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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CASSANDRA WALKER, FRANCES PARDO,
CHRISTIAN VERDUZCO, COLLIN JOHNSON,
and HANNAH GANSEN, as private attorneys
general,

Plaintiffs,

vs.

FITNESS ALLIANCE, LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2023-00020191-CU-OE-CTL

**THIRD AMENDED REPRESENTATIVE
ACTION COMPLAINT**

**(1) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/21/2024 at 10:40:00 AM

Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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1 As a proxy for the State of California, Plaintiffs Cassandra Walker, Frances Pardo, Christian
2 Verduzco, Collin Johnson, and Hannah Gansen submit this Third Amended Representative Action
3 Complaint (the “Complaint”) against Defendant, Fitness Alliance, LLC, and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This representative action challenges systemic employment practices resulting in
7 violations of the California Labor Code against individuals who worked for Defendants. Plaintiffs are
8 informed and believe that Defendants have jointly and severally acted intentionally and with deliberate
9 indifference and conscious disregard to the rights of employees by failing to pay an additional hour of
10 regular rate wages for missed, late, or interrupted meal periods and rest periods, failing to pay all sick
11 pay wages, failing to pay all wages and overtime wages, failing to pay all sick pay wages, failing to
12 reimburse all business expenses, failing to timely pay all wages during employment or upon termination
13 of employment, and by failing to provide complete and accurate itemized wage statements. The
14 Complaint seeks penalties and other relief pursuant to, among other provisions, Labor Code sections
15 201-204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197,
16 1197.1, 1198, 2802, and 2698 et seq..¹

17 2. Plaintiffs and other non-exempt employees regularly work shifts of at least 3.5 hours
18 requiring rest periods and shifts of more than 5.0 hours requiring meal periods. Plaintiffs and other non-
19 exempt employees also earn non-base hourly wages or other non-hourly, non-discretionary
20 remuneration, including for example incentives, commissions, and holiday hourly rates. Defendants fail
21 to consider such earnings when Plaintiffs and other non-exempt employees’ meal periods and rest
22 periods are missed, late, or interrupted. Specifically, rather than pay an additional hour of regular rate
23 wages for a missed, late, or interrupted meal period or rest period, Defendants routinely underpay the
24 additional hour of wages to Plaintiffs and other non-exempt employees at their base hourly rates of pay.

25 3. Defendants also fail to pay sick pay wages at the regular rate of pay. As discussed above,
26 Plaintiffs and other non-exempt employees also earn non-base hourly wages or other non-hourly, non-
27 discretionary remuneration, including for example incentives, commissions, and holiday hourly rates.

28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 Defendants fail to consider such wages when paying sick pay wages. Rather than pay sick pay wages at
2 the regular rate of pay, Defendants underpay sick pay wages to Plaintiffs and other non-exempt
3 employees at their base rates of pay.

4 4. Defendants also underpay employees in at least four other ways. First, Defendants do not
5 pay Plaintiffs and other non-exempt employees for all work hours spent programming for clients, which
6 includes time spent designing workouts for clients, customizing meal plans, and planning/preparing
7 future sessions. Second, Defendants do not pay Plaintiffs and other non-exempt employees for all work
8 hours spent walking the floor to find clients. Instead, Defendants would pay Plaintiffs and other non-
9 exempt employees for just two hours or as little as one hour per week for such work. Third, Defendants
10 do not pay Plaintiffs and other non-exempt employees for all work hours because of a uniform practice
11 of rounding the actual time worked and recorded by Plaintiffs and other non-exempt employees, so that
12 they are paid less than they would have been paid for actual recorded time. Fourth, Defendants do not
13 pay Plaintiffs and other non-exempt employees for all work hours spent submitting to mandatory
14 temperature checks and symptom questionnaires for COVID-19 screenings prior to clocking into
15 Defendants' timekeeping system each workday.

16 5. Because Plaintiffs and other non-exempt employees are not paid an additional hour of
17 wages at their regular rates, are underpaid sick pay wages, and are not paid wages for all hours worked,
18 Defendants routinely fail to timely pay Plaintiff and other non-exempt employees all wages during
19 employment or upon separation of employment. Moreover, Defendants also routinely fail to furnish
20 wage statements that accurately show and itemize all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked, total hours worked, gross wages earned, and net
22 wages earned.

