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Electronically FILED by
Superior Court of California,
County of Los Angeles
2/16/2024 5:59 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Gnade, Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JORDAN COUTCHER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

HARMAN FITNESS, LLC, a California
limited liability company; BAKERSFIELD
FITNESS, LLC, a California limited liability
company; DB HEALTH & FITNESS, LLC, a
California limited liability company; LA
VERNE FITNESS, LLC, a California limited
liability company; NORWALK FITNESS,
LLC, a California limited liability company;
RANCHO CUCAMONGA FITNESS, LLC, a
California limited liability company;
THOUSAND OAKS FITNESS, LLC, a
California limited liability company; XI
ENTERPRISES, INC., a California
corporation; FITNESS CLUB
MANAGEMENT, LLC, a California limited
liability company; CURTIS HARMAN, an
individual; DAVID HARMAN, an individual;
and DOES 1 through 50, inclusive,

Defendants.

JORDAN COUTCHER, individually and on
behalf of all others similarly situated,

Plaintiff,

Case No. 22STCV18360

[Consolidated with Case No. 22STCV18386]

**CONSOLIDATED CLASS ACTION
COMPLAINT**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Rest Periods;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Provide Accurate Wage Statements;
- (7) Failure to Pay Wages Timely During Employment;
- (8) Failure to Pay Wages Timely at Separation;
- (9) Violations of the Unfair Competition Law; and
- (10) Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

vs.

CANOGA PARK FITNESS, LLC, a California limited liability company; CERRITOS FITNESS & HEALTH, LLC, a California limited liability company; CHATSWORTH HEALTH FITNESS, LLC, a California limited liability company; CHINO FITNESS, LLC, a California limited liability company; CORONA HEALTH & FITNESS, LLC, a California limited liability company; HEMET FITNESS, LLC, a California limited liability company; LA MIRADA HEALTH & FITNESS, LLC, a California limited liability company; LAKEWOOD FITNESS, LLC, a California limited liability company; LANCASTER FITNESS, LLC, a California limited liability company; LONG BEACH FITNESS, LLC, a California limited liability company; MORENO VALLEY FITNESS, INC., a California corporation; MURRIETA FITNESS & HEALTH, LLC, a California limited liability company; NORTH RIVERSIDE FITNESS, INC., a California limited liability company; NORTHRIDGE HEALTH FITNESS, LLC, a California limited liability company; SAN DIMAS FITNESS LLC, a California limited liability company; SANTA MARIA HEALTH & FITNESS, LLC, a California limited liability company; SIMI VALLEY FITNESS, LLC, a California limited liability company; TEMECULA FITNESS, LLC, a California limited liability company; VAN NUYS FITNESS, LLC, a California limited liability company; HARMAN FITNESS, LLC, a California limited liability company; FITNESS CLUB MANAGEMENT, LLC, a California limited liability company; CURTIS HARMAN, an individual; DAVID HARMAN, an individual; and DOES 1 through 50, inclusive,

Defendants.

1 Plaintiff Jordan Coutcher, individually and on behalf of a class of similarly situated
2 individuals, alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought pursuant to Code of Civil Procedure Section 382 to
5 recover wages and all other available relief on behalf of Plaintiff Jordan Coutcher and similarly
6 situated current and former non-exempt, hourly-paid employees who worked for Defendants at
7 Defendants' Crunch Fitness gyms located in California at any time from four years prior to the
8 commencement of this action until judgment is rendered, plus any additional time during which the
9 statutes of limitation for the causes of action alleged herein were tolled pursuant to Emergency Rule
10 9 of the California Rules of Court, the "Emergency Rules Related to COVID-19." Plaintiff and
11 similarly situated current and former non-exempt, hourly-paid employees are referred to herein as
12 "class members."

13 2. On behalf of herself and other class members, Plaintiff seeks relief for Defendants'
14 systematic and uniform violations of the Labor Code, California Business and Professions Code, the
15 applicable Wage Order issued by the California Industrial Welfare Commission ("IWC"), IWC
16 Wage Order No. 2-2001, Cal. Code Regs., tit. 8, § 11020, and related common law principles.

17 3. This is also a non-class representative action under the Labor Code Private Attorneys
18 General Act of 2004, Labor Code Section 2698, *et seq.* to recover civil penalties and any other
19 available relief on behalf of the State of California, Plaintiff, and all other current and former
20 employees who worked for Defendants as non-exempt, hourly-paid in California, who received at
21 least one wage statement, and against whom one or more violations of any provision of the Labor
22 Code or any provision regulating hours and days of work, or establishing working conditions, in
23 IWC Wage Order No. 2-2001 were committed, as set forth in this Complaint.

24 4. The acts complained of in this Complaint have occurred, are presently occurring and
25 are expected to continue occurring within the time period from four years prior to the commencement
26 of this action until judgment is rendered.¹

27 _____
28 ¹ Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9 (a)
of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court,

PARTIES

5. Plaintiff Jordan Coutcher is an individual residing in Los Angeles County, California.

6. Defendant Harman Fitness, LLC (“Harman Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Harman Fitness manages the Fitness Center Defendants (as defined below). According to the most recent Statement of Information that Harman Fitness filed with the California Secretary of States, Curtis Harman is a member or manager of Harman Fitness, and also serves as its Chief Executive Officer.

7. Defendant Fitness Club Management, LLC (“Fitness Club Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Fitness Club Management also manages the Fitness Center Defendants (as defined below). According to the most recent Statement of Information that Fitness Club Management filed with the California Secretary of States, Worldwide Fitness Solutions Inc. is a member or manager of Fitness Club Management. Curtis Harmon and David Harmon serve, respectively, as the CEO and Secretary of Worldwide Fitness Solutions Inc.

8. Defendants Harman Fitness and Fitness Club Management are referred to herein as the “Managing Defendants.”

9. Upon information and belief, Defendant Curtis Harman (“Curtis Harman”) is an individual residing in Los Angeles County, California. Upon information and belief, Curtis Harman is and at all times relevant to this Complaint was an owner, director, officer and/or managing agent of the Fitness Center Defendants (as defined below) and the Managing Defendants, and, therefore, is liable in his individual capacity as an employer pursuant to Labor Code Section 558.1.²

adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this complaint is extended into the past by the number of days in which this tolling was in effect.

² Curtis Harman and David Harman are also liable in their individual capacities for the civil penalties, attorneys’ fees and litigation costs available pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* See, e.g., *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 824 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than*

10. Upon information and belief, Defendant David Harman (“David Harman”) is an individual residing in Arizona. Upon information and belief, David Harman is and at all times relevant to this Complaint was an owner, director, officer and/or managing agent of the Fitness Center Defendants (as defined below) and the Managing Defendants, and, therefore, is liable in his individual capacity as an employer pursuant to Labor Code Section 558.1.

11. Defendant Bakersfield Fitness, LLC (“Bakersfield Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Bakersfield Fitness operates a Crunch Fitness center in Bakersfield, California. According to a press release issued by Crunch Franchise, “The [Bakersfield Fitness] location will be operated by Southern California residents David Harman, Curtis Harman and Shawn Bidsal. David and Curtis Harman jointly own and operate more than 40 Crunch locations, throughout California, Colorado, Idaho, Illinois and New Mexico.”³

12. Defendant Canoga Park Fitness, LLC (“Canoga Park Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Canoga Park Fitness operates a Crunch Fitness center in Canoga Park, California. According to the most recent Statement of Information that Canoga Park Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness, LLC are each a member or manager of Canoga Park Fitness.

13. Defendant Cerritos Fitness & Health, LLC (“Cerritos Fitness & Health”) is a California limited liability company with its principal place of business in Chatsworth, California. Cerritos Fitness & Health operates a Crunch Fitness center in Cerritos, California. According to the most recent Statement of Information that Cerritos Fitness & Health filed with the California Secretary of States, Curtis Harman and Harman Fitness, LLC are each a member or manager of Cerritos Fitness & Health.

14. Defendant Chatsworth Health Fitness, LLC (“Chatsworth Health Fitness”) is a _____
the corporate employer subject to the civil penalties awarded by the trial court under those two statutes”) (emphasis in original).

³ See Crunch Franchise Announces Its Newest Location in Bakersfield, California (Nov. 26, 2018), available at <https://www.prnewswire.com/news-releases/crunch-franchise-announces-its-newest-location-in-bakersfield-california-300755144.html> (last visited February 12, 2024).

1 California limited liability company with its principal place of business in Chatsworth, California.
2 Chatsworth Health Fitness operates a Crunch Fitness center in Chatsworth, California. According to
3 the most recent Statement of Information that Chatsworth Health Fitness filed with the California
4 Secretary of States, Curtis Harman is a member or manager of Chatsworth Health Fitness.

5 15. Defendant Chino Fitness, LLC (“Chino Fitness”) is a California limited liability
6 company with its principal place of business in Chatsworth, California. Chino Fitness operates a
7 Crunch Fitness center in Chino, California. According to the most recent Statement of Information
8 that Chino Fitness filed with the California Secretary of States, Curtis Harman is a member or
9 manager of Chino Fitness.

