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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10 RENATA CANARELLA, an individual,

11 *Plaintiff,*

12 v.

13 HAMMETT FITNESS INC, a California
14 corporation; and DOES 1 through 25,
15 inclusive

16 *Defendants.*

CASE NO.: 30-2023-01352241-CU-OE-CJC

Assigned for All Purposes Judge David J. Hesseltine

COMPLAINT FOR DAMAGES:

1. Discrimination Based on Age;
2. Hostile Work Environment Harassment;
3. Retaliation in Violation of the Fair Employment and Housing Act;
4. Wrongful Termination in Violation of Fundamental Public Policy;
5. Violation of Labor Code § 2802; and
6. Penalties Pursuant to Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

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19 Plaintiff, RENATA CANARELLA, alleges:

20 I. PARTIES

21 1. Plaintiff RENATA CANARELLA (hereinafter “Plaintiff”) is an individual who
22 at all times relevant hereto resided in Orange County, State of California.

23 2. Plaintiff is informed and believes and based thereon alleges that at all times
24 relevant hereto, Defendant HAMMETT FITNESS INC, was and is a California corporation with
25 its principal place of business located in Orange County, California.

26 3. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of the Defendants named herein as Does 1 through 25, inclusive, are unknown to
28 Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff

1 will seek leave to amend this Complaint to insert the true names and capacities of said Defendants
2 when the same become known to Plaintiff. Plaintiff is informed and believes and based thereon
3 alleges that each of the fictitiously named Defendants is responsible for the wrongful acts alleged
4 herein and is therefore liable to Plaintiff as alleged hereinafter.

5 4. Plaintiff is informed and believes and based thereon alleges that at all times
6 relevant hereto, Defendants, and each of them, were the agents, employees, coconspirators,
7 parent corporation, joint employers, alter ego, and/or joint venturers of the other Defendants, and
8 each of them, and in doing the things alleged herein, were acting at least in part within the course
9 and scope of said agency, employment, conspiracy, joint employer, alter ego status, and/or joint
10 venture and with the permission and consent of each of the other Defendants.

11 5. Whenever and wherever reference is made in this Complaint to any act or failure
12 to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to
13 mean the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

14 II. JURISDICTION AND VENUE

15 6. Venue is proper under the Code of Civil Procedure sections 395 and 395.5 in that
16 the acts and omissions of the Defendants that form the basis of each cause of action in this
17 Complaint occurred in Orange County, State of California, and that Plaintiff's injuries occurred
18 within this jurisdiction.

19 7. This action is within the Court's jurisdiction under Labor Code section 2699, *et*
20 *seq.*, (Private Attorney General Act) and the applicable wage order(s) issued by the Industrial
21 Welfare Commission ("IWC") including IWC Wage Order No. 2.

22 III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

23 8. Pursuant to the California Government Code section 12960, on or about
24 September 18, 2023, Plaintiff timely filed an administrative Complaint of Discrimination with
25 the California Civil Rights Department ("CRD") (formerly the Department of Fair Employment
26 and Housing) against Defendants. The CRD issued a "Right to Sue" notice to Plaintiff against
27 Defendants on or about September 18, 2023. Accordingly, Plaintiff has exhausted her
28

1 administrative remedies.

2 IV. FACTUAL ALLEGATIONS

3 9. Plaintiff began her employment with Defendants as a front desk clerk on or about
4 September 22, 2020. Throughout her employment, Plaintiff performed her job in a satisfactory
5 manner. In fact, Plaintiff's performance was routinely commended, and she was quickly
6 promoted during her employment as a result of her stellar performance.

7 10. Plaintiff's performance was so extraordinary that she was promoted to the
8 Assistant General Manager of Defendants' studio in Rancho Santa Margarita. Approximately
9 two months later, Plaintiff was further promoted the studio's General Manager.

10 11. Plaintiff is and was a victim of the policies, practices, and customs of Defendants
11 complained of in this action in ways that have deprived her of the rights guaranteed her by Labor
12 Code and the applicable wage order(s) issued by the Industrial Welfare Commission, including
13 IWC Wage Order No. 2.

14 12. Plaintiff, a female over the age of 40, was faced with criticism and open hostility
15 from other employees of Defendants, including its managing agents, throughout her employment.
16 Shockingly, Defendants made no effort to hide the fact that they were engaging in an active
17 campaign to push out its older workforce, like Plaintiff, and replace them with younger
18 employees.