23 6. Defendants also routinely fail to reimburse necessary and reasonable business expenses.
24 Specifically, Plaintiffs and other non-exempt employees are required to provide their own cell phone in
25 order to perform their job, including to communicate with clients, coworkers, and managers, as well as
26 to use a required application, Trainerize. Although Plaintiffs and other non-exempt employees are
27 expected to use their personal cell phone, they are not reimbursed for their related expenses.

7. Plaintiffs are informed and believe that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

8. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power.

9. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

JURISDICTION AND VENUE

10. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 221, 226, 226.7, 227.3, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802.

11. Venue is proper in the County of San Diego. Defendants employed aggrieved employees in various locations within the County of San Diego.

PARTIES

12. In October of 2022, Plaintiff Walker began working for Defendants as a certified personal trainer and worked in California for Defendants for 30 or more days within a year. Until her employment ended in July of 2023, Plaintiff Walker was paid on an hourly basis as a non-exempt employee and earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example incentives, commissions, and holiday hourly rates. When Plaintiff Walker worked 3.5 hours in a workday, she regularly was not provided lawful rest periods. Likewise, when Plaintiff Walker worked more than 5.0 hours in a workday, she regularly was not provided lawful meal periods. Plaintiff Walker also was regularly not provided an additional hour of regular rate wages for a

missed, late, or interrupted meal period or rest period but instead paid an additional hour of wages at her base hourly rate of pay. Throughout her employment, Plaintiff Walker also accrued and actually used sick leave. When sick leave was used in workweeks that Plaintiff Walker earned non-base hourly wages or other non-hourly, non-discretionary remuneration in addition to her base hourly wages, sick pay wages were paid at Plaintiff Walker's base rate of pay rather than her regular rate of pay. Plaintiff Walker was not paid for all hours actually worked. Plaintiff Walker also was not reimbursed for cell phone expenses incurred in connection with her employment.

13. Plaintiff Pardo was employed by Defendants in California as a non-exempt employee from September of 2022 to February 20, 2023. Plaintiff Verduzco was employed by Defendants in California as a non-exempt employee from June of 2022 through November of 2022. Plaintiff Johnson began working for the Defendants in California as a non-exempt employee in June of 2022. Plaintiff Gansen was employed by Defendants in California as a non-exempt employee from February of 2020 through September of 2023. Plaintiffs Pardo, Verduzco, and Johnson had similar experiences to Plaintiff Walker.

14. Plaintiffs also were not timely paid all due wages during employment or upon separation of employment and also were not provided with accurate itemized wage statements. Plaintiffs thus are victims of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code.

15. Plaintiffs are informed and believes that Fitness Alliance, LLC was and is a California limited liability company. Plaintiffs are informed and believes that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 221, 226, 226.7, 227.3, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802.

16. Plaintiffs do not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and capacities are known. Plaintiffs are informed and believes that each of said fictitious defendants was

1 responsible in some way for the matters alleged herein and proximately caused the illegal employment
2 practices, wrongs, and injuries complained of herein.

3 17. At all times mentioned herein, each of said Defendants participated in the doing of the
4 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
5 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
6 scope of said agency and employment.

7 18. Plaintiffs are informed and believes that at all times material hereto, each of said
8 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
9 each of the other Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
11 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
12 omissions of the acting Defendants.

13 19. Plaintiffs are informed and believes that at all times material hereto each of the
14 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately
15 causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope
16 of, and in pursuance of, a joint venture, partnership, or common enterprise.

17 **PAGA ALLEGATIONS**

18 20. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
19 et seq. (“PAGA”), Plaintiffs bring this cause of action as a proxy for the State of California. In this
20 capacity, Plaintiffs seek penalties for Defendants’ violations of Sections 201-204, 221, 226, 226.7,
21 227.3, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802 committed from July 8, 2022, through April
22 26, 2024, against all aggrieved employees. Under Section 2699(c), Plaintiffs are “aggrieved
23 employees,” as one or more of the alleged violations was committed against Plaintiffs as employees of
24 Defendants.

25 21. On or about April 27, 2023, April 28, 2023, December 11, 2023, and other dates,
26 Plaintiffs sent written notices to the Labor & Workforce Development Agency (“LWDA”) of specific
27 facts and theories for Defendants’ violations of Sections 201-204, 221, 226, 226.7, 227.3, 233, 246, 510,
28 512, 1182.12, 1197, 1198, and 2802. Plaintiffs simultaneously sent written notice to Defendants via

1 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor
2 indicated that it intends to investigate the allegations in the written notices.