10 16. Defendant Corona Health & Fitness, LLC (“Corona Health & Fitness”) is a California
11 limited liability company with its principal place of business in Chatsworth, California. Corona
12 Health & Fitness operates a Crunch Fitness center in Corona, California. According to the most
13 recent Statement of Information that Corona Health & Fitness filed with the California Secretary of
14 States, Curtis Harman is a member or manager of Corona Health & Fitness.

15 17. Defendant DB Health & Fitness, LLC (“DB Health & Fitness”) is a California limited
16 liability company with its principal place of business in Chatsworth, California. DB Health & Fitness
17 operates a Crunch Fitness center in Diamond Bar, California. According to the most recent Statement
18 of Information that DB Health & Fitness filed with the California Secretary of States, Harman Fitness
19 is a member or manager of DB Health & Fitness.

20 18. Defendant Hemet Fitness, LLC (“Hemet Fitness”) is a California limited liability
21 company with its principal place of business in Chatsworth, California. Hemet Fitness operates a
22 Crunch Fitness center in Hemet, California. According to the most recent Statement of Information
23 that Hemet Fitness filed with the California Secretary of States, Curtis Harman is a member or
24 manager of Hemet Fitness.

25 19. Defendant La Mirada Health & Fitness, LLC (“La Mirada Health & Fitness”) is a
26 California limited liability company with its principal place of business in Chatsworth, California.
27 La Mirada Health & Fitness operates a Crunch Fitness center in La Mirada, California. According to
28 the most recent Statement of Information that La Mirada Health & Fitness filed with the California

1 Secretary of States, Curtis Harman is a member or manager of La Mirada Health & Fitness.

2 20. Defendant Lakewood Fitness, LLC (“Lakewood Fitness”) is a California limited
3 liability company with its principal place of business in Chatsworth, California. Lakewood Fitness
4 operates a Crunch Fitness center in Lakewood, California. According to the most recent Statement
5 of Information that Lakewood Fitness filed with the California Secretary of States, Curtis Harman is
6 a member or manager of Lakewood Fitness.

7 21. Defendant Lancaster Fitness, LLC (“Lancaster Fitness”) is a California limited
8 liability company with its principal place of business in Chatsworth, California. Lancaster Fitness
9 operates a Crunch Fitness center in Lancaster, California. According to the most recent Statement of
10 Information that Lancaster Fitness filed with the California Secretary of States, Curtis Harman and
11 Harman Fitness are each a member or manager of Lancaster Fitness.

12 22. Defendant La Verne Fitness, LLC (“La Verne Fitness”) is a California limited liability
13 company with its principal place of business in Chatsworth, California. La Verne Fitness operates a
14 Crunch Fitness center in La Verne, California. According to the most recent Statement of
15 Information that La Verne Fitness filed with the California Secretary of States, Curtis Harman is a
16 member or manager of La Verne Fitness.

17 23. Defendant Long Beach Fitness, LLC (“Long Beach Fitness”) is a California limited
18 liability company with its principal place of business in Chatsworth, California. Lancaster Fitness
19 operates a Crunch Fitness center in Long Beach, California. According to the most recent Statement
20 of Information that Long Beach Fitness filed with the California Secretary of States, Harman Fitness
21 is a member or manager of Long Beach Fitness.

22 24. Defendant Moreno Valley Fitness, Inc. (“Moreno Valley Fitness”) is a California
23 limited liability company with its principal place of business in Chatsworth, California. Moreno
24 Valley Fitness operates a Crunch Fitness center in Moreno Valley, California. According to the most
25 recent Statement of Information that Moreno Valley Fitness filed with the California Secretary of
26 States, Curtis Harman is the Chief Executive Officer of Moreno Valley Fitness.

27 25. Defendant Murrieta Fitness & Health, LLC (“Murrieta Fitness & Health”) is a
28 California limited liability company with its principal place of business in Chatsworth, California.

1 Murrieta Fitness & Health operates a Crunch Fitness center in Murrieta, California. According to the
2 most recent Statement of Information that Murrieta Fitness & Health filed with the California
3 Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Murrieta
4 Fitness & Health.

5 26. Defendant North Riverside Fitness, Inc. (“North Riverside Fitness”) is a California
6 corporation with its principal place of business in Chatsworth, California. North Riverside Fitness
7 operates a Crunch Fitness center in Riverside, California. According to the most recent Statement of
8 Information that North Riverside Fitness filed with the California Secretary of States, Curtis Harman
9 is the Chief Executive Officer of North Riverside Fitness.

10 27. Defendant Northridge Health Fitness, LLC (“Northridge Health Fitness”) is a
11 California limited liability company with its principal place of business in Chatsworth, California.
12 Northridge Health Fitness operates a Crunch Fitness center in Northridge, California. According to
13 the most recent Statement of Information that Northridge Health Fitness filed with the California
14 Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Northridge
15 Health Fitness.

16 28. Defendant Norwalk Fitness, LLC (“Norwalk Fitness”) is a California limited liability
17 company with its principal place of business in Chatsworth, California. Norwalk Fitness operates a
18 Crunch Fitness center in Norwalk, California. According to the most recent Statement of Information
19 that Norwalk Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness
20 are each a member or manager of Norwalk Fitness.

21 29. Defendant Rancho Cucamonga Fitness, LLC (“Rancho Cucamonga Fitness”) is a
22 California limited liability company with its principal place of business in Chatsworth, California.
23 Rancho Cucamonga Fitness operates a Crunch Fitness center in Rancho Cucamonga, California.
24 According to the most recent Statement of Information that Rancho Cucamonga Fitness filed with
25 the California Secretary of States, Harman Fitness is a member or manager of Rancho Cucamonga
26 Fitness.

27 30. Defendant San Dimas Fitness, LLC (“San Dimas Fitness”) is a California limited
28 liability company with its principal place of business in Chatsworth, California. San Dimas Fitness

operates a Crunch Fitness center in San Dimas, California. According to the most recent Statement of Information that San Dimas Fitness filed with the California Secretary of States, Harman Fitness is a member or manager of San Dimas Fitness.

31. Defendant Santa Maria Health & Fitness, LLC (“Santa Maria Health & Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Santa Maria Health & Fitness operates a Crunch Fitness center in Santa Maria, California.

32. Defendant Simi Valley Fitness, LLC (“Simi Valley Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Simi Valley Fitness operates a Crunch Fitness center in Simi Valley, California. According to the most recent Statement of Information that Simi Valley Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Simi Valley Fitness.

33. Defendant Temecula Fitness, LLC (“Temecula Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Simi Valley Fitness operates a Crunch Fitness center in Temecula, California. According to the most recent Statement of Information that Temecula Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Temecula Fitness.

34. Defendant Thousand Oaks Fitness, LLC (“Thousand Oaks Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Thousand Oaks Fitness operates a Crunch Fitness center in Thousand Oaks, California. According to the most recent Statement of Information that Thousand Oaks Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Thousand Oaks Fitness.

35. Defendant Van Nuys Fitness LLC (“Van Nuys Fitness”) is a California limited liability company with its principal place of business in Chatsworth, California. Van Nuys Fitness operates a Crunch Fitness center in Van Nuys, California. According to the most recent Statement of Information that Van Nuys Fitness filed with the California Secretary of States, Curtis Harman and Harman Fitness are each a member or manager of Van Nuys Fitness.

36. Defendant XI Enterprise, Inc. (“XI Enterprise”) is a California corporation with its principal place of business in Palmdale California. XI Enterprise operates a Crunch Fitness center in

Palmdale, California. On information and belief, Curtis Harman and/or Harman Fitness are owners, officers and/or managing agents of XI Enterprise.

37. Defendants Bakersfield Fitness, Canoga Park Fitness, Cerritos Fitness & Health, Chatsworth Health Fitness, Chino Fitness, Corona Health & Fitness, DB Health & Fitness, Hemet Fitness, La Mirada Health & Fitness, La Verne Fitness, Lakewood Fitness, Lancaster Fitness, Long Beach Fitness, Moreno Valley Fitness, Murrieta Fitness & Health, North Riverside Fitness, Northridge Health Fitness, Norwalk Fitness, Rancho Cucamonga Fitness, San Dimas Fitness, Santa Maria Health & Fitness, Simi Valley Fitness, Temecula Fitness, Thousand Oaks Fitness, Van Nuys Fitness, and XI Enterprise are collectively referred to herein as the “Fitness Center Defendants.”

38. Plaintiff is unaware of the true names and capacities, whether individual, corporate, associate, or otherwise of the defendants sued herein as Doe 1 through 50. Plaintiff therefore sue those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of each Doe defendant when such information has been ascertained.

39. Except as otherwise noted, a reference to “Defendants” in this Complaint shall include the named Defendants and the Doe defendants.

JURISDICTION AND VENUE

40. The California Superior Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” Plaintiff’s claims arise under the laws of the State of California, and are not statutorily assigned to any other trial court.

41. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of the Superior Court and will be established according to proof at trial.

42. The Court has personal jurisdiction over the Defendants because they are residents of and/or are doing business in the State of California.

43. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and 395.5 because the principal place of business of Defendants is located in Los Angeles County, Defendants operate in Los Angeles County, Plaintiff resides in Los Angeles County and the liability

1 for the alleged wrongs described herein arose in Los Angeles County.