19 13. Defendants' discriminatory actions included, but are not limited to, unilaterally
20 removing shifts from Plaintiff, thereby reducing the income she relied upon, demanding that
21 Plaintiff no longer work in the front where she was client-facing and instead work in a secluded
22 back office, and delegate many of Plaintiff's duties to employees in their 20s.

23 14. Defendants continued with their outward discriminatory behavior by sponsoring
24 social events and intentionally excluding Plaintiff because she was of a different generation.
25 Defendants would invite employees from many of their numerous locations yet go out of their
26 way to not inform Plaintiff.

27 15. Plaintiff, appalled by the treatment she was receiving, complained that Defendants
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1 were creating a hostile work environment and discriminating against her because of her age, but
2 Defendants failed to take any action. Instead, Defendants told Plaintiff that it wanted to rebrand
3 its workforce with younger, “fresher faces.”

4 16. Defendants then doubled down and only hired new employees in their 20s after
5 such blatantly discriminatory comment.

6 17. Shortly thereafter, on February 21, 2023, Defendants continued with its pattern of
7 practice of discriminating against people over the age of 40 and terminated Plaintiff’s
8 employment in a retaliatory fashion for complaining about illegal workplace conduct.

9 18. During Plaintiff’s employment with Defendants, she was forced to incur
10 reasonable expenses in carrying out her duties, but was not reimbursed by Defendants for such
11 business expenses, such as mileage for attending required off-site meetings.

12 19. As a result of Defendants’ discriminatory, harassing, and retaliatory actions
13 Plaintiff experienced severe levels of severe anxiety, worry, embarrassment, humiliation, shame,
14 mental anguish, and emotional distress.

15 20. The adverse employment actions taken by Defendants against Plaintiff, including,
16 but not limited to Plaintiff’s termination, were retaliatory on the basis of Plaintiff’s complaints
17 and objections regarding Defendants’ unlawful, hazardous, and unsafe conduct.

18 21. The herein described activities of Defendants and their agents constitute a
19 continuing series of related retaliatory acts and a systematic policy, pattern, and practice of
20 retaliation by Defendants targeting Plaintiff because of her age, and protesting Defendants’
21 illegal conduct, as herein above described. Said individual acts by the employees, managers,
22 supervisors, directors, officers, and/or managing agents of Defendants are related and represent
23 a series of continuing efforts targeting Plaintiff, which were designed to and did deprive Plaintiff
24 of his rights, terms, and conditions of employment.

25 22. The acts taken toward Plaintiff were carried out by and ratified by Defendants
26 and/or officers, directors, and/or managing agent employees of Defendants acting in an
27 oppressive, deliberate, egregious, and inexcusable manner in order to injure and damage Plaintiff,
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thereby justifying an award to her of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

23. As a proximate result of the wrongful acts of Defendants, Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental financial losses, including without limitation, loss of salary and benefits, loss of future earning potential and wages, and the intangible loss of employment-related opportunities for growth in her career and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to the California Civil Code sections 3287, 3288, and/or any other provision of law providing prejudgment interest.

24. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer severe anxiety, worry, embarrassment, humiliation, shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

V. PAGA ALLEGATIONS

25. “Notwithstanding any other provision of law, any provision of this code that provides for civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current and former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code §2699(a)).

26. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on behalf of the state of California and all other current and former nonexempt employees of Defendants who work or worked within the state of California within one year prior to the date on which Plaintiff first filed the instant action and continuing through the present (the “aggrieved employees” and the “PAGA Period”).

1 27. A true and correct copy of the notice is attached hereto as Exhibit A and is
2 incorporated herein by reference.

3 28. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
4 Defendants and suffered one or more of the Labor Code violations committed by Defendants and
5 alleged in this complaint.

6 29. On July 5, 2023, Plaintiff gave written notice by online filing with the LWDA and
7 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. Plaintiff paid the
9 requisite filing fee to the LWDA.

10 30. Within 33 calendar days of the postmarked date of the notice sent by Plaintiff,
11 Defendants did not give written notice by certified mail to Plaintiff providing a description of
12 any actions taken to cure the alleged violations.

13 31. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
14 violations, without any notice of cure from them or notice from the LWDA of its intent to
15 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff
16 exhausted all prerequisites and commences this civil action under Labor Code section 2699.

