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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA – HAYWARD HALL OF JUSTICE**

CHRIS ESPARZA, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC, and DOES
1-100, inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

09/30/2024 at 05:50:53 PM

By: Milagros Cortez,
Deputy Clerk

Case No. **24CV093968**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

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INTRODUCTION

1. This is a Labor Code Private Attorneys General Act (“PAGA”) action filed by Plaintiff Chris Esparza (“Plaintiff”) on behalf of the State of California against Fitness International, LLC (“Fitness International,” the “Company,” or “Defendant”) for violations of California wage and hour laws.

2. Fitness International is an American gym chain that operates sports and fitness clubs across the United States, including in California.

3. Plaintiff and Aggrieved Employees are all current and former hourly and/or non-exempt employees of Fitness International in California.

4. During the relevant period, Fitness International maintained and engaged in unlawful policies and practices in violation of the California Labor Code, the applicable Industrial Welfare Commission (“IWC”) Wage Order(s), including: (1) failing to keep accurate records; (2) failing to pay for all compensable time; (3) failing to provide meal and rest periods, or premiums in lieu thereof; (4) failing to timely pay all earned wages during and after employment; (5) failing to provide accurate itemized wage statements; and (6) failing to reimburse employees for business expenses.

5. Plaintiff seeks civil penalties, as well as other relief, to the fullest extent permitted under the PAGA and pursuant to the California Labor Code and applicable IWC Wage Order(s).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims in this action pursuant to the PAGA. The Court also has jurisdiction over Defendant because Defendant does business in the State of California and is registered with the California Secretary of State.

7. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and/or 395.5. Defendants conduct business in this County, employ Aggrieved Employees in this County, have jobsites in this County, including several City Sports Club centers, and therefore liability, as well as the cause, or some part of the cause, arose in this County.

1 **PARTIES**

2 8. Plaintiff is an individual over the age of eighteen, and at all times relevant to this
3 Complaint was a resident of California. Plaintiff is a non-exempt employee of Defendant in California,
4 and has been employed by Defendant since approximately 2014. Plaintiff has standing to bring this
5 action as the representative and proxy of the State of California pursuant to PAGA, which is legally
6 and conceptually different from an employee's own suit for damages and statutory penalties.

7 9. Plaintiff is informed, believes, and thereon alleges that Defendant is a California
8 limited liability company with its principal place of business located in Irvine, California, and
9 registered to do business in California. Defendant operates under several brand names in California,
10 including LA Fitness, Esporta Fitness, City Sports Club, Club Studio, and XSport Fitness. Defendant
11 may be served with process by serving its registered agent, C T Corporation System, 330 N. Brand
12 Blvd., Suite 700, Glendale, CA.

13 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
14 of DOES 1-100, inclusive, are unknown to Plaintiff, who therefore sues the DOE Defendants by
15 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
16 named Defendants are responsible in some manner for the occurrences and violations as herein
17 alleged. Plaintiff will amend this Complaint to show their true names and capacities when they have
18 been ascertained.

19 11. Plaintiff is informed, believes, and thereon alleges that Defendant employs and/or
20 employed Plaintiff and Aggrieved Employees because Defendant, directly or indirectly, control the
21 wages, hours, or working conditions, and/or suffer or permit to work, and/or engage Plaintiff and
22 Aggrieved Employees.

23 12. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
24 and omissions alleged herein were performed by, and/or attributable to, Defendant, acting through its
25 agents and/or employees, and/or under the direction and control of each other, and that said acts and
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1 failures to act were within the course and scope of said agency, employment, and/or direction and
2 control.

3 13. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the
4 operations of their agents, managers, and employees throughout all of their locations in California.

5 14. Plaintiff is informed, believes, and thereon alleges, that Defendant is in some manner
6 intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and
7 transactions alleged herein.

8 15. At all material times, Defendant has done business under the laws of California, has
9 places of business in California, including in the jurisdiction of this court, and has employed Aggrieved
10 Employees in Alameda County and elsewhere in California. Defendant is a “person” as defined in
11 Labor Code § 18 and an “employer” as that term is used in the Labor Code, the IWC Wage Orders
12 regulating wages, hours, and working conditions, and the California Business and Professions Code §
13 17201.