2 44. Upon information and belief, this action may not be removed to the United States
3 District Court pursuant to the Class Action Fairness Act, 28 U.S.C. Section 1332(d) (“CAFA”),
4 because the local controversy exception applies. *See* 28 U.S.C. § 1332(d)(4). Additionally, because
5 this action is based exclusively on California statutes and law, including the Labor Code, IWC Wage
6 Order No. 2-2001, Cal. Code Regs., tit. 8, § 11020 and California Business and Professions Code,
7 no federal question exists on which to base removal.

8 **Integrated Enterprise and Single Employer Allegations**

9 45. Defendants constitute an “integrated enterprise” with interrelated operations,
10 common management, centralized control of labor relations, and common ownership and/or financial
11 controls (the “Harman Crunch Fitness Integrated Enterprise”)—and are thus properly viewed as a
12 single employer in the context of this action.

13 46. California courts as well as federal courts in the Ninth Circuit apply the “integrated
14 enterprise” test to claims arising from alleged violations of the Labor Code. *See, e.g., Laird v. Capital*
15 *Cities/ABC, Inc.* (1998) 69 Cal. App. 4th 727, 737; *Kenny v. Regis Corp.* (N.D. Cal. Mar. 10, 2008)
16 No. 06–07521, 2008 WL 686710, at *3; *Huse v. Auburn Honda* (E.D. Cal. June 10, 2005) No. 04–
17 0227, 2005 WL 1398521, at *3 (employing the integrated enterprise test to determine whether a
18 defendant was an employer within the meaning of the Labor Code); *Serrano v. 180 Connect, Inc.*
19 (N.D. Cal., Aug. 11, 2006, No. C 06-1363 TEH) 2006 WL 2348888, at *2, *rev’d on other grounds*
20 (9th Cir. 2007) 478 F.3d 1018. Courts have also applied the integrated enterprise test in the context
21 of addressing UCL claims predicated upon Labor Code violations. *See Maddock v. KB Homes, Inc.*
22 (C.D. Cal. 2007) 631 F. Supp. 2d 1226, 1238.

23 47. Under *Laird*, in determining whether two entities are liable as a single employer or
24 an “integrated enterprise,” courts consider four factors: (1) centralized control of labor relations; (2)
25 interrelation of operations; (3) common management; and (4) common ownership or financial
26 control. *Laird*, 68 Cal. App. 4th at 737. All of these factors are satisfied here.

27 48. The Harman Crunch Fitness Integrated Enterprise owns and operates over twenty-
28 four (24) Crunch Fitness gyms in California, and additional gyms in other states. Although each

Crunch Fitness location is generally registered as a separate legal entity, the entities have chosen to handle their employer-employee relationships jointly and have chosen to operate as a single integrated enterprise.

49. The Harman Crunch Fitness Integrated Enterprise has centralized the control of labor relations and set up common management through Harman Fitness, Fitness Club Management and potentially other entities that may be discovered through investigation and discovery.

50. The Harman Crunch Fitness Integrated Enterprise has a single human resource department. In promotional materials distributed to the Fitness Center Defendants' employees, the Harman Crunch Fitness Integrated Enterprise welcomes employees to their "new employment with Crunch Fitness" and boast that they have a "[f]ully staffed corporate office (Harman Fitness & Fitness Club Management)." The Harman Crunch Fitness Integrated Enterprise further boasts that it has approximately 50 Crunch Fitness clubs in California and in other states. In materials distributed to the Fitness Center Defendants' employees, the Harman Crunch Fitness Integrated Enterprise provides the telephone number 818-721-8672 for human resources support, payroll support, marketing support and miscellaneous support. The telephone number 818-721-8672 is the number for Harman Fitness and Fitness Club Management.

51. Additionally, the Harman Crunch Fitness Integrated Enterprise has used a single employee handbook for all employees, regardless of the location where the employee works.

52. The Harman Crunch Fitness Integrated Enterprise also employs district managers that manage Crunch Fitness operations at multiple locations.

53. The hiring process for the Harman Crunch Fitness Integrated Enterprise is also centralized. The Crunch Fitness website also allows prospective employees to apply for work at any of Crunch Fitness locations in California. *See* <https://www.crunch.com/careers> (last visited on June 3, 2022). On Ziprecruiter.com, a hiring website, an entity described as "Crunch (Harman), Inc.," which is not a legal entity, hires for all positions at the Fitness Center Defendants.

54. The Harman Crunch Fitness Integrated Enterprise's operations are also interrelated. Curtis Harman and/or Harman Fitness serve as members, managers and/or officers of each of the Fitness Center Defendants.

1 55. Harman Fitness, Fitness Club Management and the Fitness Center Defendants list
2 their principal place of business address with the California Secretary of State as 19867 Prairie St,
3 Suite 200, Chatsworth, CA 91311.

4 56. Upon information and belief, each of the Fitness Center Defendants share a degree of
5 common ownership and financial control by Curtis Harman and Harman Fitness who are
6 members/managers of the entities operating as limited liability companies, and/or officers in the
7 entities operating as corporations.

8 **Alter Ego and Joint Employer Allegations**

9 57. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
10 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other class
11 members because Defendants have:

- 12 a. jointly exercised meaningful control over the work performed by Plaintiff and other
13 class members;
- 14 b. jointly exercised meaningful control over Plaintiff and other class members' wages,
15 hours, and working conditions, including the quantity, quality standards, speed,
16 scheduling, and operative details of the tasks performed by Plaintiff and other class
17 members;
- 18 c. jointly required that Plaintiff and other class members perform work which is an
19 integral part of Defendants' businesses; and
- 20 d. jointly exercised control over Plaintiff and other class members as a matter of
21 economic reality in that Plaintiff and other class members were dependent on
22 Defendants, who shared the power to set the wages of Plaintiff and other class
23 members and determined their working conditions, and who jointly reaped the
24 benefits from the underpayment of their wages and noncompliance with other
25 statutory provisions governing their employment.

26 58. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there
27 has existed a unity of interest and ownership between the Fitness Center Defendants and the
28 Managing Defendant such that any individuality and separateness between the entities has ceased.

1 The Fitness Center Defendants, the Managing Defendants and Does 1 through 50 are therefore alter
2 egos of each other.

3 59. Adherence to the fiction of the separate existence of Defendants would permit an
4 abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability
5 for the wrongful acts committed by them.

6 60. Plaintiff further alleges, upon information and belief, that the Fitness Center
7 Defendants and the Managing Defendants are alter egos of each other for the following reasons:

8 a. According to the California Secretary of State's website
9 (<https://bizfileonline.sos.ca.gov>), either Curtis Harman or Harman Fitness is a
10 member/manager of the Fitness Center Defendants that operate as limited liability
11 companies, with the exception of Bakersfield Fitness; Curtis Harman is the CEO of
12 the Fitness Center Defendants that operate as corporations, with the exception of XI
13 Enterprise;

14 b. In a press release announcing the opening of the Bakersfield Fitness location, Crunch
15 Franchise announced that "The location will be operated by Southern California
16 residents David Harman, Curtis Harman and Shawn Bidsal. David and Curtis Harman
17 jointly own and operate more than 40 Crunch locations, throughout California,
18 Colorado, Idaho, Illinois and New Mexico."⁴

19 c. On information and belief, Harman Fitness and Curtis Harman are partners, officers
20 and/or managing agents of XI Enterprise and Bakersfield Fitness.

21 d. According to the California Secretary of State's website, the Fitness Center
22 Defendants share the same agent for service of process, Greg Maloomian.

23 e. Mr. Maloomian serves as the Chief Financial Officer for each of the Fitness Center
24 Defendants.

25 f. On information and belief, Defendants utilize the same standardized employment
26

27 ⁴ See Crunch Franchise Announces Its Newest Location in Bakersfield, California (Nov. 26, 2018),
28 available at <https://www.prnewswire.com/news-releases/crunch-franchise-announces-its-newest-location-in-bakersfield-california-300755144.html> (last visited February 12, 2024).

forms and issue the same employment policies.

g. The Employee Handbook for each Fitness Center Defendant identifies each of the other Fitness Center Defendants on its cover and describes them in the aggregate as the “Company.”

GENERAL ALLEGATIONS

61. Defendants own and operate more than 26 “Crunch Fitness” locations in California. Defendants Harman Fitness and Fitness Club Management manage the Fitness Center Defendants.

62. Defendants employed Plaintiff as a non-exempt, hourly paid employee at the Crunch Fitness in Palmdale, California, from January 2020 until she resigned in approximately March 2021. Although the Harman Crunch Fitness Integrated Enterprise employed Plaintiff, Defendant XI Enterprise was identified as Plaintiff’s direct employer on her wage statements.

63. Defendants employed Plaintiff as a non-exempt, hourly paid employee at the Crunch Fitness in Lancaster, California, from June 2020 until she resigned in approximately September 2021. Although the Harman Crunch Fitness Integrated Enterprise employed Plaintiff, Defendant Lancaster Fitness was identified as Plaintiff’s direct employer on her wage statements.