17 Failure to Pay Wages for All Hours Worked

18 32. At various times while she worked for Defendants, Plaintiff and the Aggrieved
19 Employees worked time before and after her scheduled shifts, and during meal periods, for which
20 Plaintiff and the Aggrieved Employees were not paid the minimum wage and/or overtime for all
21 hours worked.

22 Failure to Provide Accurate Written Wage Statements

23 33. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
24 Wage Order No. 2, section 7(A), Defendants did not and still do not furnish to Plaintiff and the
25 Aggrieved Employees accurate itemized statements in writing showing (1) gross wages earned,
26 (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all
27 applicable hourly rates in effect during each respective pay period and the corresponding number
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of hours worked at each hourly rate by each respective individual.

Failure to Provide Compliant Meal Periods or Premiums in Lieu

34. Defendants failed to authorize or permit Plaintiff and the Aggrieved Employees to take a thirty-minute uninterrupted meal period for each work period more than five hours.

35. Plaintiff and the Aggrieved Employees regularly worked in excess of five hours a day without being provided at least one 30-minute meal period in which they were relieved of all duties, as required by IWC Wage Order No. 2, section 11(A) and Labor Code sections 226.7 and 512.

Failure to Provide Compliant Rest Periods or Premiums in Lieu

36. Defendants failed to authorize or permit Plaintiff and the Aggrieved Employees to take a ten-minute paid rest period for each four hours of work or major fraction thereof.

37. Plaintiff and the Aggrieved Employees regularly worked in excess of three and a half hours a day without being provided at least one paid 10-minute rest period in which they were relieved of all duties, as required by IWC Wage Order No. 2, section 12(A) and Labor Code section 226.7.

Failure to Pay Waiting Time Penalties

38. Defendants willfully failed to timely pay compensation and wages, including unpaid minimum wage pay, overtime pay, and unpaid premium pay for missed meal and rest periods, to Plaintiff and the Aggrieved Employees and whose employment ended. As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for waiting time penalties, together with reasonable attorneys' fees and costs, under Labor Code section 203.

FIRST CAUSE OF ACTION

Discrimination Based on Age
(Against All Defendants)

39. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

40. Defendants, and each of them, are employers within the meaning of and subject to California Govt. Code section 12940. Defendants regularly employ five (5) or more persons.

1 41. At all relevant times herein, Plaintiff was an individual age 40 or older.

2 42. Defendants took adverse employment actions against Plaintiff, including, but not
3 limited to, terminating Plaintiff's employment because of her age.

4 43. Defendants stated that their adverse employment actions against Plaintiff were for
5 reasons other than discrimination based on age. The reasons stated are a pretext for
6 discrimination.

7 44. FEHA makes it an unlawful employment practice to discharge an employee from
8 employment because of the employee's age or to discriminate against the person in compensation
9 or in the terms, conditions, or privileges of employment. Gov. Code § 12940(a) & (c).

10 45. Defendants' discriminatory conduct constitutes unlawful discrimination in
11 employment on account of age in violation of Government Code section 12940.

12 46. As a proximate result of the wrongful acts of Defendants, and each of them,
13 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
14 financial losses, including without limitation, loss of salary and benefits, and the intangible loss
15 of employment-related opportunities and damage to her professional reputation, all in an amount
16 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
17 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
18 provision of law providing for prejudgment interest.

19 47. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
20 and continues to suffer physical sickness, severe anxiety, worry, embarrassment, humiliation,
21 shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon
22 alleges that she will continue to experience said emotional suffering for a period in the future she
23 cannot presently ascertain, all in an amount subject to proof at the time of trial.

24 48. The above recited actions of Defendants in discriminating against and terminating
25 Plaintiff's employment were based on her age and were done with malice, fraud, and/or
26 oppression and in reckless disregard of the rights of Plaintiff under the FEHA. Plaintiff is
27 informed and believes and on that basis alleges that the discriminatory acts taken towards her
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1 were carried out by officers, directors, and/or managing agents of Defendants and/or with the
2 ratification and approval of officers, directors and/or managing agents of Defendants in a
3 malicious, oppressive, and fraudulent manner in order to harm Plaintiff, or with a willful and
4 conscious disregard of Plaintiff's rights, thereby causing her unjust hardship, humiliation, and/or
5 emotional distress. Such conduct was despicable and justifies an award of punitive damages
6 against Defendants in an amount sufficient to punish and make an example of Defendants, and
7 each of them, and to deter them from engaging in such conduct again in the future, in an amount
8 according to proof at time of trial.

