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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

EILEEN SEFFRON, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiff,

vs.

SIR FITNESS HOLDINGS LLC and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00040619-CU-OE-CTL

Hon. Marcella O. McLaughlin
Dept. 72

<u>CLASS ACTION</u>

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Unfair Competition
11. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff EILEEN SEFFRON, individually and on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants SIR FITNESS HOLDINGS LLC and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a class action brought under California Code of Civil Procedure section 382 for Defendants' violations of the California Labor Code and Business and Professions Code.

2. Defendants own and operate Crunch Fitness locations.

3. Defendants underpaid the class members' wages by failing to include all forms of remuneration, including commissions and bonuses, into the regular rate of pay calculation for overtime, sick, and premium wages.

4. Defendants also failed to compensate Plaintiff and class members for all hours worked, resulting in unpaid off-the-clock work.

5. Defendants did not reimburse Plaintiff and class members for necessary expenses incurred in furtherance of the class members' job duties.

6. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the class members.

7. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests, attorney's fees, and costs.

JURISDICTION & VENUE

8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

10. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail

themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiff Eileen Seffron

12. Plaintiff Seffron is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2022 to July 2023. Plaintiff worked as a General Manager.

13. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

B. Defendants

14. Defendant SIR Fitness Holdings LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county, including as Crunch Fitness.

15. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

16. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

17. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

18. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

19. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

20. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

21. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

22. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

23. Plaintiff and class members worked for Defendants and were compensated on an hourly basis as nonexempt employees.

24. Defendants failed to pay Plaintiff and the class members at the lawful minimum wage rate for all hours worked. On several occasions, Plaintiff and class members needed to assist customers at the start of their shift, before the opportunity to clock in. Plaintiff informed Defendants of the need

for a correction to her timesheet to reflect her earlier work, but Defendants did not make these alterations and the hours remain unpaid.

25. Likewise, when Defendants required Plaintiff and class members to drive to regional meetings at different locations, Defendants did not record this extra work time spent away from the class members' home gym. Plaintiff also requested this addition to her timesheet several times, but Defendants did not make the alteration and those hours remain unpaid.

26. In addition to earning hourly compensation, Defendants paid Plaintiff and class members other forms of non-discretionary remuneration, including commissions and bonuses based on the gym's personal training utilization. When Defendants paid overtime, sick pay, and premiums to Plaintiff and class members, Defendants failed to include the employees' additional remuneration into the regular rate of pay.

27. For example, in the pay period of March 1, 2023, to March 15, 2023, Plaintiff earned a non-discretionary bonus in the same pay period as overtime. However, Defendants only paid Plaintiff's overtime rate at 1.5x her straight hourly rate, rather than at the regular rate of pay, which would have included the extra remuneration in overtime rate calculation.

28. Likewise, in the pay period of May 1, 2023, to May 15, 2023, Plaintiff earned a non-discretionary bonus and commissions in the same pay period she utilized paid sick leave. However, Defendants only paid Plaintiff's sick leave at her base hourly rate, rather than the lawful statutory rate, which would have included the extra remuneration.

29. Further, due to constant short-staffing, employee responsibilities, and the continuous flow of business, Plaintiff and class members suffered many short, missed, late, and/or interrupted meal and rest periods.

30. For example, Plaintiff was often the only manager on duty, and she could not leave the front desk at her gym's location because other employees did not have the authorization to complete some necessary transactions. From March 22, 2023, to April 14, 2023, alone, Plaintiff suffered thirteen deficient meal periods.

31. Defendants did not pay Plaintiff or class members due premiums for these deficient meal and rest periods. However, to the extent paid, Defendants underpaid these premiums due to the same regular rate miscalculation stated above regarding bonus remuneration.

32. Because of these violations, Defendants failed to provide accurate, itemized wages statements to class members that included the accurate gross or net wages earned, as the employees earned overtime, sick leave, and premiums which were not paid at the lawful rate in light of the regular rate violations.

33. Additionally, in violation of Labor Code section 226(a)(8), Defendants failed to properly state the legal name of the employer. On Plaintiff and class members' wage statements, the employer is listed as "SIR FITNESS LLC" but the proper entity is instead "SIR Fitness Holdings LLC."

