical trainers for meal periods even though it is aware and knows that employees are entitled to such meal periods. For example, within

the relevant time period, Ms. Holley frequently worked 6 or more 60-minute training sessions back-to-back without being relieved of her duties to take a meal period. As a result of this company-wide failure to schedule meal periods, Ms. Holley and other aggrieved employees were rarely, if ever, permitted and authorized to take uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a meal period.

Upon information and belief, 24 HOUR FITNESS has, and continues to have a company-wide policy of requiring that new hires sign blanket meal period waivers during the new-hire process. Instead of building in time for Ms. Holley and other aggrieved employees to take meal periods, 24 HOUR FITNESS took the position that hourly employees had waived their rights to first meal periods for the entirety of their employment and on that basis did not provide them with first meal periods.

During the relevant time, Ms. Holley often barely had enough time to run to the restroom between back-to-back training sessions during a 6-hour shift, and did not receive 30-minute meal periods on days she worked 6-hour shifts. Instead, Ms. Holley and other aggrieved employees were required to complete their assigned tasks during meal periods, such as processing paperwork and cleaning up the workout area between client training sessions. As a result of 24 HOUR FITNESS' scheduling practices and/or policies, Ms. Holley and other aggrieved employees routinely missed meal periods. In addition, 24 HOUR FITNESS did not provide Ms. Holley and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Ms. Holley and/or other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods but were not relieved of all duties.

Further, 24 HOUR FITNESS required Ms. Holley and other aggrieved employees to complete assigned tasks while not clocked in, including filing paperwork and contacting client members, and were required to complete them under the threat of not being assigned additional clients. This practice was company-wide and discouraged and impeded Ms. Holley and other aggrieved employees from taking compliant breaks and led them to working off-the-clock in order to meet the required performance expectations set by 24 HOUR FITNESS. For example, Ms. Holley was occasionally required to clock out at the end of her scheduled shift and complete paperwork for her clients, because 24 HOUR FITNESS refused to allocate and schedule her for the additional hours to her to finish these assigned tasks. At times, Ms. Holley had to continue to work for approximately two (2) hours total off-the-clock per week after her shifts ended.

24 HOUR FITNESS also had a company-wide practice and/or policy of requiring Ms. Holley and other aggrieved employees to communicate with 24 HOUR FITNESS and/or 24 HOUR FITNESS' personal training clients via their own personal cellular phones, including on their days off and outside of their scheduled shifts. 24 HOUR FITNESS required Ms. Holley and other aggrieved employees to complete paperwork for client members and contacting client members when they were not on the clock, under the threat of not being assigned additional clients. 24 HOUR FITNESS knew or should have known that its Ms. Holley and other aggrieved employees were being made to communicate with members while off-the-clock in order to meet 24 HOUR FITNESS' expectations, but failed to compensate them for this off-the-clock work. And, although 24 HOUR FITNESS' managers regularly contacted Ms. Holley on her personal cellular phone while she was off-the-clock and not at the gym to discuss work-related matters, 24 HOUR FITNESS failed to pay her for this time.

Because Ms. Holley and other aggrieved employees sometimes 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, Ms. Holley and other aggrieved employees were not paid overtime wages for all of the overtime hours they worked. 24 HOUR FITNESS's failure to pay Ms. Holley and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, 24 HOUR FITNESS did not pay Ms. Holley and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, 24 HOUR FITNESS paid other aggrieved employees commissions, incentive pay, and/or nondiscretionary bonuses. However, in violation of the California Labor Code, 24 HOUR FITNESS failed to incorporate all remunerations, including commissions, incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Holley and other aggrieved employees worked overtime and received these other forms of pay, 24 HOUR FITNESS failed to pay all overtime wages by paying a lower overtime rate than required.

For example, during the relevant time period, 24 HOUR FITNESS has paid Ms. Holley commissions on sales of personal training session packages which appear on her wage statement(s) as "PT Comm On Sales for FS." In addition, 24 HOUR FITNESS paid Ms. Holley and other personal trainers incentive pay if they booked and completed 120 personal training in a single month. Ms. Holley received this incentive pay during the relevant time period. In the same pay periods in which these commissions, incentive payments, and/or nondiscretionary bonuses were earned, Ms. Holley and/or other aggrieved employees also worked overtime hours for which they were paid overtime wages. However, 24 HOUR FITNESS failed to incorporate these other forms of pay earned into Ms. Holley's regular rate of pay and, as a result, paid her at an incorrect and lower rate of pay for overtime hours worked. Specifically, for example, 24 HOUR FITNESS paid her at 1.5 times her *hourly* rate of pay (which was \$9.00 per hour), or \$13.50, instead of at 1.5 times her *regular* rate of pay. 24 HOUR FITNESS' failure to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Holley and other aggrieved employees.

