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Attorneys for Plaintiff Lucia Lopez-Martinez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

LUCIA LOPEZ-MARTINEZ, an individual,

Plaintiff,

vs.

PCV MODESTO 1, LLC d/b/a PLANET
FITNESS, a limited liability corporation, and
DOES 1-100, inclusive,

Defendants.

Case No.: CV-23-002478

FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES FOR:

1. RELIGIOUS DISCRIMINATION
2. FAILURE TO ACCOMMODATE
RELIGIOUS PRACTICE
3. RETALIATION
4. FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION
5. FAILURE TO PAY SICK
PAY/RETALIATION
6. FAILURE TO PAY ALL WAGES AT
TERMINATION
7. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS
8. FAILURE TO REIMBURSE BUSINESS
EXPENSES
9. LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (PAGA)

JURY TRIAL DEMANDED

Plaintiff Lucia Lopez-Martinez brings this action against Defendants PCV Modesto 1, LLC
d/b/a Planet Fitness, and Does 1-100 for violations of the California Fair Employment and Housing Act
and the California Labor Code.

1 **PARTIES**

2 1. Lucia Lopez-Martinez (“Lopez-Martinez” or “Plaintiff”) is and was at all times relevant
3 herein an individual and was an employee as defined by the Fair Employment and Housing Act
4 (“FEHA”) and the California Labor Code.

5 2. PCV Modesto 1, LLC d/b/a Planet Fitness (“Planet Fitness”) is and was at all times
6 relevant herein a limited liability corporation organized under the laws of the State of California, with
7 principal place of business in California, doing business in California, and was an employer as defined
8 by the FEHA and the California Labor Code.

9 3. Planet Fitness and Does 1-100 are collectively referred to herein as Defendants.

10 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
11 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such
12 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
13 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
14 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
15 and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants.
16 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
17 and/or employment, with the knowledge and/or consent of said co-Defendant.

18 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
19 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
20 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
21 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
22 within the course and scope of such agency, service, employment partnership, joint venture and/or
23 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
24 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
25 the remaining Defendants.

26 **VENUE AND JURY TRIAL DEMAND**

27 6. Venue is proper in this Court because unlawful acts as to Plaintiff alleged herein took
28 place in Stanislaus County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

7. Throughout the relevant time period, Plaintiff Lopez-Martinez has been a practicing member of the Roman Catholic Church and has sincerely held religious beliefs and practices aligned with the tenets of the Roman Catholic faith, including regular attendance at Sunday Mass.

8. Plaintiff was hired by Planet Fitness as a Member Services Representative on or about April 25, 2022 at its Modesto, California location.

9. During her employment with Planet Fitness, Plaintiff was discriminated against because of her religion and religious practices and ultimately terminated as a result.

10. Plaintiff's supervisor, and the facility manager, was Jazmin Tellez ("Tellez"). Tellez had overall supervisory responsibility over Plaintiff's location and was in charge of, among other things, managing employee's work schedules.

11. Tellez regularly scheduled Plaintiff to work on Sundays.

12. Plaintiff asked Tellez a few months into her employment if she could have Sundays off, to which Tellez responded that if Plaintiff wanted Sundays off, she would not have those work hours replaced with a different shift.

13. Tellez asked Plaintiff why she wanted to have Sundays off, to which Plaintiff responded that she wanted to be able to attend Mass. Tellez responded with a tone of disgust and said, "Oh, religion."

14. Tellez then told Plaintiff that she could not have Sundays off because it purportedly conflicted with scheduling availability. This was a false statement, however, as Plaintiff was aware that numerous other employees were not scheduled for Sundays and were otherwise available for work.

15. Further, Complainant is informed and believes that Planet Fitness could have readily provided Plaintiff with Sundays off as an accommodation for her religious practices without any meaningful impact on business operations.

16. After Plaintiff made her request of Tellez for Sundays off, Tellez began to actively discriminate against and retaliate against her. For example, when Plaintiff asked for additional overall work hours, Tellez refused to schedule her for more. Instead, Tellez permitted other employees to obtain more work hours that Plaintiff could have worked, even though those employees' performance

1 was no better than Plaintiff's and they had similar levels of seniority. Tellez also became unduly
2 critical of Plaintiff while allowing other employees to have

3 17. On January 6, 2023, Plaintiff was ill and missed work. Plaintiff advised Tellez as soon
4 as she was able of her need to take time off due to being ill, and asked Tellez if she could take sick
5 leave the next day, January 7. At the time of her request, Plaintiff had 23 hours of paid sick leave
6 available.