34. Finally, Defendants required Plaintiff and class members to incur necessary, work-related costs, without reimbursement. Plaintiff and class members often had to travel to Defendants' other gym locations for regional meetings or to complete other job tasks using their own personal car and gas mileage. Further, Defendants, through their supervisors, advised Plaintiff that if she went to purchase necessary supplies for her gym location, Defendants would reimburse her. After purchasing several necessary office, cleaning, promotional, and fitness supplies for her gym location, and utilizing personal gas mileage for many on-duty tasks, Defendants have yet to reimburse Plaintiff for any of these expenses. Plaintiff further believes and alleges that other class members likewise incurred these costs without reimbursement from Defendants.

35. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment, as a result of the regular rate underpayments.

36. Specifically, though Plaintiff's last day of work was July 21, 2023, she did not receive her final check until July 27, 2023. Defendants did not pay waiting time penalties for this late final check.

<u>FIRST CAUSE OF ACTION</u>

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

37. All outside paragraphs of this Complaint are incorporated into this section.

38. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages).

39. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

40. Defendants' unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

41. All outside paragraphs of this Complaint are incorporated into this section.

42. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

43. Defendants failed in their affirmative obligation to pay Plaintiff and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

44. Plaintiff and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

45. All outside paragraphs of this Complaint are incorporated into this section.

46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

47. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

48. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

49. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

<u>FOURTH CAUSE OF ACTION</u>

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

50. All outside paragraphs of this Complaint are incorporated into this section.

51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

52. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

53. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

54. All outside paragraphs of this Complaint are incorporated into this section.

55. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

56. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

> [A]n employer shall calculate paid sick leave using any of the following calculations:
>
> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
>
> (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

57. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and class members.

58. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq*.

59. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

60. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

61. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

62. Labor Code section 248.6 requires employers to pay supplemental sick leave using either method (I) or (II), as identified above.

63. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by class members.

64. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

65. All outside paragraphs of this Complaint are incorporated into this section.

66. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

67. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

68. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of $100 for the initial violation for each failure to pay each employee and $200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

<u>SEVENTH CAUSE OF ACTION</u>

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

69. All outside paragraphs of this Complaint are incorporated into this section.

70. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

71. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

72. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

73. As a result, Plaintiff and class members are entitled to recover the statutory penalty of $50 per employee for the initial pay period in which a violation occurred and $100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of $4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

<u>EIGHTH CAUSE OF ACTION</u>

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq*.

74. All outside paragraphs of this Complaint are incorporated into this section.

75. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

76. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

77. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

78. All outside paragraphs of this Complaint are incorporated into this section.

79. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

80. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

81. All outside paragraphs of this Complaint are incorporated into this section.

82. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

83. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

84. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

85. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

86. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

87. All outside paragraphs of this Complaint are incorporated into this section.

88. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

89. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

90. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

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

92. 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."

93. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

94. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

95. On or about **September 14, 2023**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to

Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

96. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

97. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

98. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

99. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

100. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

101. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiff as the class representative;

c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of damages in amount according to proof;

f. For all recoverable pre- and post-judgment interest;

g. For recovery of all civil and statutory penalties and liquidated damages;

h. For disgorgement of all amounts wrongfully obtained;

i. For this action to be maintained as a representative action under the PAGA;

j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

k. For recovery of all civil penalties and other recoverable amounts under the PAGA;

l. For restitution and injunctive relief;

m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and

n. For such other relief the Court deems just and proper.

Dated: November 28, 2023

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorneys for Plaintiff Eileen Seffron

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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September 14, 2023

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

SIR Fitness Holdings LLC
4548 Jicarillo Ave
San Diego, California 92117

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **EILEEN SEFFRON** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

SIR FITNESS HOLDINGS LLC

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the positions of Member Services Representative and General Manager from about May 2022 to July 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Defendants own and operate large fitness facilities throughout California: Crunch Fitness.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "<u>aggrieved employees</u>" and the "<u>PAGA Period</u>").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

<u>Unpaid Hours Worked/Minimum Wage</u>
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and

Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. On occasion, when Plaintiff and aggrieved employees arrived for their shifts, customer needs were so urgent that Plaintiff and aggrieved employees needed to complete work tasks before having the opportunity to clock in. For Plaintiff, this occurred at least twice in December 2022, once in January 2023, once in February 2023, and three times in April 2023. Plaintiff informed Defendants of the need for these corrections of an earlier start time on her timesheets, but Defendants did not make the corrections and this work time remains unpaid. This occurred with respect to other aggrieved employees as well.

