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11 Attorneys for Representative Plaintiffs
12 and the Aggrieved Employees

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 JOSEPH BULLOCK and IMOGEN
16 CROSS individually, and on behalf of
17 all other similarly situated aggrieved
18 employees,

19 Plaintiffs,

20 vs.

21 24 HOUR FITNESS USA, INC.,
22 and DOES 1 through 100, inclusive,

23 Defendants.

Case No.

RG116806772

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT FOR CIVIL PENALTIES**

[CAL. LAB. CODE § 2699]

[DEMAND FOR JURY TRIAL]

Representative Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. This is a representative action seeking unpaid civil penalties under the Labor Code Private Attorneys General Act of 2004, codified as California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiffs Joseph Bullock and Imogen Cross ("Plaintiffs") bring this action on behalf of themselves as aggrieved employees and on behalf of all other persons similarly situated ("Aggrieved Employees") who are or have been employed by 24 Hour Fitness USA, Inc. and/or Does 1 through 100, inclusive (collectively "Defendant" and/or "24 Hour Fitness") as non-exempt Group Exercise

COPY

1 Instructors and Personal Trainers (collectively "Fitness Instructors") within the State of California at
2 any time after March 8, 2015.

3 2. The "Relevant Time Period" is designated as the time from March 8, 2015 through
4 the date of trial and is based upon the allegation that Defendant's violations of California's wage and
5 hour laws, as described more fully below, have been ongoing during that time.

6 3. During the Relevant Time Period, Defendant has had a consistent policy of, *inter alia*:
7 (1) permitting, encouraging, and/or requiring its Fitness Instructors to work "off-the-clock," without
8 compensation therefor, (2) permitting, encouraging, and/or requiring its Fitness Instructors to
9 perform reported hours of work without compensation therefor, thereby failing to properly
10 compensate Fitness Instructors at a level sufficient to satisfy California's minimum and overtime
11 wage provisions, (3) failing to reimburse its Fitness Instructors for business expenses related to the
12 operations of Defendant, (4) willfully failing to pay compensation (including unpaid overtime and
13 minimum wages) in a prompt and timely manner to Plaintiffs and/or those Aggrieved Employees
14 whose employment with Defendant terminated, (5) willfully failing to provide Plaintiffs and
15 Aggrieved Employees with accurate semi-monthly itemized wage statements of the total number of
16 hours each of them worked and the applicable deductions during each pay period, and (6) willfully
17 failing to provide meal periods and/or rest periods to Plaintiffs and Aggrieved Employees.

18 INTRODUCTION

19 4. Plaintiffs are informed and believe and, based thereon, allege that, within the
20 Relevant Time Period, Defendant maintained and operated numerous health and fitness facilities
21 throughout California and makes the strength-building and cardiovascular fitness equipment and
22 services (e.g., group fitness classes and personal training sessions) at these facilities available to the
23 public on a membership basis. In so doing, Defendant has employed hundreds, if not thousands, of
24 individuals during the Relevant Time Period as Fitness Instructors, non-overtime-exempt employees
25 who are entitled to, *inter alia*, be paid for all hours worked, at their regular rate of pay, to be
26 reimbursed for all business expenses related to Defendant's operations, and to be paid said wages
27 and reimbursed for said business-related expenses in a timely manner.

1 5. Defendant's Fitness Instructors are responsible for facilitating 24 Hour Fitness'
2 members' health and fitness goals through the instruction of various class formats and personal
3 training sessions.

4 6. Class instructors often teach several classes a day, and are responsible for performing
5 additional pre- and post-session duties required for the performance of their positions with and for
6 the benefit of Defendant.

7 7. Personal trainers often hold several sessions a day, and are responsible for performing
8 additional pre- and post-session duties required for the performance of their positions with and for
9 the benefit of Defendant.

10 8. Notwithstanding the foregoing, no matter how many hours are spent by Fitness
11 Instructors performing tasks for the benefit of Defendant, they are paid only for the length of time of
12 the exercise instruction.

13 9. Defendant establishes and publishes, for its members' benefit, class descriptions as
14 well as class durations of each of the class formats it offers. As such, Defendant advertises the class
15 length as being the actual duration of instruction. Similarly, Defendant markets and sells personal
16 training sessions lasting for predetermined durations of time. Despite this, Plaintiffs are informed
17 and believe and, based thereon, allege that Fitness Instructors generally work far more hours than
18 their particular instruction schedules would reflect.