7 18. In response to her request, Tellez told Plaintiff that her absence would be considered
8 unexcused unless she provided a doctor's note. Out of concern for being written up for a protected
9 absence, Plaintiff worked on January 7, 2023, despite being sick.

10 19. Defendant did not pay Plaintiff any sick pay for the sick leave that she took on January
11 6, and unlawfully threatened to discipline her for requesting sick leave for January 7, 2023.

12 20. Approximately two weeks before Plaintiff's employment was terminated, Tellez posted
13 the work schedule for the weeks of January 16, 2023, through January 29, 2023. On that schedule, for
14 the first time, Plaintiff was given two Sundays off. Next to this schedule was hung a rosary, clearly
15 placed there to mock Plaintiff for her request for time off to attend Mass. See *Exhibit 1*. The rosary
16 was not present before the schedules were posted, and Plaintiff is informed and believes that Tellez
17 pinned the rosary to the board when she posted the work schedules.

18 21. On January 30, 2023, Plaintiff had a conversation with Tellez regarding her shifts.
19 During that conversation, Plaintiff again asked to be scheduled for more overall work hours. Tellez
20 told Plaintiff that she gives hours to people who have "more availability."

21 22. On February 3, 2023, Tellez met with Plaintiff and told her that her employment was
22 being terminated because Planet Fitness could not work with Plaintiff's availability. Tellez also
23 pretextually and falsely stated that Plaintiff took too long to clean the women's locker room. Tellez
24 then handed Plaintiff her final paycheck.

25 23. At no time during Plaintiff's employment with Planet Fitness did she receive a negative
26 performance review or write-up about her performance.

1 24. In truth, Plaintiff's employment was terminated because of her religion and requests for
2 accommodation to attend Mass, and in retaliation for same and in retaliation for requesting paid sick
3 leave.

4 25. When Plaintiff's employment was terminated, she was not paid the sick leave she
5 requested and was entitled to have been paid for January 6 and 7, 2023. As a result, Plaintiff was not
6 paid all wages earned but unpaid at the time of her termination.

7 26. Throughout Plaintiff's employment, Defendant required her to utilize her personal
8 cellular phone for work-related tasks, including but not limited to communicating with her supervisors
9 regarding work matters and arranging for shift coverage among employees. However, despite
10 Plaintiff's use of her personal cellular phones being required and/or reasonably necessary for her
11 employment with Defendant, Defendant did not reimburse Plaintiff for any amount of her work-related
12 cellular phone use.

13 27. During Plaintiff's employment with Defendant, Defendant furnished Plaintiff with
14 inaccurate wage statements that did not comply with the requirements of Labor Code section 226(a).
15 For example, Plaintiff was paid a meal period penalty during the pay period of January 8, 2023 through
16 January 21, 2023. On her wage statement for that pay period, the meal premium penalty is inaccurately
17 included in the "Hours Worked" set forth on Plaintiff's wage statement. As a result, the wage
18 statement issued to Plaintiff failed to accurately identify the total hours worked in violation of Labor
19 Code section 226(a)(2).

20 28. As a result of this inaccuracy, Plaintiff was unable to promptly and easily determine the
21 total number of hours worked by looking at her wage statement alone. Furthermore, this inaccuracy
22 was knowing and intentional, not the result of a mistake or clerical error.

23 29. Plaintiff is informed and believes that Defendant has a pattern and practice of
24 inaccurately stating the total hours worked on the wage statements it issues to its employees.

25 30. On April 10, 2023, Plaintiff filed a complaint with the Department of Fair Employment
26 and Housing against Defendants, alleging that Defendants discriminated against, retaliated against, and
27 failed to prevent discrimination and retaliation against Plaintiff in violation of the FEHA. A right to
28

1 sue notice was issued to Plaintiff the same day, a copy of which was served on Defendants by certified
2 mail on April 10, 2023.

3
4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF GOVERNMENT CODE SECTION 12940(a)**
6 **(Religious Discrimination)**
7 **Against Defendants**

8 31. Plaintiff hereby realleges and incorporates by reference each and every allegation
9 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
10 allegations of this cause of action.

11 32. The FEHA explicitly prohibits any employer from discriminating against any
12 employee in the terms and conditions of their employment because of religious creed. Gov. Code
13 §12940(a).

14 33. Defendants were at all times relevant herein Plaintiff's pursuant to Government
15 Code section 12926(d) and were therefore barred from discriminating against Plaintiff because of
16 her religious creed.

17 34. Nevertheless, as set forth above, Defendants discriminated against Plaintiff because
18 of her religious creed in violation of Government Code § 12940(a).