Ms. Holley and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, and 1197.1

California Labor Code sections 1182.12, 1194, 1197, and 1197.1 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.

As set forth above, due to 24 HOUR FITNESS's company-wide practice of not scheduling meal breaks for physical trainers, Ms. Holley and other aggrieved employees were forced to forego meal periods, and/or have their meal periods interrupted by work and were not relieved of all duties for unpaid meal periods. Ms. Holley and other aggrieved employees were also required to perform work off-the-clock before and after their scheduled shifts to complete their assigned duties, including processing paperwork and communicating with 24 HOUR FITNESS' management and gym members. 24 HOUR 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, 24 HOUR 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, 24 HOUR FITNESS regularly failed to pay at least minimum wages

to Ms. Holley and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197 and 1197.1.

Ms. Holley 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 and 512(a)

California Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order require employers to provide meal and rest breaks 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 break 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.

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.

As stated, 24 HOUR FITNESS had a company-wide policy and/or practice of failing to schedule Ms. Holley and other aggrieved employees for meal periods. Meanwhile, 24 HOUR FITNESS knew Ms. Holley and other aggrieved employees were working back-to-back training sessions that impeded and prevented them from taking uninterrupted 30-minute meal periods. As a result of 24 HOUR FITNESS' failure to schedule meal periods, Ms. Holley and other aggrieved employees were made to continue to perform their duties without taking timely, compliant meal periods. 24 HOUR FITNESS further knew, or should have known, that it did not pay Ms. Holley and other aggrieved employees meal and/or rest period premium wages when they were missed or taken late. During the relevant time period, Ms. Holley frequently worked 6 consecutive hours without any breaks whatsoever. Furthermore, 24 HOUR FITNESS did not provide Ms. Holley and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. At times, Ms. Holley worked over 12 hours straight without a meal period. Ms. Holley and other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods but were not relieved of all duties. Rather, as mentioned, 24 HOUR FITNESS required Ms. Holley and other aggrieved employees to sign blanket waivers of first meal periods during the new-hire process at or near the time they were hired, which were invalid.

As with meal periods, 24 HOUR FITNESS' scheduling policies, or lack thereof, prevented Ms. Holley and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. 24 HOUR FITNESS similarly had no practice of scheduling rest periods for Ms. Holley and other aggrieved employees. And, in the time between training sessions and/or group exercise classes, Ms. Holley and other aggrieved employees would be required to complete assigned tasks, including, but not limited to processing paperwork, cleaning up the workout area, and responding to member questions. As a result, Ms. Holley and other aggrieved employees would work shifts in excess of 3.5 hours without ten (10) minute rest periods to which they were entitled. Throughout her employment, Ms. Holley regularly worked straight through her shifts without taking ten (10) minute rest periods.

24 HOUR FITNESS also has engaged in a company-wide practice and/or policy of not paying meal and rest period premiums owed when compliant meal and rest periods are not provided. Because of this practice and/or policy, Ms. Holley and other aggrieved employees have not received premium pay for all missed meal and/or rest periods. To the extent that 24 HOUR FITNESS did pay Ms. Holley and other aggrieved employees premium pay for missed meal and/or rest periods, 24 HOUR FITNESS did not pay Ms. Holley and other aggrieved employees at the correct rate of pay for premium wages. Specifically, 24 HOUR FITNESS systematically failed to properly calculate Ms. Holley's and other aggrieved employees' regular rates of pay for purposes of paying premium wages by failing to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. For example, Ms. Holley received commissions on sales of personal training session packages which appear on her wage statement(s) as "PT Comm On Sales for FS." Ms. Holley also received incentive pay if she booked and completed 120 personal fitness sessions per month. However, 24 HOUR FITNESS failed to include these additional forms of remuneration into Ms. Holley and other aggrieved employees' regular rate of pay when paying overtime. As a result, to the extent 24 HOUR FITNESS paid Ms. Holley and other aggrieved employees premium pay for missed meal or rest periods, it did so at a lower rate than required by law, resulting in an underpayment of premium wages.

Accordingly, 24 HOUR FITNESS failed to provide all meal and rest periods in violation of California Labor Code sections 226.7 and 512. Ms. Holley and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(f)-(g).