3 **FIRST CAUSE OF ACTION**

4 **Violation of Labor Code §§ 2698 *Et Seq.***

5 **(By Plaintiff as a Proxy for the State Against All Defendants)**

6 22. The preceding paragraphs are re-alleged and incorporated by this reference.

7 23. **Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512):** Because Plaintiffs and
8 other aggrieved employees were non-exempt employees, Defendants were required to comply with
9 Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits
10 employment of an individual for a work period of more than five hours per day without providing the
11 employee with an uninterrupted, duty-free meal period of at least 30 minutes. Section 226.7(b) provides
12 that an employer shall not require an employee to work during a meal period. Section 226.7(c) states
13 that “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of
14 compensation for each workday that the meal or rest or recovery period is not provided.”

15 24. As a matter of policy and practice, whenever Defendants pay an additional hour of wages
16 to Plaintiffs and other aggrieved employees for missed, late, or interrupted meal periods, Defendants pay
17 an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in
18 workweeks in which Plaintiffs and other aggrieved employees earn non-base hourly wages or other non-
19 hourly, non-discretionary remuneration, Defendants fail to consider such wages when calculating the
20 regular rate of pay for purposes of paying the additional hour of wages. As such, Plaintiffs and other
21 aggrieved employees are owed additional wages for missed, late, or interrupted meal periods.

22 25. Moreover, all owing wages must be paid timely. Section 204 provides that wages are
23 generally due and payable no later than seven days after the end of a pay period or at least twice during
24 each calendar month, on days designated in advance as the regular paydays. Section 201 provides that if
25 an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no
27 later than 72 hours after an employee quits his or her employment, unless the employee has given
28 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is

entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

26. Based on Defendants' failure to pay an additional hour of wages to Plaintiffs and other aggrieved employees for missed, late, or interrupted meal periods, and as a matter of policy and practice, Defendants also fail to timely pay Plaintiffs and other aggrieved employees all due wages. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiffs and other aggrieved employees all wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

27. **Failure to Provide Rest Periods (Lab. Code § 226.7):** Because Plaintiffs and other aggrieved employees were non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section 226.7(c) states that "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."

28. As a matter of policy and practice, whenever Defendants pay an additional hour of wages to Plaintiffs and other aggrieved employees for missed, late, or interrupted rest periods, Defendants pay an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in workweeks in which Plaintiffs and other aggrieved employees earn non-base hourly wages or other non-hourly, non-discretionary remuneration, Defendants fail to consider such wages when calculating the regular rate of pay for purposes of paying the additional hour of wages. As such, Plaintiffs and other aggrieved employees are owed additional wages for missed, late, or interrupted rest periods.

1 29. Moreover, all owing wages must be paid timely. Based on Defendants’ failure to pay an
2 additional hour of wages to Plaintiffs and other aggrieved employees for missed, late, or interrupted rest
3 periods, and as a matter of policy and practice, Defendants also fail to timely pay Plaintiffs and other
4 aggrieved employees all due wages. On information and belief, Defendants were advised by skilled
5 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff’s
6 allegations. Because Defendants willfully fail to timely pay Plaintiffs and other aggrieved employees all
7 wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among
8 other Labor Code provisions.

9 30. **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 233, 246):** Section 233 provides that
10 an employer must permit an employee to use accrued sick leave in accordance with Section 246.5 at the
11 employee’s then current rate of entitlement. Section 246 provides that an employee is entitled to sick
12 pay wages for use of accrued sick leave pursuant to Section 246.5. Specifically, once accrued sick leave
13 is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must
14 calculate and compensate based on one of two calculations: (i) “Paid sick time for nonexempt
15 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
16 the employee uses paid sick time, whether or not the employee actually works overtime in that
17 workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing the
18 employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in
19 the full pay periods of the prior 90 days of employment.” Under Sections 204, 218, and 233, employees
20 may sue to recover underpaid sick pay wages as damages.

21 31. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and other
22 aggrieved employees at the incorrect rate of pay. Plaintiffs and other aggrieved employees regularly use
23 accrued sick leave in workweeks in which they also earn non-base hourly wages or other non-hourly,
24 non-discretionary remuneration, including for example incentives, commissions, and holiday hourly
25 rates. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and other
26 aggrieved employees at the base hourly rate of pay, as opposed to the regular rate of pay, which would
27 consider all non-discretionary remuneration in addition to base hourly wages, or the rate resulting from
28 dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours

1 worked in the full pay periods of the prior 90 days of employment. As a result, Defendants underpay
2 sick pay wages to Plaintiffs and other aggrieved employees.