19 10. Moreover, Plaintiffs are informed and believe and, based thereon, allege that
20 Defendant knew and/or should have known that its Fitness Instructors are and, at all times during the
21 Relevant Time Period, were performing work for which Aggrieved Employees are/were not being
22 compensated and are/were incurring business-related expenses for which they are/were not being
23 reimbursed by Defendant.

24 11. Despite actual knowledge of these facts and legal mandates, Defendant has enjoyed
25 an advantage over its competition and has disadvantaged its workers by electing not to pay all wages
26 due and/or provide reimbursement of business-related expenses to its instructors.

12. Plaintiffs are informed and believe and, based thereon, allege that officers and directors of 24 Hour Fitness knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

13. Despite Defendant's knowledge of the Aggrieved Employees' entitlement to wages for all hours worked and expense reimbursements for all applicable work periods, Defendant failed and continues to fail to provide the same for all applicable work periods in willful violation of California state statutes, Industrial Welfare Commission Orders and Title 8 of the California Code of Regulations. This action is brought to redress and end this ongoing pattern of unlawful conduct once and for all.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the Representative Plaintiff's and Aggrieved Employees' claims for civil penalties sought herein under the California Labor Code.

15. Venue as to Defendant is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendant maintains locations within Alameda County, transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California and County of Alameda. Defendant operates facilities and has employed numerous Aggrieved Employees in the County of Alameda, as well as within other counties across the State of California.

PLAINTIFFS

16. Plaintiff Joseph Bullock is a natural person and was, during the relevant time period identified herein, employed by Defendant as a non-exempt Personal Trainer at one or more of Defendant's California fitness clubs.

17. At all times herein relevant, Plaintiff Bullock was and is now an individual within the category of Aggrieved Employees further described and defined herein.

18. Plaintiff Imogen Cross is a natural person and was, during the relevant time period identified herein, employed by Defendant as a non-exempt Group Exercise Instructor at one or more of Defendant's California fitness clubs.

1 19. At all times herein relevant, Plaintiff Cross was and is now an individual within the
2 category of Aggrieved Employees further described and defined herein.

3 20. As used throughout this Complaint, the term "Aggrieved Employees" refers to the
4 named Plaintiffs herein as well as each and every person employed by Defendant in California as a
5 non-exempt Fitness Instructor during the Relevant Time Period.

6 21. Plaintiffs bring this action on behalf of themselves and as a representative action,
7 pursuant to California Labor Code section 2699, on behalf of all Aggrieved Employees similarly
8 situated and proximately damaged by the unlawful conduct described herein.

9 **DEFENDANTS**

10 22. At all times herein relevant, defendant 24 Hour Fitness USA, Inc. was/is a
11 corporation and/or other form of business entity, duly licensed, located and doing business in, but
12 not limited to, the County of Alameda, in the State of California.

13 23. Plaintiffs are informed and believe and, based thereon, allege that Defendant directly
14 or indirectly employs and has employed and/or exercised control over the wages, hours and working
15 conditions of Plaintiffs and Aggrieved Employees within various California counties, including, but
16 not limited to, the County of Alameda.

17 24. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all
18 relevant times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,
19 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
20 Plaintiffs are informed and believe and, on that basis, alleges that, at all relevant times herein-
21 mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed, and/or
22 exercised control over the wages, hours, and/or working conditions of Plaintiffs and Aggrieved
23 Employees at various California locations, as identified in the preceding paragraph.

24 25. Plaintiffs are unaware of the true names and capacities of those defendants sued
25 herein as Does 1 through 100, inclusive and, therefore, sues these Defendants by such fictitious
26 names. Plaintiffs will seek leave of court to amend this Complaint when such names are ascertained.
27 Plaintiffs are informed and believe and, on that basis, allege that each of the fictitiously-named
28 defendants is/was responsible in some manner for, gave consent to, ratified, and/or authorized the

1 conduct herein-alleged and that liability for civil penalties as to Plaintiffs and Aggrieved Employees,
2 as herein-alleged, was proximately caused thereby.

3 26. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times
4 herein-mentioned, each of the Defendants was the agent and/or employee of each of the remaining
5 Defendants and, in doing the acts herein alleged, was acting within the course and scope of such
6 agency and/or employment.