64. Defendants employed Plaintiff as a non-exempt, hourly-paid employee at the Crunch Fitness in Lancaster, California from on December 29, 2021 until May 2023, when she resigned.

65. Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Chatsworth, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

66. In particular, Plaintiff and other class members, on information and belief, received the same standardized documents and/or written policies, including an Employee Handbook that expressly identifies each the Fitness Center Defendants on its cover.

67. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or

1 positions. Upon information and belief, Defendants set forth uniform policies and procedures in
2 several documents provided at an employee's time of hire.

3 68. Upon information and belief, Defendants maintain a centralized Payroll department
4 at their company headquarters in Chatsworth, California, which processes payroll for all non-exempt,
5 hourly paid employees working for Defendants at their various locations in California, including
6 Plaintiff and other class members. Based upon information and belief, Defendants issue the same
7 formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of
8 their work locations. Upon information and belief, Defendants process payroll for departing
9 employees in the same manner throughout the State of California, regardless of the manner in which
10 each employee's employment ends.

11 69. Plaintiff generally worked three (3) to five (5) shifts per week of between five (5) and
12 six (6) hours, shifts of approximately eight (8) hours and shifts in excess of eight (8) hours including
13 shifts in excess of ten (10) hours.

14 70. On information and belief, other class members worked, and continue to work, shifts
15 of four (4) hours, shifts of approximately eight (8) hours and shifts in excess of eight (8) hours.

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

17 72. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other class
18 members were not paid for all hours worked because all hours worked were not recorded.

19 73. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other class members were entitled to receive certain wages for
21 overtime compensation and that they were not receiving certain wages for overtime compensation.

22 74. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other class members were entitled to receive at least minimum
24 wages for compensation and that they were not receiving at least minimum wages for work that was
25 required to be done off-the-clock. In violation of the Labor Code, Plaintiff and other class members
26 were not paid at least minimum wages for work done off-the-clock.

27 75. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other class members were entitled to meal periods in accordance

1 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay
2 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
3 minute meal periods and that Plaintiff and other class members were not provided with all meal
4 periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not
5 receive a timely, uninterrupted, thirty (30) minute meal period.

6 76. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other class members were entitled to rest periods in accordance
8 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay
9 at their regular rates of pay when they were not authorized and permitted to take a compliant rest
10 period. In violation of the Labor Code, Plaintiff and other class members were not authorized and
11 permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other class
12 members with payment of one (1) additional hour of pay at their regular rates of pay when they were
13 not authorized and permitted to take a compliant rest period.

14 77. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other class members were entitled to receive complete and
16 accurate wage statements in accordance with California law. In violation of the Labor Code, Plaintiff
17 and other class members were not provided complete and accurate wage statements.

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

22 79. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other class members were entitled to timely payment of all
24 wages earned upon termination of employment. In violation of the Labor Code, Plaintiff and other
25 class members did not receive payment of all wages due, including, but not limited to, overtime
26 wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

27 80. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other class members were entitled to timely payment of wages

1 during their employment. In violation of the Labor Code, Plaintiff and other class members did not
2 receive payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or
3 meal and rest period premiums, within permissible time periods.

4 81. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other class members were entitled to receive itemized wage
6 statements or separate written statements showing the amount of paid sick leave available, or paid
7 time off provided in lieu of sick leave. In violation of the Labor Code, Defendants failed to provide
8 Plaintiff and other class members with written itemized wage statements or separate written
9 statements showing this information.

10 82. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other class members were entitled to receive full reimbursement
12 for all business-related expenses and costs they incurred during the course and scope of their
13 employment and that they did not receive full reimbursement of applicable business-related expenses
14 and costs incurred.

15 83. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
17 other class members for all hours worked, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to
19 Plaintiff and other class members that they were properly denied wages, all in order to increase
20 Defendants' profits.

21 **CLASS ACTION ALLEGATIONS**

22 84. Plaintiff brings this action on behalf of herself and the following class and subclass
23 pursuant to Code of Civil Procedure Section 382:

24 Class: All current and former non-exempt employees who worked
25 for Defendants Bakersfield Fitness, Canoga Park Fitness, Cerritos
26 Fitness & Health, Chatsworth Health Fitness, Chino Fitness, Corona
27 Health & Fitness, DB Health & Fitness, Hemet Fitness, La Mirada
28 Fitness & Health, Lakewood Fitness, Lancaster Fitness, La Verne
Fitness & Health, Long Beach Fitness, Moreno Valley Fitness, Murrieta
Fitness & Health, North Riverside Fitness, Northridge Health

1 Fitness, Norwalk Fitness, Rancho Cucamonga Fitness, San Dimas
2 Fitness, Santa Maria Health & Fitness, Simi Valley Fitness,
3 Temecula Fitness, Thousand Oaks Fitness, Van Nuys Fitness, and/or
4 XI Enterprise at their Crunch Fitness gyms in California at any time
5 from four (4) years prior to the commencement of this action until
6 judgment is entered, plus any additional time during which the
7 statutes of limitation for the causes of action herein were tolled
8 pursuant to Emergency Rule 9 of the California Rules of Court, the
9 “Emergency Rules Related to COVID-19” (the “Class”).

10 85. Excluded from the Class are Defendants’ legal representatives, officers, directors,
11 assigns, and successors, or any individual who has, or who at any time during the class period has
12 had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member
13 of the Judge(s)’ immediate family; and all persons who will submit timely and otherwise proper
14 requests for exclusion from the Classes.

15 86. In addition, excluded from this action are the claims of class members that were
16 released as a result of the November 30, 2023 final order and judgment approving the class action
17 settlement reached in *Weinberg v. Baldwin Park Fitness, LLC, et al.*, Los Angeles County Superior
18 Court Case No. BC682204.

19 87. Members of the Class and any Subclasses are referred to herein as “class members.”

20 88. Reservation of Rights. Plaintiff reserves the right to amend or modify the Class
21 definition with greater specificity and to add additional subclasses as appropriate based on further
22 investigation and discovery. Plaintiff also reserves the right to pursue the cause of action for civil
23 penalties under the Labor Code Private Attorneys General Act of 2004 in a representative capacity
24 without complying with Code of Civil Procedure Section 382.

25 89. Ascertainable Class. The proposed Classes and Subclasses may be readily ascertained
26 by a review of Defendants’ payroll and personnel records.

27 90. Numerosity. Both the Class and Subclass are so numerous that joinder of all members
28 is unfeasible and not practicable. While the precise number of Class and Subclass members has not
been determined at this time, Plaintiff is informed and believe that more than five hundred class
members have worked for Defendants as non-exempt employees in California during the relevant
time period. On information and belief, each of the individual Fitness Center Defendants has

1 employed approximately seventy-five employees during the relevant time period. The quantity and
2 identity of such membership is readily ascertainable by a review of Defendants' payroll and
3 personnel records.

4 91. Commonality and Predominance. There are questions of law and fact common to all
5 class members, which predominate over any questions affecting only individual class members. The
6 principal common issues include:

- 7 a. Whether Defendants required, suffered or permitted class members to perform certain
8 work-related duties without compensation equal to at least the applicable California
9 minimum wage;
- 10 b. Whether Defendants required class members to work over eight (8) hours per day, or
11 over forty (40) hours per week, without paying class members all legally required
12 overtime compensation;
- 13 c. Whether Defendants required, suffered or permitted class members to work while
14 clocked out for their meal periods;
- 15 d. Whether Defendants required, suffered or permitted class members to work during
16 rest periods;
- 17 e. Whether Defendants violated Labor Code Sections 1182.12, 1194, 1197 and 1198
18 and IWC Wage Order 2-2001, Section 4 by failing to pay class members the
19 applicable minimum wage for all hours worked;
- 20 f. Whether Defendants violated Labor Code Sections 510 and IWC Wage Order 2-2001,
21 Section 3 by failing to pay class members the applicable overtime wage for all
22 overtime hours worked;
- 23 g. Whether Defendants failed to provide class members with compliant, off-duty meal
24 periods and meal period premium wages in violation of Labor Code Sections 226.7,
25 512 and IWC Wage Order 2-2001, Section 11;
- 26 h. Whether Defendants failed to provide class members with rest periods and rest period
27 premium wages in violation of Labor Code Sections 226.7 and IWC Wage Order 2-
28 2001, Section 12;

- 1 i. Whether Defendants knowingly and intentionally failed to provide class members
- 2 with accurate wage statements, as required by Labor Code Section 226 and IWC
- 3 Wage Order 2-2001, Section 7;
- 4 j. Whether Defendants violated Labor Code Section 1174 and IWC Wage Order No. 2-
- 5 2001, Section 7 by failing to maintain documentation of the actual hours worked each
- 6 day by Plaintiff and other class members;
- 7 k. Whether Defendants failed to reimburse class members for all business-related
- 8 expenditures and/or losses incurred by class members at Defendants' direction for
- 9 work purposes;
- 10 l. Whether Defendants violated Labor Code Section 204 by failing timely to pay all
- 11 earned wages due to class members during their employment;
- 12 m. Whether Defendants violated Labor Code Sections 201 and 202 by failing timely to
- 13 pay all earned wages due to class members upon their termination or resignation;
- 14 n. Whether Defendants engaged in unlawful and unfair business practices in violation
- 15 of California Business & Professions Code sections 17200, *et seq.*; and
- 16 o. Whether class members are entitled to liquidated damages from Defendants for
- 17 unpaid minimum wages under Labor Code Section 1194.2;
- 18 p. Whether class members are entitled to injunctive relief;
- 19 q. Whether class members are entitled to restitution;
- 20 r. Whether class members are entitled to prejudgment interest;
- 21 s. Whether class members are entitled to attorneys' fees and costs;
- 22 t. Whether class members and the State of California are entitled to civil penalties
- 23 pursuant to Labor Code Section 2968, *et seq.*;
- 24 u. The appropriate amount of damages, restitution, and monetary penalties resulting
- 25 from Defendants' violations of California law.
- 26 92. Typicality. Plaintiff's claims are typical of the claims of the Classes and Subclass that
- 27 they seek to represent. Plaintiff and other class members sustained the same types of injuries and
- 28 damages arising out of and caused by Defendants' common course of unlawful conduct.