3 32. Section 204 provides that wages generally are due and payable twice during each
4 calendar month and are to be paid no later than the payday for the next regular payroll period. Consistent
5 with Section 204, Section 246 specifically requires that, upon use of accrued sick leave, vested sick pay
6 wages are due and to be paid no later than the payday for the next regular payroll period after accrued
7 sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer discharges an
8 employee, wages earned and unpaid at the time of discharge are due and payable immediately. Section
9 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an
10 employee quits his or her employment, unless the employee has given 72-hour notice of his or her
11 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. The
12 Labor Code penalizes untimely payments. For example, Section 203 provides that if an employer
13 willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the
14 employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages
15 shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for violations
16 of Section 204 and untimely payments during employment. Under Sections 203, 210, and 218,
17 employees may sue to recover applicable penalties.

18 33. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
19 sick pay wages and thus do not timely pay Plaintiffs and other aggrieved employees all owing and
20 underpaid sick pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among
21 other Labor Code provisions. Plaintiffs are informed and believe that Defendants were advised by
22 skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
23 Plaintiff's allegations, especially since the California Supreme Court has explained that "[c]ourts have
24 recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or
25 her compensation, including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v.*
26 *Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants
27 willfully fail to timely pay Plaintiffs and other aggrieved employees all sick pay wages due, Defendants
28 are subject to applicable penalties.

1 34. **Unpaid Wages (Lab. Code §§ 1182.12 and 1197):** Sections 1182.12 and 1197 provide
2 a minimum wage to be paid to employees and make unlawful the payment of a lesser wage. The
3 applicable IWC Wage Order defines compensable time as “the time during which an employee is
4 subject to the control of an employer, and includes all the time the employee is suffered or permitted to
5 work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours
6 Worked”). California law thus generally requires that employers pay employees for all hours worked
7 and pay at least the minimum wage for all hours worked.

8 35. As a matter of policy and practice, Defendants fail to pay at least minimum wage and fail
9 to pay any wage at all for all hours worked by Plaintiffs and other aggrieved employees. First,
10 Defendants do not pay Plaintiffs and other aggrieved employees for all work hours spent programming
11 for clients, which includes time spent designing workouts for clients, customizing meal plans, and
12 planning/preparing future sessions. Second, Defendants do not pay Plaintiffs and other aggrieved
13 employees for all work hours spent walking the floor to find clients. Instead, Defendants would pay
14 Plaintiffs and other aggrieved employees for just two hours or as little as one hour per week for such
15 work. Third, Defendants do not pay Plaintiffs and other aggrieved employees for all work hours because
16 of a uniform practice of rounding the actual time worked and recorded by Plaintiffs and other aggrieved
17 employees, so that they are paid less than they would have been paid for actual recorded time. Fourth,
18 Defendants do not pay Plaintiffs and other aggrieved employees for all work hours spent submitting to
19 mandatory temperature checks and symptom questionnaires for COVID-19 screenings prior to clocking
20 into Defendants’ timekeeping system each workday. As such, Plaintiffs and other aggrieved employees
21 are owed unpaid regular and minimum wages.

22 36. Moreover, Section 204 provides that wages are generally due and payable no later than
23 seven days after the end of a pay period or at least twice during each calendar month, on days
24 designated in advance as the regular paydays. Section 201 provides that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.
26 Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours
27 after an employee quits his or her employment, unless the employee has given seventy-two (72) hours
28 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages

1 at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in
2 accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from
3 the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30)
4 days.

5 37. Based on Defendants' failure to pay all regular and minimum wages to Plaintiffs and
6 other aggrieved employees, and as a matter of policy and practice, Defendants fail to timely pay all due
7 wages during employment and fail to timely pay all due wages upon separation of employment. On
8 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
9 of the mandates of the Labor Code as it relates to Plaintiffs' allegations. Because Defendants willfully
10 fail to timely pay Plaintiffs and other aggrieved employees all wages due, Defendants are subject to
11 applicable penalties.