7 **REPRESENTATIVE ACTION ALLEGATIONS**

8 27. Plaintiffs bring this action on behalf of themselves and as a representative action on
9 behalf of the following category of Aggrieved Employees:

10 *All persons who are and/or were employed as non-exempt group exercise instructors*
11 *and/or personal trainers at 24 Hour Fitness USA, Inc., in one or more of its*
12 *California fitness locations between March 8, 2015 and the present.*

13 28. Defendants and their officers and directors are excluded from the category of
14 Aggrieved Employees defined in the preceding paragraph.

15 **COMMON FACTUAL ALLEGATIONS**

16 29. 24 Hour Fitness has, for years, knowingly failed to properly compensate Plaintiffs
17 and the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to,
18 minimum and overtime wages and/or compensation for missed meal and/or rest periods). Defendant
19 has declined to pay these wages, even upon an Aggrieved Employee's termination or resignation
20 from employment, in blatant violation of California Labor Code sections 201-204, inclusive. More
21 than 30 days have passed since certain Aggrieved Employees have left Defendant's employ.

22 30. Moreover, Defendant has failed to provide Plaintiffs and the Aggrieved Employees
23 with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof, and
24 has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts
25 exceeding five hours.

26 31. Defendant also failed to provide Plaintiffs and Aggrieved Employees with accurate
27 semimonthly itemized statements of the total number of hours worked by each, and all applicable
28 hourly rates in effect during each pay period, in violation of California Labor Code section 226. In

1 doing so, Defendant has not only failed to pay its workers the full amount of compensation due, it
2 has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by
3 concealing the magnitude (e.g., the full number of hours worked) and financial impact of its
4 wrongdoing.

5 32. Moreover, according to Defendant's policies, Aggrieved Employees were required to
6 incur business expenses related to the operations of Defendant. Defendant failed to reimburse
7 Plaintiffs and Aggrieved Employees for these expenses.

8 33. As a direct and proximate result of Defendant's Labor Code violations, as set forth
9 herein, Plaintiffs and Aggrieved Employees are entitled to recover civil penalties (pursuant to
10 California Labor Code section 2699(a)) in an amount to be established at trial. Twenty-five percent
11 of such penalties recovered shall be paid to Plaintiffs and the Aggrieved Employees and the
12 remaining seventy-five percent shall be paid to the California Labor and Workforce Development
13 Agency ("LWDA"), pursuant to Labor Code section 2699(i). As a further direct and proximate result
14 of Defendant's unlawful conduct, as set forth herein, Plaintiffs and Aggrieved Employees are also
15 entitled to recover attorneys' fees and litigation costs pursuant to California Labor Code section
16 2699(g) and/or California Code of Civil Procedure § 1021.5.

17 34. Plaintiffs complied and/or will comply with the procedures for bringing suit specified
18 in California Labor Code § 2699.3. By letter dated March 8, 2016, Plaintiffs gave written notice, by
19 certified mail, to the LWDA and Defendant of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support those violations.

21 **FIRST CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
23 **(California Labor Code §§ 2699)**

24 70. Plaintiffs incorporate in this cause of action each and every allegation of the
25 preceding paragraphs, with the same force and effect as though fully set forth herein.

26 71. California Labor Code § 2699(a) states:

27 Notwithstanding any other provision of the law, any provision of this code that
28 provides for a civil penalty to be assessed and collected by the Labor and Workforce
Development Agency or any of its departments, divisions, commissions, boards,
agencies, or employees, for a violation of this code, may, as an alternative, be
recovered through a civil action brought by an aggrieved employee on behalf of
herself or herself and other current or former employees...

RELIEF SOUGHT

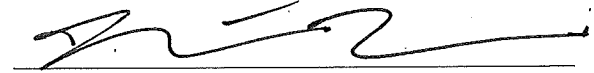
WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the Aggrieved Employees, pray for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

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Dated: March 8, 2016

SCOTT COLE & ASSOCIATES, APC

By:



Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiffs and
the Aggrieved Employees

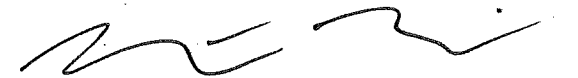
JURY DEMAND

Plaintiffs and the Aggrieved Employees hereby demand trial by jury of all issues triable as of
right by jury.

Dated: March 8, 2016

SCOTT COLE & ASSOCIATES, APC

By:



Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiffs and
the Aggrieved Employees