Violation of California Labor Code §§ 226(a) and 1174(d)

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. 24 HOUR FITNESS has not provided Ms. Holley 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 violations occurs and \$100 per employee for each violation in an 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, 24 HOUR FITNESS has knowingly and intentionally provided Ms. Holley and other aggrieved employees with uniform, incomplete and inaccurate wage statements.

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Furthermore, 24 HOUR FITNESS has knowingly provided Ms. Holley and other aggrieved employees with uniform, standardized wage statements that list the incorrect address for 24 HOUR FITNESS in violation of Labor Code section 226(a)(8). Specifically, according to Ms. Holley's wage statements, the address for 24 HOUR FITNESS is listed as "1265 Laurel Tree Lane Ste 200,

Carlsbad, CA 92011.” However, according to the California Secretary of State’s website, the correct address for 24 HOUR FITNESS is 12647 Alcosta Boulevard, Suite 500, San Ramon CA 94583.

The wage statement deficiencies also include, among other things, failing to list total hours worked by employees; 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 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 “[keep, 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), 24 HOUR FITNESS willfully failed to maintain accurate payroll records for Ms. Holley 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.

Because 24 HOUR FITNESS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Holley 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, Ms. Holley 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.

Ms. Holley and/or other aggrieved employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204

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, 24 HOUR FITNESS failed to pay Ms. Holley and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, commission pay, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Holley and aggrieved employees are entitled to recover 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

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. 24 HOUR FITNESS willfully failed to pay Ms. Holley and other aggrieved employees who are no longer employed by 24 HOUR FITNESS all their earned wages, including, but not limited to, overtime wages, commission pay, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving 24 HOUR FITNESS's employ in violation of California Labor Code sections 201, 202, and 203.

For example, on May 28, 2015, Ms. Holley was terminated. Her last day of work was on May 28, 2015, but she did not receive her entire final wages until one (1) week after her last day of work. Ms. Holley received one check on May 28, 2015, and a second check for her wages later on, in June 2015. 24 HOUR FITNESS has a company-wide practice or policy of paying departing employees the entirety of their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Although Ms. Holley was terminated on May 28, 2015, 24 HOUR FITNESS failed to pay Ms. Holley her final wages on her last day of work, in violation of Labor Code section 201.

Ms. Holley and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 2802

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, 24 HOUR FITNESS, on a company-wide basis, required that Ms. Holley and other aggrieved employees utilize their own personal cell phones and cell phone data to carry out their job duties, but 24 HOUR FITNESS failed to reimburse them for the costs of their cell

phone plans and/or data plans. For example, Ms. Holley was regularly required to use her personal cellular phone in order to carry out her work, such as receiving and answering emails, text messages, and/or phone calls from supervisors and co-workers regarding her schedule and work assignments, yet 24 HOUR FITNESS failed to reimburse her for this cost. Also, Ms. Holley was regularly required to respond to text messages from clients regarding their sessions. Although 24 HOUR FITNESS required Ms. Holley to regularly utilize her personal cellular phone to carry out work-related responsibilities, 24 HOUR FITNESS failed to reimburse her for this cost. 24 HOUR FITNESS could have provided Ms. Holley and/or other aggrieved employees with phones, to be used for fulfilling work-related tasks, but instead, 24 HOUR FITNESS passed this operating cost off onto Ms. Holley and other aggrieved employees.

24 HOUR FITNESS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

24 HOUR FITNESS's policy and/or practice of passing its operating costs on to Ms. Holley and other aggrieved employees by requiring that they use their own personal cellular phones for work is in violation of California Labor Code section 2802. Ms. Holley and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 2810.5

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday, the name of the employer, including any "doing business as" names used by the employer, the physical address of the employer's main office or principal place of business, the telephone number of the employer, the name, address, and telephone number of the employer's workers' compensation insurance carrier. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

24 HOUR FITNESS failed to provide Ms. Holley and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5, including commission pay compensation plans. 24 HOUR FITNESS' failure to provide other aggrieved employees with written notice of basic information regarding their employment with 24 HOUR FITNESS is in violation of Labor Code section 2810.5. Ms. Holley and other aggrieved employees are therefore entitled to recover 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." 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." 24 HOUR FITNESS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Holley and other aggrieved employees' rights by violating various sections of the California Labor Code.

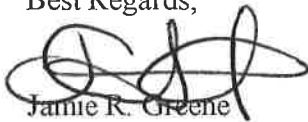
Accordingly, Ms. Holley seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Ms. Holley, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against 24 HOUR FITNESS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Holley seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

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

Jamie R. Greene
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Jamie R. Greene

Copy: 24 HOUR FITNESS USA, INC. (via Certified Mail)