Further, when Defendants required Plaintiff and aggrieved employees to travel to a different gym location for meetings, Defendants did not record this extra work time spent away from the aggrieved employee's home gym. For Plaintiff, this occurred at least twice in May and June of 2023. On several occasions, Plaintiff attempted to bring these errors to Defendants' attention. However, Defendants did not correct this lapse in hours worked, and Plaintiff's time spent at these meetings remains unpaid. Plaintiff believes and alleges that other aggrieved employees likewise spent off-clock hours attending regional meetings and that Defendants did not compensate those aggrieved employees for the unrecorded work time.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1197.1 ($100/$250), 1199 / "Penalties" section of the IWC Wage Orders ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. In addition to their base hourly wages, Plaintiff and aggrieved employees earned sales commissions and Client Retention Bonuses based on their home gym's personal training utilization rates. When Plaintiff and aggrieved employees earned this extra remuneration and overtime wages in the same pay period, Defendants only paid overtime at 1.5x the aggrieved employees' base hourly rate instead of the higher regular rate of pay. An example of Defendants' overtime underpayment is below.

Non Negotiable - This is not a check - Non Negotiable

SIR FITNESS LLC

Eileen M Seffron | **Earnings Statement**

Employee ID	**16186**	Fed Taxable Income	**2,324.59**	Check Date	**March 23, 2023**	Voucher Number	**25421**
Location	**5945-52**	Fed Filing Status	S	Period Beginning	**March 1, 2023**	Net Pay	**1,847.41**
Hourly	**$20.00**	State Filing Status	**S-0**	Period Ending	**March 15, 2023**	Total Hours Worked	**82.30**

Earnings	Rate	Hours	Amount	YTD
BONUS		0.00	662.29	1,659.02
COMMISSI				25.00
OVERTIM	30.00	1.63	48.90	1,025.45
REGULAR	20.00	80.67	1,613.40	8,469.68
Gross Earnings		**82.30**	**2,324.59**	**11,179.15**

Taxes	Filing Status	Amount	YTD
CA	S-0	77.90	349.55
CASDI-E		20.92	100.62
FITW	S	200.53	922.12
MED		33.71	162.11
SS		144.12	693.11
Taxes		**477.18**	**2,227.51**

Deductions	Amount	YTD
No Deductions		

Direct Deposits	Type	Account	Amount
US BANK NA	C	***9980	1,847.41
Total Direct Deposits			**1,847.41**

Time Off	Available to Use	Plan Year Used
CA SICK	24.00	0.00

Plaintiff's wage statement from pay period March 1, 2023, to March 15, 2023, showing that Plaintiff earned a Client Retention Bonus in the same pay period as overtime. However, Defendants only paid overtime at 1.5x Plaintiff's base hourly rate of $20, rather than the regular rate of pay.

Additionally, to the extent that the unrecorded and unadjusted hours from the off-clock work claim above resulted in additional overtime hours, Plaintiff believes and alleges that those overtime wages were also underpaid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As discussed above, Defendants failed to factor some forms of non-discretionary income into the lawful regular rates of pay, including paid sick leave rates. When Plaintiff and aggrieved employees earned other forms of remuneration, like bonuses and commissions, in the same pay periods as sick leave, Defendants underpaid sick leave wages at only the base hourly rate. Below is an example of Defendants' sick leave underpayment:

SIR FITNESS LLC

Eileen M Seffron **Earnings Statement**

Employee ID	16186	Fed Taxable Income	2,416.73	Check Date	May 23, 2023	Voucher Number	26385
Location	5945-52	Fed Filing Status	S	Period Beginning	May 1, 2023	Net Pay	1,914.21
Hourly	$22.00	State Filing Status	S-0	Period Ending	May 15, 2023	Total Hours Worked	74.12