19 35. The acts taken toward Plaintiff were carried out by Defendants acting in an
20 oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby
21 justifying an award to her of punitive damages.

22 36. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
23 and requests relief as hereafter provided.

24 **SECOND CAUSE OF ACTION**
25 **VIOLATION OF GOVERNMENT CODE SECTION 12940(l)(1)**
26 **(Failure to Accommodate Religious Practice)**
27 **Against All Defendants**

28 37. Plaintiff hereby realleges and incorporates by reference each and every allegation
set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of
action.

1 38. The FEHA explicitly prohibits any employer or any other person from
2 discriminating against an employee because of a conflict between the employee's religious belief
3 or observance and any employment requirement, unless the employer demonstrates that it has
4 explored any available reasonable alternative means of accommodating the religious belief or
5 observance, including the possibilities of excusing the employee from those duties that conflict
6 with the religious belief or observance or permitting those duties to be performed at another time or
7 by another person, but is unable to reasonably accommodate the religious belief or observance
8 without undue hardship. Gov't Code § 12940(l)(1).

9 39. This duty to accommodate includes, but is not limited to, observance of a Sabbath or
10 other religious holy day or days. Gov't Code § 12940(l)(1).

11 40. Defendants were at all times relevant herein Plaintiff's employer pursuant to
12 Government Code sections 12926(d) and were therefore required to reasonably accommodate
13 Plaintiff's request to have time off to attend Sunday Mass.

14 41. Nevertheless, as set forth above, Defendants refused to accommodate Plaintiff and
15 further refused to explore any available alternative means to accommodate Plaintiff, in violation of
16 Government Code section 12940(l)(1).

17 42. The acts taken toward Plaintiff were carried out by Defendants acting in an
18 oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby
19 justifying an award to her of punitive damages.

20 43. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
21 and requests relief as hereafter provided.

22 **THIRD CAUSE OF ACTION**
23 **VIOLATION OF GOVERNMENT CODE SECTION 12940(l)(4)**
24 **(Retaliation)**
 Against All Defendants

25 44. Plaintiff hereby realleges and incorporates by reference each and every allegation
26 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
27 allegations of this cause of action.

1 45. Government Code section 12940(1)(4) prohibits an employer from retaliating or
2 otherwise discriminating against an employee for requesting an accommodation for a religious
3 belief or observance, regardless of whether the request was granted.

4 46. Defendants were at all times relevant herein Plaintiff's employer pursuant to
5 Government Code sections 12926(d) and were therefore prohibited from retaliating against or
6 otherwise discriminating against Plaintiff for requesting accommodation for a religious observance,
7 specifically to attend Sunday Mass.

8 47. However, as set forth above, Defendants retaliated against Plaintiff for her requests
9 for time off in order to attend Sunday Mass, in violation of Government Code section 12940(1)(4).

10 48. The acts taken toward Plaintiff were carried out by Defendants acting in an
11 oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby
12 justifying an award to her of punitive damages.

13 49. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
14 and requests relief as hereafter provided.

15 **FOURTH CAUSE OF ACTION**
16 **VIOLATION OF GOVERNMENT CODE SECTION 12940(k)**
17 **(Failure to Prevent Discrimination and Retaliation)**
 Against All Defendants

18 50. Plaintiff hereby realleges and incorporates by reference each and every allegation
19 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
20 allegations of this cause of action.

21 51. The FEHA requires an employer to take all reasonable steps necessary to prevent
22 discrimination, harassment, and retaliation from occurring. Gov. Code § 12940(k).

23 52. Defendants at all times relevant herein were Plaintiff's employer pursuant to
24 Government Code section 12926(d) and were therefore required to prevent discrimination and
25 retaliation pursuant to Government Code section 12940(k).

26 53. Defendants knew or should have known of the discrimination and retaliation but did
27 nothing to prevent it. Instead, Defendants encouraged, permitted and/or acquiesced to the
28

1 discrimination and retaliation. Consequently, Defendants failed to take all reasonable steps to
2 prevent the discrimination from occurring in violation of Government Code section 12940(k).

3 54. The acts taken toward Plaintiff were carried out by Defendants acting in an
4 oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby
5 justifying an award to her of punitive damages.

6 55. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
7 and requests relief as hereafter provided.

8 **FIFTH CAUSE OF ACTION**
9 **Violation of Labor Code Section 233**
10 **(Failure to Pay Sick Pay/Retaliation)**
11 **Against All Defendants**

12 56. Plaintiff hereby realleges and incorporates by reference each and every allegation
13 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 57. Labor Code section 233(a) requires an employer to permit an employee to use in
16 any calendar year the employee's accrued and available sick leave entitlement for any of the
17 reasons set forth in Labor Code section 246.5. These reasons include diagnosis, care, or treatment
18 of an existing health condition of, or preventive care for, an employee or an employee's family
19 member.

