

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephen Goorvitch

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Danielle E. Montero, Esq. (SBN 333945)
Julie M. Romersa, Esq. (SBN 341871)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Emails: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
dmontero@lelawfirm.com
jromersa@lelawfirm.com
WHT2@lelawfirm.com

Attorneys for Plaintiff ITZEL MARTINEZ,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

ITZEL MARTINEZ, on behalf of herself and
current and former aggrieved employees

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC; and DOES
1 to 100, inclusive,

Defendants.

Case No.: **23STCV05144**

PAGA ACTION

**PLAINTIFF ITZEL MARTINEZ'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff ITZEL MARTINEZ ("Plaintiff"), who alleges and complains
against Defendants FITNESS INTERNATIONAL, LLC; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
2 hours worked at minimum wage and all overtime hours worked; failure to authorize or permit all
3 legally required and/or compliant rest periods or pay rest period premium wages; indemnification
4 for all necessary expenditures or losses incurred by employees in direct consequence of
5 discharging their duties; statutory penalties for failure to timely pay earned wages during
6 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
7 time penalties in the form of continuation wages for failure to timely pay employees all wages due
8 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
9 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
10 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California,
11 and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
17 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Los Angeles County, at 24945 Pico Canyon Road,
21 Stevenson Ranch, California 91381.

22 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
23 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
24 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
25 tolled from April 6, 2020, until October 1, 2020.

26 **III. PARTIES**

27 4. Plaintiff brings this action as a representative of the Labor and Workforce
28 Development Agency on behalf of herself and other current and former employees subject to

1 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
2 filed include current, former and/or future employees of Defendants who work, worked, or will
3 work for Defendants as direct employees as well as temporary employees employed through temp
4 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
5 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
6 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
7 around June 15, 2021, until on or about October 18, 2021.

8 5. Plaintiff is informed and believes and thereon alleges that Defendant FITNESS
9 INTERNATIONAL, LLC is authorized to do business within the State of California and is doing
10 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
11 hereto were persons acting on behalf of Defendant FITNESS INTERNATIONAL, LLC in the
12 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
13 Defendant FITNESS INTERNATIONAL, LLC operates in Los Angeles County and employed
14 Plaintiff and aggrieved employees in Los Angeles County, including but not limited to, at 24945
15 Pico Canyon Road, Stevenson Ranch, California 91381.

16 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
17 through 50 are corporations, or are other business entities or organizations of a nature unknown to
18 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
19 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
20 working conditions of employment of Plaintiff and aggrieved employees.

21 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
22 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
23 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
24 supervisor, independent contractor and/or employee of each defendant who violated or caused to
25 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
26 the Industrial Welfare Commission's wage orders regulating hours and days of work.

27 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
28 sues said defendants by said fictitious names, and will amend this complaint when the true names

1 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
2 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
3 named defendants is in some manner responsible for the events and allegations set forth in this
4 complaint.

5 9. Plaintiff makes the allegations in this complaint without any admission that, as to
6 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
7 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

8 **FIRST CAUSE OF ACTION**

9 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

10 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

11 **(Against all Defendants by Plaintiff)**

12 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

13 11. During the period beginning one (1) year preceding Plaintiff sending the initial
14 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
15 202, 203, 204, 226, 226.7, 510, 1194, 1197, 2802 and Sections 14 and 15 of the applicable Wage
16 Orders.

17 12. Specifically, Defendants have committed the following violations of California
18 Labor Code:

19 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
20 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
21 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
22 which includes all time that an employee is under control of the employer and all time the
23 employee is suffered and permitted to work. This includes the time an employee spends, either
24 directly or indirectly, performing services which inure to the benefit of the employer.

25 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
26 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
27 Wage Orders.

28 15. In this case, Plaintiff and other current and former aggrieved California-based

1 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
2 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
4 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
5 not limited to:

6 (a) Defendant failed to pay Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees their actual hours worked during their shifts and
8 instead paid Plaintiff and the Minimum Wage Class by scheduled hours despite that they routinely
9 worked beyond their scheduled hours; and

10 (b) Plaintiff and other current and former aggrieved California-based hourly non-
11 exempt employees were required to access "Group Me" when they were off-the-clock to
12 communicate to co-workers and management, retrieve schedules, review scheduled updates, and
13 retrieve other information related to their employment.

14 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
15 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
16 control without paying wages for that time. This resulted in Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees working time for which they were not
18 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
19 Wage Order.

20 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
21 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
22 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
23 which includes all time that an employee is under control of the employer and all time the
24 employee is suffered and permitted to work. This includes the time an employee spends, either
25 directly or indirectly, performing services that inure to the benefit of the employer.'

26 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
27 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
28 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Defendant failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees their actual hours worked during their shifts and instead paid Plaintiff and the Minimum Wage Class by scheduled hours despite that they routinely worked beyond their scheduled hours; and

(b) Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were required to access "Group Me" when they were off-the-clock to communicate to co-workers and management, retrieve schedules, review scheduled updates, and retrieve other information related to their employment.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

21. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

22. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 2 at §12. Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 2 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 2 at §12. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

23. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 2 at § 12.