Earnings	Rate	Hours	Amount	YTD
BONUS		0.00	382.09	2,482.14
COMMISSI		0.00	30.00	55.00
OVERTIM	33.00	6.00	198.00	1,900.85
REGULAR	22.00	68.12	1,652.64	14,967.02
SICK	22.00	7.00	154.00	274.00
Gross Earnings		**81.12**	**2,416.73**	**19,679.01**

Deductions	Amount	YTD
No Deductions		

Direct Deposits	Type	Account	Amount
US BANK NA	C	***9980	1,914.21
Total Direct Deposits			**1,914.21**

Taxes	Filing Status	Amount	YTD

Available Plan Year

Plaintiff's wage statement for pay period May 1, 2023, to May 15, 2023, showing she earned a Client Retention Bonus and commissions in the same pay period as sick leave. However, Defendants only paid Plaintiff's sick leave at her base hourly rate instead of the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to constant short-staffing, employee responsibilities, and the continuous flow of business, Plaintiff and aggrieved employees suffered many short, missed, late, and/or interrupted meal periods. As the only Manager on staff at times, Plaintiff could not leave the front desk at her gym's location because other employees did not have authorization to complete some necessary transactions. An example of Plaintiff's deficient meal periods is below.

SIR Fitness LLC
5791 Guincho Road
San Diego, CA 92124

Employee Time Cards

As of Wednesday, August 30, 2023
All Employees
01/01/2022 - 08/30/2023

Employee Number: 16186 Name: Seffron, Eileen

Code	Date	Day	Action	Start	Stop	Hours	Reg	OT1	OT2	Total Paid	Total Unpaid
	03/22/2023	Wed	Work	8:49 AM	2:44 PM	5.92	5.92			8.17	1.18
			Lunch	2:44 PM	3:55 PM	0.00					
			Work	3:55 PM	6:10 PM	2.25	2.08	0.17			
	03/23/2023	Thu	Work	7:47 AM	11:31 AM	3.73	3.73			6.17	3.28
			Lunch	11:31 AM	2:48 PM	0.00					
			Work	2:48 PM	5:14 PM	2.43	2.43				
	03/27/2023	Mon	Work	4:58 AM	1:20 PM	8.37	8.00	0.37		11.55	2.18
			Lunch	1:20 PM	3:31 PM	0.00					
			Work	3:31 PM	6:42 PM	3.18		3.18			
	03/28/2023	Tue	Work	4:45 AM	1:42 PM	8.95	8.00	0.95		8.95	0.28
			Lunch	1:42 PM	1:59 PM	0.00					
			Work	1:59 PM	1:59 PM	0.00					
	03/29/2023	Wed	Work	8:53 AM	2:42 PM	5.82	5.82			8.35	1.02
			Lunch	2:42 PM	3:43 PM	0.00					
			Work	3:43 PM	6:15 PM	2.53	2.18	0.35			
	03/30/2023	Thu	Work	9:46 AM	1:58 PM	4.20	4.20			7.58	1.22
			Lunch	1:58 PM	3:11 PM	0.00					
			Work	3:11 PM	6:34 PM	3.38	3.38				
	03/31/2023	Fri	Work	8:53 AM	5:11 PM	8.30	8.00	0.30		8.30	
	04/04/2023	Tue	Work	9:20 AM	2:23 PM	5.05	5.05			7.13	1.75
			Lunch	2:23 PM	4:08 PM	0.00					
			Work	4:08 PM	6:13 PM	2.08	2.08				
	04/05/2023	Wed	Work	9:08 AM	2:19 PM	5.18	5.18			7.57	2.02
			Lunch	2:19 PM	4:20 PM	0.00					
			Work	4:20 PM	6:43 PM	2.38	2.38				
	04/06/2023	Thu	Work	8:57 AM	1:51 PM	4.90	4.90			8.42	1.08
			Lunch	1:51 PM	2:56 PM	0.00					
			Work	2:56 PM	6:27 PM	3.52	3.10	0.42			
	04/07/2023	Fri	Work	8:53 AM	5:06 PM	8.22	8.00	0.22		8.22	
	04/10/2023	Mon	Work	8:43 AM	5:32 PM	8.82	8.00	0.82		8.82	
	04/11/2023	Tue	Work	8:43 AM	1:44 PM	5.02	5.02			5.03	4.45
			Lunch	1:44 PM	6:11 PM	0.00					
			Work	6:11 PM	6:12 PM	0.02	0.02				
	04/12/2023	Wed	Work	8:46 AM	1:56 PM	5.17	5.17			8.65	1.07
			Lunch	1:56 PM	3:00 PM	0.00					
			Work	3:00 PM	6:26 PM	3.43	2.83	0.60			
			Work	6:35 PM	6:38 PM	0.05		0.05			
	04/13/2023	Thu	Work	8:52 AM	3:04 PM	6.20	6.20			9.10	0.83
			Lunch	3:04 PM	3:54 PM	0.00					
			Work	3:54 PM	6:48 PM	2.90	1.80	1.10			
	04/14/2023	Fri	Work	8:54 AM	4:24 PM	7.50	7.50			7.98	
			Work	4:29 PM	4:58 PM	0.48	0.48				