20 58. Labor Code section 233(c) prohibits an employer from denying an employee the
21 right to use sick leave or from discharging, demoting, suspending, or in any manner discriminating
22 against an employee for using, or attempting to exercise the right to use, sick leave.

23 59. Labor Code section 233(d) provides that an employee aggrieved by a violation of
24 this section is entitled to reinstatement and actual damages or one day's pay, whichever is greater,
25 and to appropriate equitable relief.

26 60. Labor Code section 233(f) permits an employee to bring a civil action to seek the
27 remedies provided by this section and permits the employee, on prevailing, to recover reasonable
28 attorney's fees.

61. As set forth above, Plaintiff was unlawfully denied the use of her available sick leave by Defendants. Plaintiff was also retaliated against for her use and attempted use of sick leave by Defendants, all in violation of Labor Code section 233.

62. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

SIXTH CAUSE OF ACTION
Violation of Labor Code § 201
(Failure to Pay All Wages at Termination)
Against All Defendants

63. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

64. Labor Code section 201 requires an employer, when discharging an employee, to immediately pay the wages earned and unpaid at the time of discharge.

65. As set forth above, Plaintiff requested and was entitled to have been paid sick time wages; however, Defendants refused and failed to pay said wages to Plaintiff. To date, Plaintiff has not been paid said wages.

66. Since Defendants failed to pay Plaintiff all wages due and owing during her employment, there were necessarily additional wages outstanding at the time of separation. As a result, Plaintiff was not paid all wages due and owing at termination—those wages remain outstanding.

67. Labor Code section 203(a) provides a statutory penalty of up to 30 days wages.

68. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed and requests relief as hereafter provided.

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SEVENTH CAUSE OF ACTION
Violation of Labor Code § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against All Defendants

69. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

70. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (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 her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

71. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226(e)(1).

72. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code
2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
3 and address of the employer and iv) the name of the employee and the last four digits of his or her
4 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
5 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
6 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

7 73. As set forth above, Defendants intentionally and willfully failed to furnish accurate
8 itemized wage statements which complied with Labor Code section 226.

9 74. As a direct and proximate result of Defendants’ conduct, Plaintiff has been harmed
10 and requests relief as hereafter provided.

11 **EIGHTH CAUSE OF ACTION**
12 **Violation of Labor Code § 2802**
13 **(Failure to Reimburse Business Expenses)**
14 **Against All Defendants**

15 75. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 76. Labor Code section 2802 requires employers to indemnify employees for all
19 necessary expenditures or losses incurred in the direct discharge of his or her duties. This includes
20 usage of cellular phones. *Cochran v. Schwan’s Home Serv. Inc.* (2014) 228 Cal.App.4th 1137,
21 1144.

22 77. As set forth above, Defendants required Plaintiff to use her personal cellular phone
23 for work purposes, but Defendants did not reimburse her at all for that usage, despite both being
24 aware that she was using her personal cellular phone and requiring its use for work-related
25 communications.

26 78. As a direct and proximate result of Defendants’ conduct, Plaintiff has been harmed
27 and requests relief as hereafter provided.

28 **NINTH CAUSE OF ACTION**
Labor Code Private Attorneys General Act of 2004 (PAGA)
Against All Defendants

1
2 79. Plaintiff hereby realleges and incorporates by reference each and every allegation
3 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
4 allegations of this cause of action.

5 80. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
6 pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”)
7 after the following requirements have been met:

- 8 a. The aggrieved employee shall give written notice by certified mail to the LWDA
9 and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
10 the Labor Code alleged to have been violated, including the facts and theories to
11 support the alleged violations;
- 12 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
13 and the aggrieved employee by certified mail that it does not intend to investigate
14 the alleged violation within 60 calendar days of the postmark date of the
15 Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not
16 provide notice within 65 calendar days of the postmark date of the Employee’s
17 Notice, the aggrieved employee may commence a civil action pursuant to Labor §
18 2699 to recover civil penalties in addition to any other penalties to which the
19 employee may be entitled.

20 81. For reasons set forth above, Plaintiff is an aggrieved employee as she has been
21 subjected to one or more violation of the California Labor Code by Defendants.