93. Adequacy of Representation. Plaintiff will fairly and adequately represent and protect the interests of all class members, and have no interests antagonistic to the other class members. There are no material conflicts between Plaintiff's claims and the claims of the other class members that would make class certification inappropriate. Plaintiff have retained counsel experienced in handling complex class actions and wage and hour claims.

94. Superiority of Class Action. A class action is superior to other available means for fair and efficient adjudication of class members' claims, and offers significant benefits to the parties and the Court. A class action will allow a large number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. Additionally, because the monetary amounts due to many individual class members are likely to be relatively small, it would make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve important public interests by enabling the statutory rights of class members to be effectively asserted and fundamental public policies to be vindicated in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

(Labor Code §§ 1182.12, 1194, 1197 and 1198)

(Against all Defendants)

95. Plaintiff incorporates all preceding allegations as if fully set forth herein.

96. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

97. Compensable work time is defined by the applicable IWC Wage Order No. 2 as "the time during which an employee is subject to the control of an employer, and includes all the time the

1 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
2 § 11020(2)(G) (defining “Hours Worked”).

3 98. In 2018, the California Supreme Court held that “The relevant statutes and wage order
4 do not allow employers to require employees to routinely work for minutes off-the-clock without
5 compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 848.

6 99. Defendants employed Plaintiff and other class members as non-exempt employees
7 who were entitled to the protections of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC
8 Wage Order 2-2001.

9 100. In violation of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage
10 Order 2-2001, Defendants failed to pay Plaintiff and other class members the applicable minimum
11 wage for all hours worked for several reasons:

12 101. First, during the relevant period, Defendants had, and continue to have, a uniform
13 policy and/or practice pursuant to which the clock-in and clock-out times of Plaintiff and other class
14 members are edited to reduce and/or eliminate hours worked from their time records, and to eliminate
15 evidence of late, missed or short meal periods. As a result of this practice of mandatory time shaving,
16 Defendants failed to pay the applicable minimum wage to Plaintiff and other class members for all
17 hours worked.

18 102. Second, during the relevant period, Defendants had, and continue to have, a uniform
19 policy and/or practice of requiring Plaintiff and other class members to perform off-the-clock work
20 pre- and post- shift that was not recorded by Defendants. Relatedly, Defendants had a consistent
21 policy and/or practice that required Plaintiff and other Class members working the closing shift to
22 perform off-the-clock work by requiring them to perform store closing procedures after clocking out
23 from work, including but not limited to shutting off computers, activating the alarm, exiting the
24 fitness center, and locking the front door. Defendants failed to track this time spent working before
25 and after scheduled shifts, and failed to fully compensate Plaintiff and other class members for this
26 time.

27 103. Third, during the relevant period, Defendants had, and continue to have, a uniform
28 policy of discouraging and impeding Plaintiff and other class members from recording hours worked

1 that were outside of their scheduled shifts in order to limit the amount of regular hours and overtime
2 hours employees could accrue. On information and belief, this limitation on hours worked accrual
3 was based on a company-wide policy of staffing their fitness centers strictly based on the labor hours
4 or labor budget established by the Managing Defendants. This policy of limiting regular and overtime
5 hours worked, coupled with Defendants' policies and/or practices of understaffing, implementation
6 of sales goals, and assignment of heavy workloads, led Plaintiff and other class members to work
7 off-the-clock before and after their scheduled shift times. For these reasons, too, Defendants failed
8 to track all of the time that employees spent performing work related tasks, and Plaintiff and other
9 class members received no compensation for this time.

10 104. Fourth, during the relevant period, Defendants had, and continue to have, a uniform
11 policy of requiring Plaintiff and other class members to work for several hours off the clock to
12 complete Internet-based training known as "Crunch University." Defendants failed to track all of
13 the time that employees spent in completing Crunch University training programs for work purposes,
14 and Plaintiff and other class members received no compensation for this time.

15 105. Fifth, Defendants had a company-wide practice of failing to provide sufficient
16 coverage for meal periods, which further caused Plaintiff and other class members to not be relieved
17 of their duties for compliant meal periods. As a result of this lack of meal period coverage, Plaintiff
18 and other class members were not always afforded thirty (30) minute meal periods during shifts when
19 they were entitled to receive a meal period and instead continued to work during unpaid meal periods,
20 time for which they were not paid. For example, Defendants required Plaintiff and other class
21 members to continue working through all or parts of their meal periods to assist customers and make
22 sales to meet their monthly goals.

23 106. Defendants knew or should have known that, as a result of these uniform practices
24 and/or policies, Plaintiff and other class members were performing their assigned duties off-the-
25 clock and during meal periods, and were suffered or permitted to perform work for which they were
26 not paid the applicable minimum wage.

27 107. As a direct and proximate result of Defendants' conduct, Plaintiff and other class
28 members have suffered damages in amounts to be proven at trial and are entitled to recover and

hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders, including unpaid wages in an amount to be determined at trial, pre-judgment interest, liquidated damages, attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Labor Code §§ 510, 1194, 1198)

(Against all Defendants)

108. Plaintiff incorporates all preceding allegations as if fully set forth herein.

109. Labor Code Section 510 provides that "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

110. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

111. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable IWC Wage Order.

112. Section 3 of IWC Wage Order No. 2-2001 provides in pertinent part that:

[E]mployees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

6 114. Labor Code Section 218.5(a) provides that “In any action brought for the nonpayment
7 of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award
8 reasonable attorney’s fees and costs to the prevailing party if any party to the action requests
9 attorney’s fees and costs upon the initiation of the action.”

10 115. Defendants employed Plaintiff and other class members as non-exempt employees
11 who were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order
12 2-2001.

13 116. As noted above, Defendants failed to compensate Plaintiff and other class members
14 for all overtime hours worked pursuant to Labor Code Sections 510, 1194, 1198 and IWC Wage
15 Order 2-2001.

16 117. As set forth above, in violation of Labor Code Sections 510, 1194, 1198 and IWC
17 Wage Order 2-2001, Defendants failed to pay Plaintiff and other class members overtime wages for
18 all overtime hours worked because Defendants implemented a uniform policy and practice pursuant
19 to which Plaintiff’s and other class members’ clock-in and out times were edited to reduce total hours
20 worked and to eliminate overtime hours worked.

21 118. In addition, as detailed above, Defendants failed to pay Plaintiff and other class
22 members for all overtime hours worked because Defendants required, permitted or suffered Plaintiff
23 and other class members to perform work off-the-clock. When Plaintiff and other class members
24 worked eight or more hours on-the-clock, the off-clock work clearly constituted work in excess of
25 eight hours in workday and should have been paid at the applicable overtime rate. When Plaintiff’s
26 and other class members’ time records indicate that they worked close to eight hours in a workday
27 on the clock—e.g., when their time cards reflect that they worked 7.8 or 7.9 total hours—the off-the-
28 clock work also caused Plaintiff’s and other class member’s total hours worked to exceed eight (8)

hours on such a workday and, likewise, should have been paid at the applicable overtime rate.

48. Additionally, the overtime wages that Defendants paid to Plaintiff and other class members was short because Defendants incorrectly calculated the regular rate for purposes of calculating overtime. Defendants paid Plaintiff and other class members non-discretionary forms of pay in addition to an hourly rate but failed to include those non-discretionary forms of pay in the regular rate calculations for Plaintiff and other class members. As a result, when Defendants paid Plaintiff and other class members overtime wages during pay periods when Plaintiff and other class members earned non-discretionary forms of pay, Defendants failed to pay Plaintiff and other class members the appropriate amount of overtime compensation.

119. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members have suffered damages in amounts to be proven at trial and are entitled to recover and hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders, including unpaid wages, interest, attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods

(Labor Code §§ 226.7 and 1198)

(Against all Defendants)

120. Plaintiff incorporates all preceding allegations as if fully set forth herein.

121. At all relevant times, IWC Wage Order No. 2-2001 and Labor Code Sections 226.7 and 1198 were applicable to Plaintiff's and other class members' employment by Defendants.