14 **FACTUAL ALLEGATIONS**

15 16. Fitness International is an American gym chain that operates sports and fitness clubs
16 across the United States, including in California. In California, Fitness International operates under
17 several brand names, including LA Fitness, Esporta Fitness, City Sports Club, Club Studio, and XSport
18 Fitness.

19 17. Plaintiff is a current non-exempt employee of Defendant in California, and has been
20 employed by Defendant since approximately 2014. Plaintiff, along with other Aggrieved Employees,
21 have been subjected, and continue to be subjected to, the employment violations described below.
22 Plaintiff brings this action as the representative and proxy of the State of California pursuant to PAGA,
23 concerning on the alleged practices and policies described below.

24 18. Defendant fails to maintain accurate payroll records of the hours worked by Aggrieved
25 Employees, and the wages earned by Aggrieved Employees. Defendant records scheduled shifts and
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1 provides compensation based on scheduled shifts. Defendant does not accurately record actual time
2 worked, and actual wages earned.

3 19. Defendant fails to provide Aggrieved Employees proper compensation for all hours
4 worked, including minimum wage and overtime, during their employment. Defendant regularly
5 requires Aggrieved Employees to perform work while off-the-clock. For instance, Defendant requires
6 Aggrieved Employees to attend mandatory off-the-clock meetings, and perform work duties, including
7 attending to clients and attempting to sign on clients, during breaks and before and after shifts.
8 Defendant does not record such time as hours worked, and does not compensate Aggrieved Employees
9 for this compensable time.

10 20. Defendant fails to provide Aggrieved Employees all meal breaks and rest breaks that
11 they are entitled to, including timely, full, duty-free meal and rest breaks free from the control of
12 Defendant. Defendant requires and/or maintains an environment where Aggrieved Employees
13 routinely perform work during or through their meal and rest breaks. Defendant fails to provide
14 Aggrieved Employees all earned premium wages at the regular rate, for missed and/or non-compliant
15 meal and rest breaks.

16 21. Defendant fails to reimburse Aggrieved Employees for business expenses incurred due
17 to job duties or following Defendant's directions. For example, Defendant requires Aggrieved
18 Employees to utilize their cell phones on a daily basis, to respond to and text with management and
19 clients and to access work-related information, however Defendant does not reimburse Aggrieved
20 Employees for costs associated with such use. Defendant also requires Aggrieved Employees to drive
21 to different locations, including for work meetings, and Defendant does not reimburse Aggrieved
22 Employees for these expenses.

23 22. Defendant fails to provide accurate itemized wage statements to Aggrieved Employees.
24 The itemized wage statements provided to Aggrieved Employees do not reflect accurate total hours
25 worked, or accurate gross or net wages earned, because Defendant does not accurately record all
26 compensable time, including pre- and post-shift work and work during meal periods.
27

23. Defendant fails to provide Aggrieved Employees all wages earned at the time of separation. Defendants does not pay Aggrieved Employees all their earned wages for off-the-clock work, and their earned premium wages for missed and non-compliant meal and rest periods.

24. On information and belief, Defendant's failures to comply with California's labor laws described above were knowing, willful, and intentional, and not based on a good faith and reasonable belief that their conduct complies with California law.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of the State of California and Aggrieved Employees)

25. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

26. Labor Code § 2699(a) provided:

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.¹

27. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages, owed to Aggrieved Employees in violation of: (i) Labor Code § 204 in the amounts established by Labor Code § 210; (ii) Labor Code § 1182.12 in the amounts established by Labor Code § 1197.1; (iii) Labor Code § 510 in the amounts established by Labor Code §§ 210 and/or 558; and (iv) Labor Code §§ 201-202 in the amounts established by Labor Code § 256.

¹ Labor Code § 2699 was amended, effective July 1, 2024. However, the provisions of Labor Code § 2699 prior to July 1, 2024 are applicable to this action because Plaintiff submitted his notice to the Labor and Workforce Development Agency before June 19, 2024. *See* Labor Code § 2699(g)(2) (as amended) ("The amendments made to this section by the act adding this subdivision shall not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of this section was filed before June 19, 2024.").

28. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to provide meal and rest periods to Aggrieved Employees, or premium wages in lieu thereof, in violation of: (i) Labor Code § 512, in the amounts established by Labor Code § 558; (i) Labor Code § 204, in the amounts established by Labor Code § 210.

29. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code §§ 226(e) and/or 226.3.

30. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant to keep accurate records in compliance with Labor Code § 1174 in the amounts established by Labor Code § 1174.5.

31. Pursuant to Labor Code § 2699.3(a)(1) and (2), on November 20, 2023, Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to assert the claims in this action. More than sixty-five calendar days has passed without notice from the LWDA, and Plaintiff therefore satisfied the administrative prerequisite to commence a civil action in compliance with § 2699.3(a).

32. Plaintiff seeks the aforementioned penalties on behalf of the State and Aggrieved Employees as set forth in Labor Code § 2699(g)(i).

33. Defendant is liable to Aggrieved Employees and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

34. Wherefore, Plaintiff request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

35. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

1 36. Labor Code § 2699(f) provides:

2 For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of these
4 provisions, as follows: . . . (2) If, at the time of the alleged violation, the person
5 employs one or more employees, the civil penalty is one hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial violation and
7 two hundred dollars (\$200) for each aggrieved employee per pay period for
8 each subsequent violation.

9 37. To the extent than any violation alleged herein does not carry penalties under Labor
10 Code § 2699(a) and/or on alternate theories, Plaintiff seeks civil penalties pursuant to Labor Code §
11 2699(f) for Plaintiff and Aggrieved Employees each pay period in which they were aggrieved, in the
12 amounts established by Labor Code § 2699(f).

13 38. Plaintiff seeks civil penalties under Labor Code § 2699(f) for each failure by
14 Defendant, as alleged above, to timely pay all wages, owed to Aggrieved Employees in violation of
15 Labor Code §§ 201, 202, 204, 510, 1194, and 1198.

16 39. Plaintiff seeks civil penalties under Labor Code § 2699(f) for each failure by
17 Defendant, as alleged above, to provide meal and rest periods to Aggrieved Employees, or premium
18 wages in lieu thereof, in violation of Labor Code §§ 226.7, 512, and 1198.

19 40. Plaintiff seeks civil penalties under Labor Code § 2699(f) for each failure by
20 Defendant, as alleged above, to reimburse Aggrieved Employees for their work expenses in violation
21 of Labor Code § 2802.

22 41. Plaintiff seeks civil penalties under Labor Code § 2699(f) for each failure by
23 Defendant, as alleged above, to provide accurate itemized wage statements to Aggrieved Employees
24 in violation of Labor Code § 226.

25 42. Plaintiff seeks civil penalties under Labor Code § 2699(f) for each failure by
26 Defendant, as alleged above, to keep accurate records in violation of Labor Code § 1174.

27 43. Pursuant to Labor Code § 2699.3(a)(1) and (2), on November 6, 2023, Plaintiff
28 provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to
29 assert the claims in this action. As of January 10, 2024, sixty-five calendar days have passed without

1 notice from the LWDA, and Plaintiff therefore has satisfied the administrative prerequisite to
2 commence a civil action in compliance with § 2699.3(a).

3 44. Plaintiff seeks the aforementioned penalties on behalf of the State and Aggrieved
4 Employees as set forth in Labor Code § 2699(g)(i).

5 45. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
6 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
7 and costs as set forth below.

8 46. Wherefore, Plaintiff requests relief as hereinafter provided.

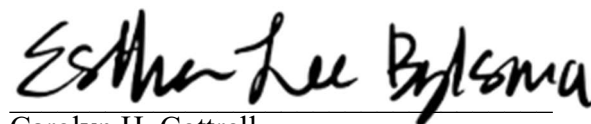
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
11 requests the following relief:

- 12 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
13 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
14 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
15 and/or any other applicable law;
16 3. For all costs of suit; and
17 4. For such other and further relief as this Court deems just and proper.

18 Respectfully submitted,

19
20 Date: September 30, 2024



21 Carolyn H. Cottrell
22 Esther Bylsma
23 Andrew D. Weaver
24 SCHNEIDER WALLACE
25 COTTRELL KONECKY LLP

26 *Attorneys for Plaintiff, on behalf of the State of*
27 *California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: September 30, 2024

6 

7 Carolyn H. Cottrell

8 Esther L. Bylsma

9 Andrew D. Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*