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10 **SECOND CAUSE OF ACTION**
Hostile Work Environment Harassment
(Against All Defendants)

11 49. Plaintiff incorporates by reference the allegations contained in the preceding
12 paragraphs as though fully set forth herein

13 50. The FEHA protects employees against harassment in the terms or conditions of
14 their employment. Defendants, and their owners, officers, agents, and/or employees engaged in
15 the wrongful actions described herein with the intent of harassing Plaintiff based on her age and
16 other protected categories.

17 51. Defendants engaged in a campaign to push out employees who were over the age
18 of forty, such as Plaintiff. Their actions included, but are not limited to, making derogatory
19 remarks based on age, such as replacing the older workforce with "fresher faces." Actions also
20 included issuing failing to investigate complaints, terminating said employees, and replacing
21 them with employees under the age of forty.

22 52. The unwelcome harassment of Plaintiff as described herein was severe and
23 pervasive, thereby altering the conditions of Plaintiff's employment and creating a hostile,
24 abusive, and intimidating work environment.

25 53. Defendants are strictly liable for the wrongful actions described here committed
26 by Defendants, because at all times pertinent, the wrongful actions were committed by
27 individuals who was each an owner, officer, and/or managing agent of Defendants.
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54. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other provision of law providing for prejudgment interest.

55. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer physical sickness, severe anxiety, worry, embarrassment, humiliation, shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

56. The above recited actions of Defendants in retaliating against Plaintiff were done with malice, fraud, and/or oppression and in reckless disregard of the rights of Plaintiff under the FEHA. Plaintiff is informed and believes and on that basis alleges that the acts taken towards her were carried out by officers, directors, and/or managing agents of Defendants and/or with the ratification and approval of officers, directors, and/or managing agents of Defendants in a malicious, oppressive, and fraudulent manner in order to harm Plaintiff, or with a willful and conscious disregard of Plaintiff's rights, thereby causing her unjust hardship, humiliation, and/or emotional distress. Such conduct was despicable and justifies an award of punitive damages against Defendants in an amount sufficient to punish and make an example of Defendants, and each of them, and to deter them from engaging in such conduct again in the future, in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

Retaliation in Violation of the Fair Employment and Housing Act
(Against all Defendants)

57. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

1 58. Plaintiff opposed and protested what she reasonably believed to be unlawful
2 discrimination, harassment, and retaliation against her by Defendants because of her age.

3 59. In response to Plaintiff's protests about discrimination, harassment, and
4 retaliation, Defendants further discriminated against Plaintiff and terminated her employment.

5 60. Defendants' retaliatory conduct constitutes unlawful retaliation in violation of the
6 FEHA, Government Code sections 12940(h) & (m)(2).

7 61. As a proximate result of the wrongful acts of Defendants, and each of them,
8 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
9 financial losses, including without limitation, loss of salary and benefits, and the intangible loss
10 of employment-related opportunities and damage to her professional reputation, all in an amount
11 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
12 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
13 provision of law providing for prejudgment interest.

14 62. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
15 and continues to suffer physical sickness, severe anxiety, worry, embarrassment, humiliation,
16 shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon
17 alleges that she will continue to experience said emotional suffering for a period in the future she
18 cannot presently ascertain, all in an amount subject to proof at the time of trial.

19 63. The above recited actions of Defendants were done with malice, fraud, and/or
20 oppression and in reckless disregard of the rights of Plaintiff under the FEHA. Plaintiff is
21 informed and believes and on that basis alleges that the acts taken towards her were carried out
22 by officers, directors, and/or managing agents of Defendants and/or with the ratification and
23 approval of officers, directors, and/or managing agents of Defendants in a malicious, oppressive,
24 and fraudulent manner in order to harm Plaintiff, or with a willful and conscious disregard of
25 Plaintiff's rights, thereby causing her unjust hardship, humiliation, and/or emotional distress.
26 Such conduct was despicable and justifies an award of punitive damages against Defendants in
27 an amount sufficient to punish and make an example of Defendants, and each of them, and to
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1 deter them from engaging in such conduct again in the future, in an amount according to proof
2 at time of trial.

3 **FOURTH CAUSE OF ACTION**

4 Wrongful Termination in Violation of Public Policy
5 (Against all Defendants)

6 64. Plaintiff incorporates by reference the allegations contained in the preceding
7 paragraphs as though fully set forth herein.