122. IWC Wage Order No. 2-2001 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 often (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.

123. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC wage

1 order, an employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties - including the obligation that an employee remain on call. A
3 rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.* (2016)
4 2 Cal. 5th 257, 269-270.

5 124. Upon information and belief, Plaintiff and other class members were subject to the
6 same policies, practices and procedures governing the provision of rest periods.

7 125. Plaintiff and other class members regularly worked shifts of more than three-and-a-
8 half (3.5) hours, and were entitled to an uninterrupted, off-duty rest period of not less than ten (10)
9 minutes. Plaintiff and other class members also regularly worked shifts in excess of six (6) hours,
10 and were entitled to at least a second uninterrupted, off-duty rest period of not less than ten (10)
11 minutes.

12 126. Defendants engaged in a company-wide practice and/or policy of failing to provide
13 Plaintiff and other class members with uninterrupted, off-duty rest periods when required.
14 Notwithstanding any formal written policy to the contrary, Defendants’ actual custom and business
15 practice was to undermine any formal policy of providing legally compliant rest periods by
16 pressuring employees to perform their duties in ways that omitted breaks, including, but not limited
17 to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an
18 informal anti-rest-period policy enforced through pressure, failing to schedule rest periods, failing to
19 provide rest-period coverage, and otherwise discouraging employees from taking legally protected
20 rest periods. Plaintiff and other class members routinely worked through their shifts without being
21 able to take a legally compliant rest period.

22 127. Defendants have also engaged in a company-wide practice and/or policy of not paying
23 rest periods premium wages owed when compliant rest periods are not provided. As a result, Plaintiff
24 and other class members were denied rest periods and Defendants failed to pay Plaintiff and other
25 class members the full rest period premiums due, in violation of Labor Code Section 226.7 and IWC
26 Wage Order No. 2-2001.

27 128. As a direct and proximate result of Defendants’ conduct, Plaintiff and other class
28 members have been damaged in an amount to be determined at trial, and hereby seek one additional

hour of pay at their regular rate of compensation for each day that a compliant rest period was not provided in a cumulative amount to be determined at trial, plus pre-judgment interest.

FOURTH CAUSE OF ACTION

Failure to Provide Meal Periods

(Labor Code §§ 226.7, 512(a) and 1198)

(Against all Defendants)

129. Plaintiff incorporates all preceding allegations as if fully set forth herein.

130. Labor Code Section 512(a) provides in pertinent part that:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

131. Under California law, first meal periods must start after no more than five hours.

Brinker Rest. Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1041-1042.

132. Labor Code Section 226.7 provides in pertinent part that:

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

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

133. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the

1 applicable IWC Wage Order.

2 134. IWC Wage Order No. 2-2001, Section 11 provides, in pertinent part:

3 (A) No employer shall employ any person for a work period of more
4 than five (5) hours without a meal period of not less than 30 minutes,
5 except that when a work period of not more than six (6) hours will
6 complete the day's work the meal period may be waived by mutual
7 consent of the employer and the employee.

8 (B) An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal period
12 may be waived by mutual consent of the employer and the employee
13 only if the first meal period was not waived.

14 (C) Unless the employee is relieved of all duty during a 30 minute
15 meal period, the meal period shall be considered an "on duty" meal
16 period and counted as time worked. An "on duty" meal period shall be
17 permitted only when the nature of the work prevents an employee from
18 being relieved of all duty and when by written agreement between the
19 parties an on-the-job paid meal period is agreed to. The written
20 agreement shall state that the employee may, in writing, revoke the
21 agreement at any time.

22 (D) If an employer fails to provide an employee a meal period in
23 accordance with the applicable provisions of this order, the employer
24 shall pay the employee one (1) hour of pay at the employee's regular
25 rate of compensation for each workday that the meal period is not
26 provided.

27 135. Upon information and belief, Plaintiff and other class members were subject to the
28 same policies, practices and procedures governing the provision of meal periods.

136. Plaintiff and other class members regularly worked more than five (5) hours per shift
and were entitled to an uninterrupted, off-duty meal period of not less than thirty (30) minutes.

137. Notwithstanding any formal written policy to the contrary, Defendants' actual custom
and business practice was to undermine any formal policy of providing legally required meal periods
by pressuring employees to perform their duties in ways that omitted meal periods, including, but
not limited to, scheduling a heavy workload that made taking meal periods extremely difficult,
maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal
periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking

1 legally protected meal periods. Defendants also required Plaintiff and other class members to clock
2 out for a meal period and to continue working. In addition, when the time records of Plaintiff and
3 other class members showed a late, missed, or short meal period, Defendants' uniform policy or
4 practice of editing clock-in and out times to eliminate the late, missed, or short meal period deprived
5 Plaintiff and other class members of the meal period premium wages to which they were entitled.

6 138. Upon information and belief, Plaintiff and other class members did not validly or
7 legally waive their first meal periods by mutual consent with Defendants or otherwise.

8 139. Upon information and belief, Plaintiff and other class members did not enter into any
9 written agreement with Defendants agreeing to an on-the-job paid meal period.

10 140. Thus, Defendants failed to provide Plaintiff and other class members with meal
11 periods as required by Labor Code Sections 226.7 and 512, and IWC Wage Order No. 2-2001.

12 141. Defendants have also engaged in a company-wide practice and/or policy of not paying
13 meal period\ premium wages owed when compliant meal periods are not provided. As a result,
14 Plaintiff and other class members were denied meal periods and Defendants failed to pay Plaintiff
15 and other class members the meal period premiums due, in violation of Labor Code Sections 226.7
16 and 512, and IWC Wage Order No. 2-2001.

17 142. As a direct and proximate result of Defendants' conduct, Plaintiff and other class
18 members have been damaged in an amount to be determined at trial, and hereby seek one additional
19 hour of pay at their regular rate of compensation for each day that a compliant meal period was not
20 provided in a cumulative amount to be determined at trial, plus pre-judgment interest, penalties and
21 costs of suit.

22 **FIFTH CAUSE OF ACTION**

23 **Failure To Reimburse Business Expenditures**

24 **(Labor Code § 2802)**

25 **(Against all Defendants)**

26 143. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

27 144. Labor Code Section 2802(a) provides that an employer "shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence of

1 the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

2 145. The purpose of Labor Code Section 2802 is to prevent employers from passing off
3 their costs of doing business and operating expenses on to their employees. *Cochran v. Schwan’s*
4 *Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.

5 146. Labor Code Section 2802(b) provides that “All awards made by a court . . . for
6 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
7 judgments in civil actions” and that “Interest shall accrue from the date on which the employee
8 incurred the necessary expenditure or loss.”

9 147. Labor Code Section 2802(c) provides that, “[f]or the purposes of this section, the term
10 ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,
11 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

12 148. Labor Code Section 1198 provides that it is unlawful to employ persons under
13 conditions prohibited by the applicable IWC Wage Order.

14 149. IWC Wage Order No. 2-2001, Section 9 provides in pertinent part that, “[w]hen tools
15 or equipment are required by the employer or are necessary to the performance of a job, such tools
16 and equipment shall be provided and maintained by the employer.”

17 150. Defendants had and, on information and belief, continue to have, a company-wide
18 policy and/or practice of not reimbursing employees for expenses necessarily incurred.

19 151. Defendants as a matter of practice and/or policy violated Labor Code Section 2802
20 by denying Plaintiff and other class members reimbursement for necessary expenditures that they
21 incurred as a result of discharging their duties and/or obeying the directions of Defendants. Plaintiff
22 and other class members were required to incur numerous out-of-pocket expenses. First, Plaintiff
23 and other class members were required to incur out-of-pocket expenses to complete hours of
24 mandatory training that Defendants called “Crunch University.” In that regard, Defendants required
25 Plaintiff and other class members to complete the Crunch University training on their own time,
26 using either their personal cell phones, tablets or computers, and their personal Internet data plans.
27 Second, Plaintiff and other class members were required to incur out-of-pocket expenses for the use
28 of their personal vehicles, gas and auto insurance that were used at Defendants’ direction for work

1 purposes.

2 152. Defendants could have provided Plaintiff and other class members with the actual
3 tools required for use on the job, including company tablets or computers. Defendants also could
4 have provided Plaintiff and other class members with a company car to use for business-related
5 purposes. Further, Defendants could have reimbursed Plaintiff and other class members for the costs
6 they incurred in maintaining a personal cell phone and cellular data plan, by purchasing mobile
7 applications for work-related purposes and by using their personal vehicle, gas and auto insurance
8 instead of a company car. Instead, Defendants passed those operating costs off onto Plaintiff and
9 other class members in violation Labor Code Section 2802.

10 153. As a direct and proximate result of Defendants' conduct, Plaintiff and other class
11 members are entitled to recover, and hereby seek, their business-related expenses incurred during the
12 course of their employment in a total, cumulative amount to be determined at trial, plus pre-judgment
13 interest from the dates on which Plaintiff and other class members incurred the necessary business-
14 related expenses, plus reasonable attorneys' fees and costs.