24. In this case, Defendants failed to authorize or permit all legally required and compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not limited to:

(a) Failing to provide Plaintiff and other current and former aggrieved California-based hourly non-exempt employees uninterrupted duty-free rest periods of no less than ten (10) minutes for each four-hour period of work or major fraction there of as required by law.

25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did not receive legally required and compliant rest periods, in violation of Labor Code section 226.7.

26. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff

1 and other current and former aggrieved California-based hourly non-exempt employees not
2 receiving wages to compensate them for workdays in which Defendants did not provide them with
3 rest periods in compliance with California law.

4 **27. Failure to Indemnify for Losses and Expenditures Incurred as Part of**
5 **Employment:** California law requires that every employer must indemnify its employees for all
6 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
7 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
8 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
9 2802.)

10 **28.** Defendants have violated Labor Code Section 2802 by failing to indemnify
11 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees’
12 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
13 employed policies, practices, and/or procedures of impermissibly passing business-related
14 expenses to Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees. These policies, practices, and/or procedures included, but were not limited to:

16 (a) requiring Plaintiff and other current and former aggrieved California-based hourly
17 non-exempt employees to use or purchase their own tools and/or resources in order to work for
18 Defendants, including but not limited to cell phone (including both telephone use and cellular data
19 use) for work-related purposes - without reimbursing Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees for such use; and

21 (b) Plaintiff and other current and former aggrieved California-based hourly non-
22 exempt employees were required to download and maintain “Group Me” application on their
23 personal cellphones for use in conjunction with their employment including, but limited to,
24 communication with co-workers and management, retrieve schedules, review schedule updates,
25 and retrieve other information related to their employment, without reimbursing Plaintiff and other
26 current and former aggrieved California-based hourly non-exempt employees for such use.

27 **29.** Moreover, Defendants employed policies and procedures which ensured Plaintiff
28 and aggrieved employees would not receive indemnification for their employment related

1 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
2 indemnification in compliance with California law.

3 30. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
4 employment related expenses, including but not limited to costs related to use of their personal
5 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

6 31. **Failure to timely pay earned wages during employment:** In California, wages
7 must be paid at least twice during each calendar month on days designated in advance by the
8 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
9 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
10 16th and the 26th day of that month and wages earned between the 16th and the last day,
11 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
12 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
13 paid within seven (7) calendar days following the close of the payroll period in which wages were
14 earned. Labor Code section 204(d).

15 32. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
16 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
17 exempt employees' earned wages (including minimum wages, overtime wages and/or rest period
18 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
19 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
20 aggrieved California-based hourly non-exempt employees' their earned wages within the
21 applicable time frames outlined in Labor Code section 204.

22 33. **Failure to provide complete and accurate wage statements:** Labor Code section
23 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
24 employee his or her wages, the employer must "furnish each of his or her employees ... an
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
26 employee, except for any employee whose compensation is solely based on a salary and who is
27 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
28 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
2 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
3 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
4 name of the employee and his or her social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.”

7 34. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt employees all wages
9 earned (including minimum wages, overtime wages and/or rest period premium wages) rendered
10 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
11 wage statements inaccurate, in violation of Labor Code section 226.

12 35. **Failure to pay employees all wages due at time of termination/resignation:** An
13 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
14 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
15 hours of resignation (Labor Code section 202).

16 36. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
17 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
18 all their earned wages (including minimum wages, overtime wages and/or rest period premium
19 wages), Defendants failed to pay those employees timely after each employee’s termination and/or
20 resignation, in violation of Labor Code sections 201, 202, and 203.

21 37. Defendants’ violations of Wage Order 2 constituted violations of Labor Code
22 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

23 38. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
24 employee, on behalf of himself or herself and other current or former employees, to bring a civil
25 action to recover civil penalties against all Defendants pursuant to the procedures specified in
26 Labor Code section 2699.3.

27 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On July 27, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and

1 provided notice to Defendants by certified mail which provided notice of the specific provisions of
2 the Labor Code alleged to have been violated, including the facts and theories to support the
3 violations alleged.

4 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
6 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
7 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
8 to investigate Plaintiff's claims.

9 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
10 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
11 1194, 1197, 2802 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
12 Notice to the LWDA to the present, in the following amounts:

13 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, 1198,
14 and 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

17 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
18 for each employee for each pay period for the initial violation, and for each subsequent violation,
19 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
20 established by Labor Code section 226.3].

21 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
22 employee for each pay period for the initial violation, and for each subsequent violation, one
23 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
24 established by Labor Code section 558] and any unpaid wages.

25 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
27 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
28 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

42. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: March 8, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Danielle E. Montero, Esq.
Julie M. Romersa, Esq.
Attorneys for Plaintiff
ITZEL MARTINEZ,
on behalf of herself and current and former
aggrieved employees