22 82. On July 7, 2023, Plaintiff electronically filed an Employee’s Notice with the LWDA
23 and served the same on Defendants by certified mail. Plaintiff also paid the \$75 filing fee as
24 required. The July 7, 2023, Employee’s Notice is attached hereto as **Exhibit 1**, and is incorporated
25 by this reference.

26 83. As of today’s date, more than 65 days have passed without the LWDA providing
27 any LWDA Notice that it intends to investigate the allegations in the notices. Accordingly,
28 Plaintiff has satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the

1 time of the postmark of his notice to bring a civil action to recover penalties against Defendants
2 under the PAGA.

3 84. As set forth in detail in **Exhibit 1**, within the relevant time period, including the past
4 year and 65 days and continuing, and in accordance with uniform policy, Defendants have violated
5 the Labor Code as to Plaintiff and other former and current employees, including Labor Code
6 Sections 201, 202, 226(a), 226.7, 233, 512, and 2802.

7 85. Wherefore, Plaintiff prays for relief as set forth below.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

11 **As to the First through Fourth Causes of Action:**

- 12 1. That this Court award actual, compensatory, special, and general damages, in an
13 amount yet unknown;
- 14 2. That this Court award punitive damages;
- 15 3. That this Court award statutory attorneys' fees and costs, including those available
16 under Government Code section 12965(b);
- 17 4. That this Court award prejudgment and post-judgment interest according to any
18 applicable provision of law or as otherwise permitted by law, including that
19 available under Civil Code sections 3287(a) and 3289(b);
- 20 5. That this Court award such other and further relief as the Court deems just and
21 proper.

22 **As to the Fifth through Eighth Causes of Action:**

- 23 1. That this Court award actual, compensatory damages, special and general damages,
24 including but not limited to, unpaid sick wages, lost past and future wages, and
25 unreimbursed business expenses, in an amount according to proof;
- 26 2. That this Court award statutory penalties, including but not limited to those
27 available under Labor Code sections 203 and 226(e), in an amount according to
28 proof;

3. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226(e)(1), and 233(f);
4. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code sections 3287(a) and 3289(b);
5. That this Court award such other and further relief as the Court deems just and proper.

As to the Ninth Cause of Action:

1. That this Court award civil penalties pursuant to the PAGA, on behalf of Plaintiff and all other aggrieved employees, including but not limited to those available pursuant to Labor Code section 226.3, 256, 558, and 2699(f);
2. That this Court award statutory attorneys' fees and costs, including those available under Labor Code section 2699(g);
3. That this Court award such other and further relief as the Court deems just and proper.

DATED: September 26, 2023

MAYALL HURLEY P.C.

By

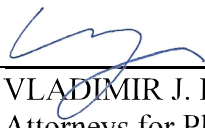

VLADIMIR J. KOZINA
Attorneys for Plaintiff
LUCIA LOPEZ-MARTINEZ

Exhibit 1

NORTHERN CALIFORNIA
118 WEST OAK STREET
LODI, CALIFORNIA 95240
[BY APPT. ONLY - NO SERVICE ACCEPTED]
♦
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207
SOUTHERN CALIFORNIA
360 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY - NO SERVICE ACCEPTED]

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VLADIMIR J. KOZINA

July 7, 2023

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/308>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

PCV Modesto 1, LLC
11 Chestnut Street
Dover, NH 03820

Re: Lucia Lopez-Martinez

To Whom It May Concern:

This firm represents Lucia Lopez-Martinez ("Lopez-Martinez") in relation to her prior employment with PCV Modesto 1, LLC d/b/a Planet Fitness ("Employer") in California. In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Lopez-Martinez's written notice to the Labor and Workforce Development Agency ("LWDA") and Employer regarding the following violations, and facts and theories supporting the violations, on Ms. Lopez-Martinez's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Employer.

During the prior year and beyond, Employer has failed to do all of the following with respect to Ms. Lopez-Martinez and its other current and former non-exempt employees in violation of the California Labor Code:

1. Afford employees the right to use paid sick time and pay paid sick time in violation of Labor Code sections 233 and 245, *et seq.* Labor Code section 246 requires employers to permit employees the right to accrue and then use paid sick leave beginning on the 90th day of employment. Similarly, Labor Code section 233(a) provides that employers "shall permit" an employee to use in any calendar year that employee's accrued and available sick leave entitlement. Furthermore, pursuant to Labor Code section 246.5, an employee must be permitted to use that sick pay "upon oral or

written request of an employee...for...diagnosis, care , or treatment of an existing health condition of, or preventive care for, an employee...” Lab. Code § 246.5(a). This sick leave must be paid at no less than either the employee’s regular rate of pay or the rate determined by dividing total wages by total hours in the prior 90 days. Lab. Code § 246(l). Pursuant to Labor Code section 246.5(b), an employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days. Pursuant to Labor Code sections 233(c) and 246.5(c)(1), an employer shall not deny an employee the right to use accrued sick days or in any manner discriminate against an employee for using accrued sick days or attempting to exercise the right to use accrued sick days. Nothing in Labor Code sections 245 *et seq.* permits an employer to require a doctor’s note as a condition of granting an employee’s request for sick leave.