15 **SIXTH CAUSE OF ACTION**

16 **Failure to Provide Accurate Wage Statements**

17 **(Labor Code § 226(a))**

18 **(Against all Defendants)**

19 154. Plaintiff incorporates all preceding allegations as if fully set forth herein.

20 155. Labor Code Section 226(a) provides in pertinent part:

21 An employer, semimonthly or at the time of each payment of wages,
22 shall furnish to his or their employee, either as a detachable part of the
23 check, draft, or voucher paying the employee's wages, or separately if
24 wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee . . . , (3) the number of piece-rate units earned
27 and any applicable piece rate if the employee is paid on a piece-rate
28 basis, (4) all deductions, provided that all deductions made on written
orders of the employee may be aggregated and shown as one item, (5)
net wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and only the last four
digits of his or their social security number or an employee
identification number other than a social security number, (8) the name

and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

156. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other class members with uniform incomplete and inaccurate wage statements as follows:

- a. Defendants violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because Defendants implemented a uniform policy and/or practice pursuant to which non-exempt employees’ clock-in and clock-out times were edited to eliminate and/or reduce the total hours worked (including straight time and overtime) from the time records of Plaintiff and other class members;
- b. Defendants also violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because Defendants failed to record and compensate Plaintiff and other class members for all off-the-clock work;
- c. Defendants also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages” and “net wages” because Defendants failed to provide Plaintiff and other class members with required meal and rest period premium wages;
- d. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because Defendants did not include time spent working during on-duty meal periods for which Plaintiff and other class members should have been compensated; and
- e. Defendants violated Labor Code Section 246(i) by failing to include “the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave.”

157. Labor Code Section 226(e)(1) provides in pertinent part that “An employee suffering

1 injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)
2 is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
3 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
4 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
5 entitled to an award of costs and reasonable attorney's fees."

6 158. Labor Code Section 226(e)(2) provides that an employee suffers injury if the
7 employer fails to provide accurate and complete information as required by any one or more items
8 listed in Labor Code Section 226(a) and the employee cannot promptly and easily ascertain requisite
9 information without reference to other documents or information.

10 159. As a result of Defendants' failure to comply with Labor Code Section 226(a),
11 Plaintiff and other class members suffered injuries because they could not promptly and easily
12 ascertain the information required by Labor Code Section 226(a) without reference to other
13 documents or information. In addition, Plaintiff and other class members suffered injuries because
14 they were not aware of what their true wages should have been and how they were calculated, and
15 because Plaintiff and other class members suffered economic loss in the form of lower wages and
16 lost compensation.

17 160. As a direct and proximate result of Defendants' conduct, Plaintiff and other class
18 members are entitled to recover from Defendants, and hereby seek, the greater of their actual
19 damages caused by Defendants' failure to comply with Labor Code Section 226(a), or an aggregate
20 penalty not exceeding four thousand dollars (\$4,000) per employee.

21 161. Plaintiff and other class members also seek preliminary and permanent injunctive
22 relief and an award of attorneys' fees and costs pursuant to Labor Code Section 226(h).

23 **SEVENTH CAUSE OF ACTION**

24 **Failure To Pay Wages Timely at Termination**

25 **(Labor Code §§ 201, 202, 203)**

26 **(Against all Defendants)**

27 162. Plaintiff incorporates all preceding allegations as if fully set forth herein.

28 163. Labor Code Section 201 provides that, if an employer discharges an employee, the

wages earned and unpaid at the time of discharge are due and payable immediately.

164. Labor Code Section 202 provides that if an employee voluntarily leaves his or their employment, the employee's 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 their intention to quit, in which case the employee is entitled to his or their wages at the time of quitting.

165. Labor Code Section 203 provides that if an employer willfully fails to pay compensation as required by Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to thirty work days.

166. As detailed above, during the class period, Defendants willfully failed to pay Plaintiff and other class members all their earned wages, including, but not limited to minimum wages, overtime wages, and rest and meal period premium wages, either at the time of their discharge, or within seventy-two (72) hours after their resignation.

167. Defendants' failure to pay Plaintiff and other class members their earned and unpaid wages at the time of discharge, or within seventy-two (72) hours after their resignation, violates Labor Code Sections 201 and 202.

168. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members are therefore entitled to recover from Defendants, and hereby seek, waiting time penalties for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to Labor Code Section 203 in a total, cumulative amount to be determined at trial.

EIGHTH CAUSE OF ACTION

Failure To Pay Wages Timely During Employment

(Labor Code § 204)

(Against all Defendants)

169. Plaintiff incorporates all preceding allegations as if fully set forth herein.

170. Labor Code Section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

1 171. Labor Code Section 204 also provides that all wages earned by any person in any
2 employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other
3 than those wages due upon termination of an employee, are due and payable between the first (1st)
4 and the tenth (10th) day of the following month.

5 172. In addition, Labor Code Section 204 provides that all wages earned for labor in excess
6 of the normal work period shall be paid no later than the payday for the next regular payroll period.
7 Alternatively, Labor Code Section 204 provides that its requirements are deemed satisfied by the
8 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
9 seven (7) calendar days following the close of the payroll period.

10 173. At all relevant times, Defendants willfully failed to pay Plaintiff and other Class
11 members all wages due including, but not limited to, minimum wages, overtime wages, and meal
12 and rest period premium wages, within the time periods specified by Labor Code Section 204, and
13 therefore violated Labor Code Section 204.

14 174. Labor Code Section 210 provides in pertinent part, “[i]n addition to, and entirely
15 independent and apart from, any other penalty provided in this article, every person who fails to pay
16 the wages of each employee as provided in Sections . . . 204. . . , shall be subject to a penalty as
17 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
18 employee; and (2) For each subsequent violation, or any willful or intentional violation, two hundred
19 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
20 withheld.”

21 175. During the relevant time period, Defendants willfully failed to pay Plaintiff and other
22 class members all wages due including, but not limited to, overtime wages, minimum wages, and/or
23 meal and rest period premiums, within the time periods specified by Labor Code section 204.

24 176. Defendants’ failure to timely pay Plaintiff and other class members all wages due
25 violates Labor Code section 204. Plaintiff and other class members are therefore entitled to recover
26 from Defendants the statutory penalty wages pursuant to Labor Code section 210 in a total,
27 cumulative amount to be determined at trial.

28 //

NINTH CAUSE OF ACTION

Violations of Unfair Competition Law

(Business & Professions Code § 17200, *et seq.*)

(Against all Defendants)

177. Plaintiff incorporates all preceding allegations as if fully set forth herein.

178. The California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), prohibits unfair competition. The UCL defines unfair competition to include any “unlawful,” “unfair,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code § 17200.

179. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

180. As detailed above, throughout the relevant time period, Defendants as a matter of practice and/or policy violated Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, and Cal. Code Regs. tit. 8, § 11020. Based on those violations, Defendants engaged in unlawful business practices in violation of the UCL throughout the relevant time period.

181. Throughout the relevant time period, Defendants as a matter of practice and/or policy also engaged in unlawful business practices by violating Labor Code Sections 204 and 1174(d), as follows:

182. Defendants also violated Labor Code Section 1174(d). Pursuant to Labor Code Section 1174(d), every employer in the state shall: “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.” These records must be kept in accordance with rules established for this purpose by Labor Commissioner, but in any case shall be kept on file for not less than three years.

183. At all relevant times, Defendants violated Labor Code Section 1174 by failing to maintain an accurate record of Plaintiff’s and other class members’ total hours worked because, among other reasons, Defendants did not include in total hours worked the time spent by Plaintiff

1 and other class members during on-duty meal periods.

2 184. A business act or practice is “unfair” under the UCL if the reasons, justifications, and
3 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

4 185. Defendants also committed “unfair” business acts or practices by, among other things:
5 (a) engaging in conduct where the utility of the conduct, if any, is outweighed by the gravity of the
6 consequences to Plaintiff and other class members; (b) engaging in conduct that is immoral,
7 unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and other class members;
8 and (c) engaging in conduct that undermines and violates the stated policies underlying the Labor
9 Code and applicable IWC Wage Order, which seeks to protect employees against unfair and sharp
10 business practices.

11 186. As a result of Defendants’ unlawful and unfair business practices, Plaintiff and other
12 class members have suffered injury in fact and lost money or property including but not limited to
13 the loss of earned wages.

14 187. As a result of the violations of California law herein described, Defendants unlawfully
15 gained an unfair advantage over other businesses.

16 188. Pursuant to Business & Professions Code Sections 17200, *et seq.*, Plaintiff and other
17 class members are entitled to, and hereby seek, (a) restitution of the wages and other monies withheld
18 and retained by Defendants during a period that commences four years prior to the filing of the initial
19 complaint in this action; (b) a permanent injunction requiring Defendants to pay all outstanding
20 wages due to Plaintiff and other class members; (c) a permanent injunction prohibiting Defendants
21 from engaging in the acts complained of in the operative Complaint; and (d) an award of attorneys’
22 fees and costs pursuant to Code of Civil Procedure Section 1021.5 and/or other applicable laws.

23 **TENTH CAUSE OF ACTION**

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

25 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against All**
26 **Defendants)**

27 189. Plaintiff incorporates all preceding allegations as if fully set forth herein.

