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9 on behalf of himself and all “aggrieved employees”
10 pursuant to Labor Code § 2698 *et seq.*

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Michelle Gomez-Casillas, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 BOBBY MOORE, on behalf of himself and all
11 “aggrieved employees” pursuant to Labor
12 Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 FITNESS INTERNATIONAL, LLC, a
16 California limited liability company, and
17 DOES 1 through 10, inclusive,

18 Defendants.

CASE NO: CIVSB2409107

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, 1174, 1174.5, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

1 Plaintiff BOBBY MOORE (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of FITNESS
3 INTERNATIONAL, LLC, a California limited liability company, and any subsidiaries or affiliated
4 companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees, including, but not limited to, HVAC
9 technicians, who currently work or formerly worked for Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly blend bonuses and other non-base hourly wages, earned by
15 Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes of paying
16 them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at
17 the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.
18 Defendants pay Plaintiff and other Aggrieved Employees bonuses and other non-base hourly
19 wages; however, Defendants fail to properly blend these wages, and instead pay Plaintiff and
20 other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages,
21 and sick pay wages based only on the base hourly rate of pay, thus deprives Plaintiff and other
22 Aggrieved Employees of all meal and rest period premiums, overtime wages, and sick pay
23 wages earned. Defendants also underpay overtime for certain pay periods. This violates Labor
24 Code §§ 226.7, 246, 510, 512, 558, and 1194;

25 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
26 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
27 and 558, and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees were
28 routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period

1 for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute
2 meal period for every shift worked that exceeded ten hours, but were not paid premium wages
3 of one hour's pay at the proper rate of pay for each missed first or second meal period. When
4 they did receive a meal period, it would routinely be late (after the fifth hour). Defendants also
5 failed to maintain accurate records showing the start and stop time of meal periods since they
6 automatically clock out Plaintiff and Aggrieved Employees for their meal period regardless
7 of if they are taking it or not. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5,
8 and 1194 and IWC Wage Order 4-2001;

9
10 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
11 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
12 Order No. 4-2001. Plaintiff and other Aggrieved Employees were routinely unable to take a
13 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
14 paid premium wages of one hour's pay for each missed rest period. Plaintiff was simply denied
15 and not authorized to take his legally entitled rest periods and was never paid premium wages
16 for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001;

17 d. Failing to provide Plaintiff and all other Aggrieved Employees with wage
18 statements that fully and accurately itemized the requirements set forth in Labor Code §
19 226(a). Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above.
20 As such, the wage statements provided by Defendants failed to accurately state all gross wages
21 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
22 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
23 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
24 numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3.
25 Furthermore, and independent of the above allegations, the wage statements issued to Plaintiff
26 and Aggrieved Employees fail to set forth all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked, in violation of Labor Code §§
28

226(a)(9) and 226.3. Specifically, the wage statements set forth a multitude of rates in effect during the pay period, but it is impossible to determine which rates are applicable; and

e. Failing to pay Plaintiff and other Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment, including vacation wages. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in San Bernardino County.

III.

PARTIES

A. Plaintiff

5. Plaintiff BOBBY MOORE was employed by Defendants from May 2022 through October 2023 as a non-exempt employee in San Bernardino County, California.

B. Defendant

6. Defendant FITNESS INTERNATIONAL, LLC, is a California limited liability company that employed Plaintiff and Aggrieved Employees throughout California, including San Bernardino County.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is

1 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
2 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
3 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
4 designated hereinafter as DOES when such identities become known.

5 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
6 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
7 business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally
8 attributable to the other Defendants.

9 9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting
10 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
11 provisions of the California Labor Code as alleged herein.

12 IV.

13 CAUSES OF ACTION

14 FIRST CAUSE OF ACTION

15 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
16 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
17 **LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, AND 1194**
18 **AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**
19 **LABOR CODE §§ 226.3 AND 558**

20 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
21 forth herein.

22 11. As a result of the acts alleged above, including the Labor Code violations set forth in
23 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

24 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
25 civil penalties subject to the following formula:

- 26 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
27 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3,
28 246, 510, 512, 1174, 1174.5, and 1194; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On November 16, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 16, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: March 18, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By: 

EVAN S. GAINES
Attorneys for Plaintiff