12 38. **Unpaid Overtime (Lab. Code §§ 510, 1198):** Section 510 and the applicable IWC
13 Wage Order provide that "[a]ny work in excess of eight hours in one workday and any work in excess
14 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any
15 one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of
16 pay for an employee" and that "[a]ny work in excess of 12 hours in one day shall be compensated at the
17 rate of no less than twice the regular rate of pay for an employee." Section 1198 makes unlawful
18 conditions of labor that are prohibited by the applicable IWC Wage Order.

19 39. Plaintiffs and other aggrieved employees regularly work more than eight hours in a day
20 or 40 hours in a workweek. As a matter of policy and practice, when Plaintiffs and other aggrieved
21 employees work hours entitled to overtime wages, Defendants fail to pay overtime wages for all hours
22 exceeding eight in a day or 40 in a workweek. First, Defendants do not pay Plaintiffs and other
23 aggrieved employees for all work hours spent programming for clients, which includes time spent
24 designing workouts for clients, customizing meal plans, and planning/preparing future sessions. Second,
25 Defendants do not pay Plaintiffs and other aggrieved employees for all work hours spent walking the
26 floor to find clients. Instead, Defendants would pay Plaintiffs and other aggrieved employees for just
27 two hours or as little as one hour per week for such work. Third, Defendants do not pay Plaintiffs and
28 other aggrieved employees for all work hours because of a uniform practice of rounding the actual time

1 worked and recorded by Plaintiffs and other aggrieved employees, so that they are paid less than they
2 would have been paid for actual recorded time. Fourth, Defendants do not pay Plaintiffs and other
3 aggrieved employees for all work hours spent submitting to mandatory temperature checks and
4 symptom questionnaires for COVID-19 screenings prior to clocking into Defendants' timekeeping
5 system each workday. As such, Plaintiffs and other aggrieved employees are owed overtime wages.

6 40. Based on Defendants' failure to pay overtime wages to Plaintiffs and other aggrieved
7 employees, as a matter of policy and practice, Defendants fail to timely pay Plaintiffs and other
8 aggrieved employees all due wages during employment and fail to timely pay all due wages upon
9 separation of employment. On information and belief, Defendants were advised by skilled lawyers and
10 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs' allegations.
11 Because Defendants willfully fail to timely pay Plaintiffs and other aggrieved employees all wages due,
12 Defendants are subject to applicable penalties.

13 41. **Inaccurate Itemized Wage Statements (Lab. Code § 226(a)):** Section 226(a) requires
14 an employer to furnish to its employees itemized wage statements that show accurate information,
15 including without limitation, all applicable hourly rates in effect during the pay period, gross wages
16 earned, and net wages earned.

17 42. Defendants fail to provide accurate itemized wage statements to Plaintiffs and other
18 aggrieved employees. Because of the above violations and as a matter of policy and practice,
19 Defendants fail to furnish Plaintiffs and other aggrieved employees with wage statements that accurately
20 show the applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked, total hours worked, gross wages earned, and net wages earned.

22 43. **Unreimbursed Business Expenses (Lab. Code § 2802):** Section 2802 requires that an
23 employer must reimburse employees for all necessary expenditures and losses incurred in the
24 performance of their jobs. Section 2802 is intended to prevent employers from placing their operating
25 expenses and cost of doing business on employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.
26 App. 4th 1137, 1144 (2014).

27 44. As a matter of policy and practice, Defendants fail to reimburse Plaintiffs and other
28 aggrieved employees for necessary business expenses incurred in performing their work for Defendants.

As a matter of policy and practice, Plaintiffs and other aggrieved employees are required to provide their own cell phone to perform their jobs. Although Plaintiffs and other aggrieved employees are expected to use their personal cell phone, they are not reimbursed for their related expenses.

PRAYER FOR RELIEF

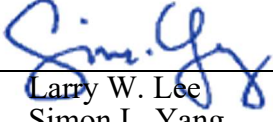
WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699(a), (f), and (g), and for costs and attorneys' fees;
2. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code and Code of Civil Procedure section 1021.5; and
3. For such other and further relief that the Court may deem just and proper.

DATED: May 13, 2024

DIVERSITY LAW GROUP, P.C.

By: _____


Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
8 Los Angeles, California 90071.

9 On May 21, 2024, I served the following document(s) described as: **THIRD AMENDED**
10 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as
11 follows:

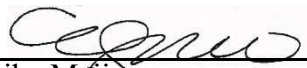
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29 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
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35 I declare under penalty of perjury under the laws of the State of California that the above
36 is true and correct. Executed on May 21, 2024, at Los Angeles, California.

37 
38 Erika Mejia