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Via Online Filing (at https://dir.govfa.net/411)

Attn: PAGA Administrator
Labor & Workforce Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: Notice of Labor Code § 2699, et seq., "PAGA" Violations
Plaintiff: Kyle DeStackelberg
Defendant: Equinox Holdings, Inc.

Dear California Labor & Workforce Development Agency:

Pursuant to Labor Code § 2699.3, this letter provides notice to the Labor and Workforce Development Agency ("LWDA") and EQUINOX HOLDINGS, INC., and all affiliated entities that Plaintiff KYLE DESTACKELBERG ("Plaintiff") intends to file a civil lawsuit based on claims, among others, arising under the Private Attorney General Act, California Labor Code §§ 2699, et seq., ("PAGA") on behalf of himself and all other similarly situated employees ("Aggrieved Employees"), if LWDA declines to pursue the matter on its own.

A. Plaintiff's Employment At Equinox and Defendant's Policy

From approximately June 19, 2025 through March 18, 2026, Mr. DeStackelberg was employed with Defendant Equinox Holdings, Inc. ("Defendant") as a Personal Trainer/ Onboarding Specialist. In that capacity, his primary job duties included running comprehensive fitness evaluations (EquiFits), planning and executing Personal Training sessions, coaching custom programs (design and coach progressive, science-backed fitness and nutrition programs tailored to individual client goals), lead new members through complimentary fitness orientations and guided workouts to integrate them into the club's training ecosystem, conducting sales, and facilitating new-hire staff onboarding.

At all relevant times herein, Defendant had a policy of not compensating Plaintiff and other Personal Trainers ("Aggrieved Employes") for their waiting time when a non-client member fails to show up for his or her Equifit (fitness assessment) or Complimentary Personal Training (CPT) session. A non-client member is an Equinox member who has not purchased an Equinox Personal Training package. At Equinox, a non-client member receives 1 CPT and 1 Equifit to assist the member in setting his or her fitness baseline.

This policy of not compensating Plaintiff and other Aggrieved Employees for their waiting time (or the time they spend waiting for non-client members to show up for their Equifits or CPTs) when the client does not show up for the Equifit or CPT resulted in non-payment of worked hours. At all relevant times herein, Defendant's policy states that Personal Trainers cannot clock in when a non-client member fails to show up for his or her Equifit or CPT. The waiting time is and was compensable work time as the Personal Trainers are required to remain onsite at the gym and wait for the client to show up.

B. Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code section 510 provides that employees in California shall not be employed more than eight hours in any workday or 40 hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Labor Code sections 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday or more than 40 hours in a workweek unless they receive the legal overtime compensation. Additionally, Labor Code section 1198 states that the employment of an employee for longer hours than those fixed by the commission is unlawful.

Labor Code section 1197 states that "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity." Labor Code section 1197.1 further states that:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Throughout the statutory period, Defendant failed to pay Plaintiff and other Personal Trainers for waiting time when their non-client members failed to show up for their Equifits (fitness assessment) or Complimentary Personal Training (CPT) sessions. Defendant's policy was that Plaintiff and other Personal Trainers cannot be paid for a service they have not performed even though the time waiting for their non-client members to show up for their Equifits or CPTs is work time even if the client ultimately fails to show up for the Equifit or CPT.

C. Defendant Failed to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for the no-show waiting time, Defendant also violated Labor Code section 204.

Labor Code section 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that Aggrieved Employees were not paid wages for their waiting time when their non-client members failed to show up for their Equifits and CPTs.

Moreover, Defendant is liable to Plaintiff and Aggrieved Employees for the civil penalties provided for in Labor Code section 210 for failing to pay all earned wages twice per month.

D. Defendant Failed to Maintain Accurate Records of Hours Worked

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, 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. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Defendant failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Plaintiff and other Aggrieved Employees, including earned and unpaid waiting time wages as discussed above.

California Labor Code section 1174.5 states that any employer "who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500)".

Here, Defendant had a policy that prohibited Plaintiff and other Aggrieved Employees from clocking in when their non-client members fail to show up for their Equifits or Complimentary Personal Training sessions. The policy was willfully designed so that Plaintiff and other Aggrieved Employees are not compensated for no services provided even though their waiting time is actual work time. Defendant's failure to maintain the records required by Section 1174 was willful, and therefore Defendant is subject to penalties.

E. Defendant Failed to Furnish Accurate Itemized Wage Statements

Labor Code section 226, subdivision (a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226, subd. (e)(2)(B)(iii).)

The statute further provides that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226, subd. (e)(1).).

Labor Code section 226.3 states that "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

Throughout the statutory period, Defendant or failed to furnish Plaintiff and other Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked). Their wage statements were missing their time waiting for non-client members to show up for their Equifits and CPTs. As a matter of policy, Plaintiff and other Aggrieved Members were not permitted to clock in when the non-client members failed to show up for their Equifits and CPTs.

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

Moreover, Defendant is liable to Plaintiff and other Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

F. Defendant Failed to Pay All Wages Upon Discharge or Resignation

Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended—i.e., was terminated by quitting or being discharged—and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail, to pay Plaintiff and other Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or 72 hours of their leaving Defendant's employment. These unpaid wages include wages for their waiting time when their non-client members failed to show up for their Equifits and CPTs.

Defendant's conduct violates Labor Code sections 201 and 202. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced, but that the wages shall not continue for more than 30 days.

Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up 30 days, pursuant to Labor Code section 203. Moreover, Defendant is liable to Plaintiff and Aggrieved Employees for the civil penalties provided for in Labor Code section 2699, subdivision (f)(2) for failing to timely pay all wages at termination or voluntary departure.

G. Statement of Specific Provisions of the Labor Code Violated

Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to him and other Aggrieved Employees:

(1) Labor Code sections 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum and overtime wages;
(2) Labor Code section 204 by failing to pay all earned wages twice per month;
(3) Labor Code section 1174.5 by failing to maintain accurate records of hours worked and meal periods taken or missed;
(4) Labor Code sections, 201, 202 and 203 by willfully failing to pay all wages owed upon discharge or resignation;
(5) Labor Code section 226 by failing to provide accurate itemized wage statements.

If the LWDA provides notice that it does not intend to investigate these alleged violations within 60 calendar days of the postmark date of the letter, or if no notice is provided within 65 calendar days of the postmark date of the letter, we intend to file a civil action under the Private Attorney General Act codified in Section 2698-2699.6 of the Labor Code.

Should you have any questions or need further information, please contact our office at the phone number or the email address provided at the top of this letter's first page. Thank you for your prompt attention to the matter. We look forward to your decision on this matter soon.

Very Truly Yours,

Michael H. Kim, Esq.

Cc: VIA CERTIFIED MAIL WITH RETURN RECEIPT

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SACRAMENTO, CA
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