8 65. Defendants' adverse employment actions against Plaintiff and termination of
9 Plaintiff's employment violated the public policy of the State of California against retaliation for
10 voicing complaints of illegality, as stated in Article I, Section 8 of the California Constitution,
11 Labor Code sections 1102.5 and 6310, and as set forth in *Phillips v. Gemini Moving Specialists*
12 (1998) 63 Cal. App. 4th 563 and *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal. App.
13 4th 1137.

14 66. As a proximate result of the wrongful acts of Defendants, and each of them,
15 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
16 financial losses, including without limitation, loss of salary and benefits, and the intangible loss
17 of employment-related opportunities and damage to her professional reputation, all in an amount
18 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
19 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
20 provision of law providing for prejudgment interest.

21 67. As a proximate result of the wrongful acts of Defendants, and each of them,
22 Plaintiff has suffered and continues to suffer severe anxiety, worry, embarrassment, humiliation,
23 shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon
24 alleges that she will continue to experience said emotional suffering for a period in the future she
25 cannot presently ascertain, all in an amount subject to proof at the time of trial.

26 68. The above recited wrongful acts of Defendants against Plaintiff were done with
27 malice, fraud, and/or oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is
28 informed and believes and on that basis alleges that the wrongful acts taken towards her were

1 carried out by officers, directors, and/or managing agents of Defendants and/or with the
2 ratification and approval of officers, directors, and/or managing agents of Defendants in a
3 malicious, oppressive, and fraudulent manner in order to harm Plaintiff, or with a willful and
4 conscious disregard of Plaintiff's rights, thereby causing her unjust hardship, humiliation, and/or
5 emotional distress. Such conduct was despicable and justifies an award of punitive damages
6 against Defendants in an amount sufficient to deter them from engaging in such conduct again in
7 the future, in an amount according to proof at time of trial.

8 **FIFTH CAUSE OF ACTION**

9 Violation of Labor Code §2802

(Against all Defendants)

10 69. Plaintiff incorporates by reference the allegations contained in the preceding
11 paragraphs as though fully set forth herein.

12 70. Labor Code section 2802 provides that "An employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties...."

15 71. While acting on the direct instructions of Defendants and discharging her duties
16 for them, Plaintiff incurred work-related expenses and was not reimbursed. Such expenses
17 include but are not limited to fuel; vehicle repairs, maintenance, and other vehicle operating costs;
18 vehicle depreciation; vehicle insurance; and cellular phones and associated data. Plaintiff
19 necessarily incurred these expenses and losses as a direct result of performing her job duties for
20 Defendants.

21 72. Defendants failed to indemnify or reimburse Plaintiff for these expenditures and
22 losses. By requiring Plaintiff to pay expenses and cover losses that she incurred in direct
23 consequence of the discharge of her duties for Defendants and/or in obedience to Defendants'
24 direction, Defendants violated Labor Code section 2802.

25 73. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
26 damages in the amount of her suffered substantial losses, as well as pre-judgment interest, costs,
27 and attorney fees for the prosecution of this action.
28

SIXTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2698 et seq
(Against All Defendants)

74. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

75. Defendants violated various provisions of the Labor Code, including Labor Code sections 201, 202, 203, 204, 226(a), 226.7(b), 226.7(c), 512, 1194, and 1198, and relevant portions of the applicable Wage Order(s).

76. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

77. Labor Code section 558(a) provides: “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the industrial welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For Each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

78. Plaintiff does not seek for any cause of action in this Complaint under PAGA any amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.*

79. Plaintiff complied with Labor Code section 2699.3(a) in that Plaintiffs gave proper notice to the LWDA and Defendants to the specific provisions of the Labor Code alleged to have been violated.

80. Labor Code section 2699.3(a) further states in pertinent part: “(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it

1 does not intend to investigate the alleged violation within 60 calendar days of the postmark date
2 of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is
3 provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph
4 (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

5 81. Plaintiff complied with Labor Code section 2699.3(a). Pursuant to Labor Code
6 section 2699.3, no response was received from the LWDA within the statutory period from the
7 postmark date of the above-alleged letter.