28 190. This is a representative claim brought on behalf of the State of California and the

1 following individuals:

2 All current and former non-exempt employees who worked for the
3 Harman Crunch Fitness Integrated Enterprise at Defendants
4 Bakersfield Fitness, Canoga Park Fitness, Cerritos Fitness & Health,
5 Chatsworth Health Fitness, Chino Fitness, Corona Health & Fitness,
6 DB Health & Fitness, Hemet Fitness, La Mirada Health & Fitness,
7 La Verne Fitness, Lakewood Fitness, Lancaster Fitness, Long Beach
8 Fitness, Moreno Valley Fitness, Murrieta Fitness & Health, North
9 Riverside Fitness, Northridge Health Fitness, Norwalk Fitness,
10 Rancho Cucamonga Fitness, San Dimas Fitness, Santa Maria Health
11 & Fitness, Simi Valley Fitness, Temecula Fitness, Thousand Oaks
12 Fitness, Van Nuys Fitness, and/or XI Enterprise at their Crunch
13 Fitness gyms in California for one or more pay periods at any time
14 during the PAGA Period (hereafter, “Aggrieved Employees”).

15 191. The PAGA Period is defined as the period of time beginning on June 6, 2021, and
16 continuing to the present.

17 192. Plaintiff has standing as an “aggrieved employee” because she was employed by the
18 Harman Crunch Fitness Integrated Enterprise from January 2020 until March 2021, and again from
19 December 2021 until May 2023, and alleges that the Harman Crunch Fitness Integrated Enterprise
20 violated Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5 1174(d),
21 1182.12, 1194, 1197, 1197.1, 1198, and 2802 as to Plaintiff during the PAGA Period.

22 193. Plaintiff and all other current and former non-exempt employees who worked one or
23 more pay periods for the Harman Crunch Fitness Integrated Enterprise at Defendants Bakersfield
24 Fitness, Canoga Park Fitness, Cerritos Fitness & Health, Chatsworth Health Fitness, Chino Fitness,
25 Corona Health & Fitness, DB Health & Fitness, Hemet Fitness, La Mirada Health & Fitness, La
26 Verne Fitness, Lakewood Fitness, Lancaster Fitness, Long Beach Fitness, Moreno Valley Fitness,
27 Murrieta Fitness & Health, North Riverside Fitness, Northridge Health Fitness, Norwalk Fitness,
28 Rancho Cucamonga Fitness, San Dimas Fitness, Santa Maria Health & Fitness, Simi Valley Fitness,
Temecula Fitness, Thousand Oaks Fitness, Van Nuys Fitness, and/or XI Enterprise at their Crunch
Fitness gyms in California at any time during the PAGA Period are “aggrieved employees” within
the meaning of Labor Code Section 2699, et seq. See Labor Code § 2699(c).

194. As detailed above, Defendants violated Labor Code Sections 201, 202, 203, 204, 226,
226.7, 510, 512, 558, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

1 195. Labor Code Section 2698, et seq. (“PAGA”) permits Plaintiffs to recover civil
2 penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5.
3 Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174,
4 1194, 1197, 1197.1, 1198, and 2802. Labor Code Section 2699.3(c) permits aggrieved employees,
5 including Plaintiff, to recover civil penalties for violations of those Labor Code Sections not found
6 in Section 2699.5, including Sections 1182.12.

7 196. Plaintiff has fully and completely exhausted her administrative remedies under PAGA
8 prior to proceeding with the PAGA claim. On June 6, 2022, Plaintiff filed a PAGA Notice online
9 with the LWDA and sent a letter by certified mail to Defendants setting forth the facts and theories
10 of the violations alleged against Defendants, as prescribed by Labor Code Sections 2698, et seq. As
11 required by PAGA, Plaintiff submitted the filing fee of \$75.00 to the LWDA. Pursuant to Labor
12 Code section 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its
13 intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA
14 notices. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor
15 Code section 2699.

16 197. Pursuant to Labor Code Section 2699(a) and (f), Plaintiff may recover civil penalties
17 on behalf of themselves and all other aggrieved current and former employees for Defendants'
18 violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5 1174(d),
19 1182.12, 1194, 1197, 1197.1, 1198, and 2802 in the following amounts:

20 a. For violations of Labor Code Sections 201, 202, 203, 226.7, 1182.82, 1194, 1198 and
21 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
22 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
23 per pay period for each subsequent violation (penalty amounts established by Labor
24 Code Section 2699(f)(2));

25 b. For violations of Labor Code Section 1197, one hundred dollars (\$100.00) for each
26 aggrieved employee for each initial and intentional violation and two hundred fifty
27 dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay
28 period (regardless of whether the initial violations were intentionally committed)

(penalty amounts established by Labor Code Section 1197.1);

c. For violations of Labor Code Section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation, and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code Section 210);

d. For violations of Labor Code Sections 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for each initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by Labor Code Section 226.3);

e. For violations of Labor Code Sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code Section 558); and

f. For violations of Labor Code Section 1174, a civil penalty of \$500 per employee (penalties set by Labor Code Section 1174.5).

198. Pursuant to California Labor Code Section 2699(i), seventy-five percent (75%) of the civil penalties obtained shall be allocated to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and twenty-five percent (25%) shall be allocated to the aggrieved employees.

199. Plaintiff is also entitled to seek and hereby seek reasonable attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1) and any other applicable statute.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, pray for judgment against Defendant as follows:

1. For an order certifying the class(es) and subclass(es) as a class action;

2. For an order appointing Plaintiff as class representative of the class(es) and

1 subclass(es);

2 3. For an order appointing Plaintiff's Counsel as Class Counsel;

3 4. For compensatory damages in the amount of all unpaid minimum wages owed to the
4 Plaintiff and other Class members in an amount to be determined at trial;

5 5. For liquidated damages in the amount of unpaid minimum wages not paid to the
6 Plaintiff and other Class members pursuant to Labor Code Section 1194.2;

7 6. For unpaid overtime wages owed to Plaintiff and other Class members in an amount
8 to be determined at trial;

9 7. For one (1) hour of pay at the regular rate of compensation for Plaintiff and each Class
10 member for each workday that a legally compliant rest period was not provided;

11 8. For one (1) hour of pay at the regular rate of compensation for Plaintiff sand each
12 Class member for each workday that a legally compliant meal period was not provided;

13 9. For actual damages and/or penalties pursuant to Labor Code Section 226(e) for
14 Plaintiff and other class members, in an amount to be determined at trial;

15 10. For injunctive relief pursuant to Labor Code Section 226(h);

16 11. For penalties pursuant to Labor Code Section 210;

17 12. For waiting time penalties pursuant to Labor Code Sections 201, 202 and 203 for
18 Plaintiff and other class members who quit or were fired in an amount equal to their daily wage
19 multiplied by thirty (30) days, in an amount to be determined at trial;

20 13. For an award of unreimbursed business expenses incurred by the Plaintiff and other
21 class members in an amount to be determined at trial;

22 14. For pre-judgment interest on the unreimbursed business expenses from the date such
23 expenses were incurred by the Plaintiff and other class members pursuant to Labor Code Section
24 2802(b), or as otherwise provided by law;

25 15. For civil penalties, pursuant to Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1,
26 2699(a) and/or 2699(f) and (g), for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7,
27 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802;

28 16. For an order requiring Defendant to provide restitution of all unpaid wages and other

monies wrongfully withheld and retained by Defendant from the Plaintiff and other Class members;

17. For an order entering a permanent injunction prohibiting Defendants from engaging in the unlawful conduct in California complained of in this Complaint;

18. For an award of pre-judgment and post-judgment interest;

19. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 226, 1194, 2802(c), 2699(g)(1) and Code of Civil Procedure Section 1021.5, and as otherwise provided by law; and

20. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demand trial by jury of all claims triable by jury.

CUSTIS LAW, P.C.

Dated: February 12, 2024

By: 

Keith Custis

CUSTIS LAW, P.C.

2121 Avenue of the Stars, Suite 800

Los Angeles, California 90067

Telephone: (213) 863-4276

Facsimile: (213) 863-4277

Counsel for Plaintiff and the Proposed Classes

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

On February 12, 2024, I served the foregoing document(s) described as:

CONSOLIDATED CLASS ACTION COMPLAINT

on the interested parties in this action,

Brian Peters
bpeters@kaufmandolowich.com

Noah Goldstein
noah.goldstein@kaufmandolowich.com
Kaufman Dolowich & Voluck LLP
21515 Hawthorne Blvd, Suite 450
Torrance, California 90503

David G. Hoiles, Jr.

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225 Broadway Ste. 1800

San Diego, CA 92101

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lisa.xu@jacksonlewis.com

by sending a true copy thereof to the interested parties as follows:

☒ **(BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE):** I caused the foregoing document(s) to be sent to the parties listed on the Electronic Service List maintained by Case Anywhere.

☒ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant Code of Civil Procedure Section 1010.6(e) and Rule 2.251 of the California Rules of Court.

☐ **(BY U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California, that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 12, 2024 in Los Angeles, California.



Keith Custis