Plaintiff's timesheets from March 22, 2023, to April 14, 2023, showing thirteen deficient meal periods. Defendants did not produce a meal period waiver for Plaintiff or aggrieved employees.

Additionally, Defendants meal and rest period policy details that "due to the nature of [Defendants'] business, [employee] supervisors will determine the times for [employee] meal and rest periods." This policy stripped the agency for meal and rest breaks from the aggrieved employees, prioritized sales over compliance, and, on information and belief, led to uniformly deficient meal and rest periods for aggrieved employees. The excerpt from Defendants' handbook with this policy is below.

Meals and Rest Periods

Crunch adheres to all state and local laws regarding meals and rest periods. Due to the nature of our business your supervisor will determine the times for your meal and rest periods. Meal periods are unpaid. Employees who are on a meal or rest period are not permitted to work during those designated periods of time.

Defendants did not pay Plaintiff or aggrieved employees premiums for these deficient meal periods. To the extent Defendants paid aggrieved employees any premiums for deficient meal periods, those premiums were underpaid due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay as discussed above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the same reasons and policies as meal periods above, Plaintiff and aggrieved employees suffered deficient rest periods. Defendants did not pay Plaintiff or aggrieved employees premiums for these deficient rest periods. To the extent Defendants paid any premiums, those premiums were underpaid due to Defendants' policy and practice of excluding some forms of non-discretionary income from the regular rate of pay as discussed above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to factor some forms of non-discretionary income into the lawful wage rates for overtime, sick leave, and premium pay. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to factor some forms of non-discretionary income into the lawful wage rates for overtime, sick leave, and premium pay. Further, Plaintiff's last day of work was July 21, 2023, but she did not receive her final check until July 27, 2023. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

Further, in violation of Labor Code section 226(a)(8), Defendants failed to list the proper name and address of the employer. On Plaintiff and aggrieved employees' wage statement, the employer is listed as "SIR FITNESS LLC," but the proper entity is instead "SIR Fitness Holdings LLC."

Finally, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.

The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. For example, when Plaintiff's gym location needed workout equipment, promotional materials, office supplies, or cleaning supplies, Defendants, through their supervisors, instructed Plaintiff that if she went and bought these necessary items for her gym, Defendants would reimburse her. Operating on this representation, Plaintiff utilized her personal gas mileage and incurred the costs of acquiring these items. However, Plaintiff was never reimbursed for these purchases, or the mileage used to acquire them.

Additionally, Plaintiff and aggrieved employees would occasionally travel to and from multiple of Defendants' gym locations to complete scheduled job tasks or attend meetings. Plaintiff believes and alleges that other aggrieved employees likewise necessarily incurred mileage, supply costs, or both, without reimbursement from Defendants.

Finally, Plaintiff and aggrieved employees needed to utilize their personal cell phones to complete work tasks. Plaintiff's personal cell phone was the only reasonable means of communication with her team and supervisors, especially when she was away from her gym location but still on-duty. Moreover, at times the landline at Plaintiff's home gym location was broken, and the only way for Plaintiff and aggrieved employees to complete their sales calls was to use the employees' personal cell phones. Defendants did not reimburse Plaintiff for her personal cell phone use. Plaintiff also believes and alleges that Defendants likewise did not reimburse other aggrieved employees for their personal cell phone use.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Nicholas J. Ferraro

Nicholas J. Ferraro

Cc Plaintiff Eileen Seffron

Chris Cunningham
chris@sirfitnessllc.com