- a. Employer violated Labor Code sections 233(a), 233(c), 246, 246.5(a)(1), 246.5(b), and 246.5(c)(1) as to Ms. Lopez-Martinez. On January 6, 2022, Ms. Lopez-Martinez requested that Employer permit her to take sick leave the next day. *See Exhibit 1.* At that time, Ms. Lopez-Martinez had been employed more than 90 days and had 23 hours of accrued paid sick time. *See Exhibit 2.* However, in violation of Labor Code sections 246, 246.5(a)(1), 246.5(b), and 246.5(c)(1), Employer did all of the following:
 - i. Required Ms. Lopez-Martinez to find coverage for her shift (**Exhibit 1**);
 - ii. Threatened to documented her protected paid sick time as an unexcused absence (**Exhibit 1**);
 - iii. Did not pay Ms. Lopez-Martinez any sick pay (**Exhibit 2**);
 - iv. Unlawfully denied Ms. Lopez-Martinez her request for paid sick leave, requiring her to work the shift she had requested paid sick leave to cover under threat of discipline; and
 - v. Terminated her employment less than a month later at least in part because of her attempt to use paid sick leave, citing lack of availability for work as a reason.
- b. Employer unlawfully requires its employees to both obtain coverage for their shifts and to obtain and provide a doctor’s note prior to permitting them the

use of sick time as a matter of policy (see Exhibit 1). As such, Plaintiff is informed and believes that Employer has violated Labor Code sections 233(a), 233(c), 246, 246.5(a)(1), 246.5(b), and 246.5(c)(1) as to its other employees who have requested sick leave during the relevant time period under PAGA.

2. Pay all wages at termination of employment or within 72 hours of resignation in violation of Labor Code §§ 201 and 202.
 - a. Labor Code section 201 requires that all wages earned but unpaid be paid to an employee upon termination of employment. Labor Code section 202 requires that all wages earned but unpaid be paid to an employee within 72 hours of resignation. Because Employer unlawfully withheld payment of sick pay to Ms. Lopez-Martinez and other employees entitled to sick pay, which are wages, Employer failed to pay these employees all wages earned but unpaid within the timeframes required by Labor Code sections 201 and 202 and in violation of those Labor Code provisions.
3. Furnish accurate itemized wage statements in violation of Labor Code § 226(a).
 - a. Employer failed to comply with the provisions of Labor Code section 226(a)(2) in all instances in which an employee was paid a meal period premium. Although meal period premiums are not hours worked, Employer inaccurately includes meal period premium payments within its “hours worked” total on wage statements, in violation of Labor Code section 226(a)(2).
 - i. For example, on the wage statement issued to Ms. Lopez-Martinez for the pay period of 1/8/2023 through 1/21/2023, Ms. Lopez-Martinez is paid a “MPP” of “1.00” hours and has “REGULAR” hours of 18.99. Although “MPP” (presumably meal period premium) does not represent an hour that was actually worked by Ms. Lopez-Martinez, in the column entitled “Hours Worked,” Employer inaccurately states “19.99” when her actual hours worked was 18.99, in violation of Labor Code section 226(a)(2). **Exhibit 3**
4. Furnish compliant meal periods in violation of Labor Code §§ 226.7 and 512:
 - a. Employer fails and has failed to furnish compliant meal periods to Ms. Lopez-Martinez and its other non-exempt employees.

Labor and Workforce Development Agency
PCV Modesto 1, LLC d/b/a Planet Fitness
Re: Lucia Lopez-Martinez
July 7, 2023
Page 4 of 4

- i. For example, during the pay period of 1/8/2023 through 1/21/2023, Ms. Lopez-Martinez was denied at least one compliant meal period, evidenced by payment by Employer of a meal premium penalty.

Exhibit 3.