8 82. Plaintiff, therefore, has exhausted all administrative procedures required under
9 Labor Code sections 2698, 2699, and 2699.3, and, as a result, is justified as a matter of right in
10 bringing forward this cause of action and is entitled to pursue penalties in a representative action
11 for Defendants’ violations of the Labor Code.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them for:

- 14 i. All actual, consequential, and incidental financial losses, including but not limited
15 to loss of earnings and benefits, according to proof, together with prejudgment
16 interest pursuant to the Civil Code sections 3287 and/or 3288;
 - 17 ii. Emotional distress and general damages in a sum in excess of the jurisdictional
18 minimum of the Superior Court;
 - 19 iii. Civil penalties pursuant to Labor Code sections 558, 2698, *et seq.*, and/or any other
20 provision allowed by law;
 - 21 iv. For unpaid wages to be paid to the aggrieved employees;
 - 22 v. Attorneys’ fees;
 - 23 vi. Costs of lawsuit;
 - 24 vii. Expert witness fees pursuant to any provision allowed by law;
 - 25 viii. Punitive damages in a sum in excess of the jurisdictional minimum of the Superior
26 Court;
 - 27 ix. Pre-judgment interest;
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x. Such other and further relief as the Court deems proper.

Dated: September 20, 2023

HOSSEINI LEGAL, PC

By: *Kaveh Hosseini*
Kaveh S. Hosseini
Attorney for Plaintiff RENATA
CANARELLA

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DEMAND FOR JURY TRIAL

Plaintiff Renata Canarella demands trial by jury in this action of all issues so triable.

Dated: September 20, 2023

HOSSEINI LEGAL, PC

By: *Kaveh Hosseini*
Kaveh S. Hosseini
Attorney for Plaintiff RENATA
CANARELLA

EXHIBIT A



July 5, 2023

VIA ONLINE FILING

Labor and Workforce Development Agency
Attn.: PAGA Administrator
800 Capitol Mall, MIC-55
San Francisco, CA 95814
PAGAfilings@dir.ca.gov

Re: Renata Canarella v. Hammett Fitness Inc.

Dear Representative:

This office represents Renata Canarella (“Ms. Canarella”) with respect to her claims under the California Labor Code against Hammett Fitness Inc. (“Hammett Fitness” or “Defendant”) in Orange County, California.

This letter is intended to constitute notice of claims, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, *et seq.* (“PAGA”) that Ms. Canarella intends to bring a civil action for penalties under PAGA for California Labor Code violations committed by Defendant against Ms. Canarella and other current and/or former Defendant’s employees in California (“Aggrieved Employees”). Ms. Canarella’s PAGA action involves Defendant’s violation of sections 201, 201.3, 202, 203, 204, 226(a), 226.7(b), 226.7(c), 226.8, 512, 1197, 1198, and 1198.5 of the California Labor Code. This letter is being sent in compliance with California Labor Code section 2699.3.

Ms. Canarella was employed by Defendant from approximately September 2020 through February 2023. Her duties, consistent with the services offered by her employer, were those of a Pilates instructor and studio manager.

As outlined below and throughout this complaint, Defendant violated several of California’s wage and hour laws before, during, and after Ms. Canarella’s employment. At the forefront, Defendant regularly failed to provide timely rest or meal periods or premiums, payment of the minimum wage, timely payment of wages, timely payment upon separation, and maintenance of payroll and time records for employees.

Defendant’s Violation of Sections 204 and 1194:



Defendant engaged in numerous unlawful practices which resulted in the failure to pay Ms. Canarella and Aggrieved Employees for all time worked at the correct rates of pay, including overtime compensation.

During at least the year immediately preceding the date of this letter, Ms. Canarella and other California employees of Defendant's were regularly required to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Canarella and Aggrieved Employees to perform work during purported meal breaks, which Ms. Canarella and Aggrieved Employees were not always allowed to clock out for. Ms. Canarella and Aggrieved Employees were not compensated for this off-the-clock work, resulting in failure to pay minimum wages and straight time wages.

Defendant's Violation of Section 226(a):

Section 226(a) states in pertinent part that: "An employer...shall furnish to his or her employee...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..., (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..., and (9) all applicable hourly rates in effect during the pay period..." Additionally, the "Records" section of the applicable California Industrial Welfare Commission ("IWC") Wage Order ("Wage Order") requires accurate recordkeeping including records relating to time and pay.