5. Reimburse employees for the required use of their cellular phones for work purposes in violation of Labor Code section 2802:

- a. Labor Code section 2802 requires employers to indemnify employees for all expenses reasonably required to be incurred in the discharge of their job duties, which includes paying a pro-rata portion of an employee's cellular phone bill when a cellular phone is reasonably required for work. Employer's employees, including Ms. Lopez-Martinez, were required to utilize their cell phones for work purposes by, for example, being required by Employer to text one another to obtain shift coverage and being regularly contacted by their supervisors for work purposes on their cellular phones. However, Employer did not reimburse Ms. Lopez-Martinez, nor has it reimbursed any of its other employees, for this required cellular phone usage, in violation of Labor Code section 2802.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Lopez-Martinez intends to amend her present complaint against Employer to include a claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Regards,

MAYALL HURLEY P.C.

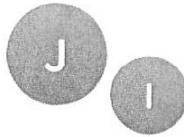
By



VLADIMIR J. KOZINA

cc: Lauren Orozco, Esq. (lorozco@littler.com)
Bruce Sarchet, Esq. (bsarchet@littler.com)

Exhibit 1



2 People >

iMessage
Fri, Jan 6 at 11:04 PM

Hey Jazmin and Izzy, can anyone at the Modesto West location cover my 4pm-10pm shift tomorrow, as I am still sick with a cold- cough and sore throat. I've text messaged multiple people at our location and no one has responded that they can cover for me

Sat, Jan 7 at 12:07 AM

Jazmin



I will call to see if I can find someone

Thank-you

Sat, Jan 7 at 11:30 AM

Hey Jazmin, were you able to find someone to cover my shift?

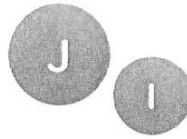
Jazmin

I am waiting for them to respond but they already had a couple of



iMessage





2 People >

Sat, Jan 7 at 11:30 AM

Hey Jazmin, were you able to find someone to cover my shift?

Jazmin

I am waiting for them to respond but they already had a couple of call outs already

What about Ceres?

Jazmin

I called them too same thing

Jocelyn had said for me to let her know when I need her to cover a weekend shift, but didn't respond to my text?

hey lucia could u cover my shift today if u can? it's 2-10?

Yes

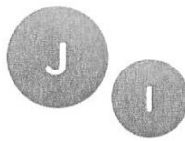
perfect let me tell jazmin and i'll text you right now

she said yes. thank you a lot!! let me know when you need a



iMessage





2 People >

perfect let me tell jazmin and i'll text you right now

she said yes. thank you a lot!! let me know when you need a weekend shift covered!!



You're welcome!

Read 12/23/22

Yesterday 9:12 AM

Hey Jocelyn, could you work my 4pm-10pm shift tomorrow?

Yesterday 8:54 PM

Hey Jocelyn, just wondering if you got my message?

Delivered

Jazmin

If she didn't respond maybe she can't? And she already worked 5 days so she'll be over hours

J

Ok

Jazmin

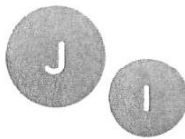
I found coverage for you but I'll have to document it

J



iMessage





2 People >

Jazmin



I found coverage for you but I'll have to document it

What will it be documented as?

Jazmin



A call out

Is it an excused call out?

Jazmin



No unless you provide a doctors note.

I can't get a doctors note because my primary care physician doesn't take Medi-Cal

Jazmin



Then unfortunately due to our policy it will be unexcused

I'm not calling out, I'm asking for someone to cover my shift



iMessage



Exhibit 2

PCV Modesto I LLC
209-572-2921
11 CHESTNUT ST
Dover, NH 03820

TEXAS CAPITAL
BANK
54-7
114

Check Date: 01/27/2023
Check #: 12569

Pay To The **LUCIA LOPEZ-MARTINEZ**
Order Of

Amount: Two Hundred Eighty Three Dollars and 36/100 Cents ***** \$ ****283.36

MODESTO/300 498 01/27/2023 12569

LUCIA LOPEZ-MARTINEZ

Non-Negotiable



Authorized Signature

#498 - LUCIA LOPEZ-MARTINEZ - XXX-XX-888
MODESTO/300

Check 12569

Pay Date: 01/27/2023

Pay Period: 01/08/2023-01/21/2023

Earnings					
	Rate	Hours	YTD	Current	YTD
MPP	15.50	1.00	1.00	15.50	15.50
REGULAR	15.50	18.99	45.31	294.35	702.31
Gross Pay				309.85	717.81
Hours Worked		19.99	46.31		
Hours Paid		19.99	46.31		
Taxes Withheld					
	Taxable	Taxable YTD	Current	YTD	
FIT	309.85	717.81			
FICA	309.85	717.81	19.21	44.50	
MEDI	309.85	717.81	4.49	10.41	
SIT:CA	309.85	717.81			
SDI:CA	309.85	717.81	2.79	6.46	
Total			26.49	61.37	
Net Pay			283.36	656.44	
Check			283.36	656.44	

Tax Allowance Settings	
Federal:	Single/Married Filing Sep. Form W4 2020 And Later: Yes Two Jobs: No Claim Dependent: \$0.00 Deduction: \$0.00 Other Income: \$0.00
California:	Allowances: 0 Additional Allowances: 0 Filing Status: S Supplemental Type: BONUS

Company Paid Benefits			
	Current	YTD	
FUTA	1.86	4.31	
FICA	19.21	44.50	
MEDI	4.49	10.41	
SUTA_SC:CA	0.31	0.72	
SUTA:CA	10.23	23.69	
Total	36.10	83.63	

Accruals				
	Accrued To	Accrued	Taken	Bal.
CA SPSS EMP	01/25/2023	Hrs: 0.00	0.00	0.00
CA SPSS FAM	01/25/2023	Hrs: 0.00	0.00	0.00
Paid Sick Leave (Mandated)	01/22/2023	Hrs: 24.00	0.00	24.00

1 For information purposes only. No effect on your net pay.

PCV Modesto I LLC 209-572-2921, 11 CHESTNUT ST, Dover, NH 03820 80317PLA

1 of 1

PCVModesto(L.Martinez) 000065

Exhibit 3

PCV Modesto 1 LLC
209-572-2921
11 CHESTNUT ST
Dover, NH 03820

TEXAS CAPITAL
BANK
54-7
114

Check Date: 01/13/2023
Check #: 12565

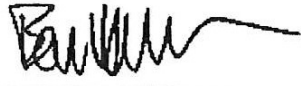
Pay To The **LUCIA LOPEZ-MARTINEZ**
Order Of

Amount: Three Hundred Seventy Three Dollars and 08/100 Cents***** \$ ****373.08

MODESTO/300 0498 01/13/2023 12565

LUCIA LOPEZ-MARTINEZ

Non-Negotiable



Authorized Signature

#0498 - LUCIA LOPEZ-MARTINEZ - XXX-XX-88
MODESTO/300

Check 12565

Pay Date: 01/13/2023
Pay Period: 12/25/2022-01/07/2023

Earnings

	Rate	Hours	YTD	Current	YTD
REGULAR	15.50	26.32	26.32	407.96	407.96
Gross Pay				407.96	407.96
Hours Worked		26.32	26.32		
Hours Paid		26.32	26.32		

Taxes Withheld

	Taxable	Taxable YTD	Current	YTD
FIT	407.96	407.96		
FICA	407.96	407.96	25.29	25.29
MEDI	407.96	407.96	5.92	5.92
SIT:CA	407.96	407.96		
SDI:CA	407.96	407.96	3.67	3.67
Total			34.88	34.88

Net Pay

Net Pay		373.08	373.08
Check		373.08	373.08

Company Paid Benefits

	Current	YTD
FUTA	2.45	2.45
FICA	25.29	25.29
MEDI	5.92	5.92
SUTA_SC:CA	0.41	0.41
SUTA:CA	13.46	13.46
Total	47.53	47.53

Accruals

	Accrued To	Accrued	Taken	Bal.
CA SPSS EMP	01/11/2023	Hrs: 0.00	0.00	0.00
CA SPSS FAM	01/11/2023	Hrs: 0.00	0.00	0.00
Paid Sick Leave (Mandated)	01/08/2023	Hrs: 23.00	0.00	23.00

Tax Allowance Settings

Federal: Single/Married Filing Sep.
Form W4 2020 And Later: Yes
Two Jobs: No
Claim Dependent: \$0.00
Deduction: \$0.00
Other Income: \$0.00
California: Allowances: 0
Additional Allowances: 0
Filing Status: S
Supplemental Type: BONUS

1 For information purposes only. No effect on your net pay.

PCV Modesto 1 LLC 209-572-2921, 11 CHESTNUT ST, Dover, NH 03820 80317PLA

1 of 1

PCVModesto(L.Martinez) 000063



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0006100876



MAYALL HURLEY
EMPLOYMENT LAWYERS

112 S. CHURCH STREET
LODI, CALIFORNIA 95240

PCV Modesto 1, LLC
11 Chestnut Street
Dover, NH 03820



July 12, 2023

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4522 12.

Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	July 12, 2023, 1:58 pm
Location:	DOVER, NH 03820
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	4.0oz
----------------	-------

Recipient Signature

Signature of Recipient:

Address of Recipient:


11 Chestnut
DOVER NH

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
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Washington, D.C. 20260-0004