During at least the year immediately preceding the date of this letter, Ms. Canarella and Defendants' other California employees were not issued itemized wage statements or issued itemized wage statements that did not comply with the requirements under either Section 226(a), or under the requirements of the "Records" section of the applicable IWC Wage Order, a violation of Section 1198. The wage statements Defendant provided to Ms. Canarella and other Defendant's employees in California failed to comply with the requirements of Section 226(a), including the failure to accurately itemize all gross and net wages earned, the applicable hourly rates in effect each pay period and/or the corresponding number of hours worked at each hourly rate because of Defendants' unlawful practices of, including, but not limited to: (i) failing to pay a premium for instances where an employee was not provided with an off-duty meal period, and (ii) failing to pay employees for time worked when he/she was unable to take an off-duty meal period. As a result, the earned wages (net and gross) were not adequately listed, and the corresponding number of hours worked at each hourly rate and the total hours worked are not adequately listed.

Defendant's Violation of Sections 226.7(b), 226.7(c) and 1198:

Section 226.7(b) makes it unlawful for an employer to require any employee to work during any rest or recovery period mandated by the applicable IWC Wage Order, statute, regulation, standard, the Occupations Safety and Health Standards Board, or the Division of Occupations Safety and Health.



Pursuant to the “Rest Periods” section of the applicable IWC Wage Order, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.” Section 1198 moreover makes it unlawful for an employer to violate the Rest Periods section of the applicable IWC Wage Order.

During at least the year immediately preceding the date of this letter, Defendant failed to authorize and permit its California non-exempt employees to take rest periods and further have failed to provide recovery periods as mandated by California law. These failures arise in part due to Defendant’s work and its failure to provide for relief during breaks. By failing to authorize and permit its California non-exempt employees to take these paid rest periods and recovery periods, Defendant violated Sections 226.7(b) and 1198.

Furthermore, despite Defendant regularly failing to provide its California employees with rest periods in conformance with California law, Defendant failed to pay Ms. Canarella and its other non-exempt employees in California rest period premiums equal to one hour at their regular rate of pay. Accordingly, Defendant violated section 226.7(c).

Defendant’s Violation of Sections 226.7(b), 226.7(c), 512, and 1198:

Section 512 and the “Meal Periods” section of the applicable IWC Wage Order provide that no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Further, under Section 512 and the applicable IWC Wage Order, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is not more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The “Records” section of the applicable IWC Wage Order requires an employer to keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period and meal periods. Section 1198 makes it unlawful to employ persons under conditions prohibited by the applicable IWC Wage Order. Furthermore, Section 226.7(b) makes it unlawful for an employer to require any employee to work during any meal period mandated by the applicable IWC Wage Order.

Plaintiff was never paid premium pay for missed meal periods. During at least the year immediately preceding the date of this letter, Defendant failed to provide duty-free meal periods in conformance with California law to Defendant’s California non-exempt employees. For example, meal periods have not been provided at all, or have been late, short, or otherwise not in conformance with California law as a result of work duties and failure to permit such meal periods. By failing to provide these required



meal periods to, and recording meal periods for, its California non-exempt employees, Defendant violated sections 226.7(b), 512, and 1198.

Furthermore, despite Defendant regularly failing to provide its California employees with duty-free meal periods in conformance with California law, Defendant failed to pay Ms. Canarella and its other non-exempt employees in California meal period premiums equal to one hour at their regular rate of pay. Accordingly, Defendant violated section 226.7(c).

Defendant's Violations/Penalties Regarding Sections 201, 202, 203 and 204:

Sections 201 and 202 set for the timing requirements for the payment of wages due upon an employee's separation of employment. Section 203 furthermore provides that a waiting time penalty must be paid should the timing requirements in Sections 201 or 202 not be complied with. Defendant did not pay Ms. Canarella and its other non-exempt California employees all wages due during employment and upon separation of employment and by the times set forth in Sections 201, 202, 203, and 204 as applicable, including, but not limited to, regular, minimum, overtime, premium wages, and other forms of wages. Ms. Canarella seeks civil penalties for these violations.

Applicable PAGA Civil Penalty:

PAGA, specifically Section 2699(a) permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violation of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Ms. Canarella intends to bring a civil action to recover civil penalties for the violations identified above, including civil penalties pursuant to Section 2699(f) as well as those civil penalties specifically set forth within the text of the California Labor Code. These penalties are sought for violations committed against Ms. Canarella and other California Defendant employees.

Please feel free to contact the undersigned with any questions you may have.

Sincerely,

HOSSEINI LEGAL, PC

Kaveh S. Hosseini

Notice provided to Defendant via Certified Mail (# 9589071052700574963036)

Hammett Fitness Inc.

214 Esplanade

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