

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Asaf Agazanof, SBN: 285043
Asaf Law, APC
2330 Westwood Blvd., Second Floor
Los Angeles, California 90064
Tel: 424.254.8870
Fax: 888.254.0651
E-mail: asaf@lawasaf.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROSA MERINO, an individual, on behalf of
herself and all other aggrieved employees,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC, a
California limited liability company, and DOES
1 through 100,

Defendants.

CASE NO. 24STCV05432

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Rosa Merino (“Plaintiff”) on behalf of herself and all other aggrieved employees,
2 hereby brings this Representative Action Complaint against Defendants Fitness International,
3 LLC, a California limited liability company, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings this
7 representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This Court
8 has jurisdiction over Defendants’ violations of the California Labor Code because the amount in
9 controversy exceeds this Court’s jurisdictional minimum.

10 **VENUE**

11 2. Venue as to each Defendant is proper in this judicial district pursuant to California
12 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
13 complained of herein occurred in the County of Los Angeles. Defendants own, maintain offices,
14 transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are
15 found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court
16 for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the statute of limitations periods
20 applicable herein, Plaintiff was employed by Defendants in California.

21 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
22 year preceding the date the California Labor and Workforce Development Agency (“LWDA”)
23 and Defendants were put on notice of Plaintiff’s claims as alleged herein and intent to bring a
24 claim under PAGA, and continuing to the present, Defendants did (and do) business by operating
25 a chain of sports and fitness clubs within Los Angeles County and the State of California, and
26 employed Plaintiff and other aggrieved employees to perform work within the State of California.
27 Defendants, therefore, were (and are) doing business in Los Angeles County and the State of
28 California. *See Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (2021)

60 Cal.App.5th 1069 (holding that venue is proper in a PAGA representative action “in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred”)

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved employees (as defined herein).

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees (as defined herein).

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

10. During Plaintiff's employment with Defendants, Defendants failed to compensate Plaintiff and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants maintained inaccurate timekeeping records that failed to account for Plaintiff and other aggrieved employees' actual time worked. Defendants mandated that Plaintiff and other aggrieved employees record their entire daily shift during their initial clock-in at the start of their shifts, without verifying the accuracy of their timekeeping. For example, during her initial clock-in, Plaintiff was required to record the start of her shift, the time she planned to begin and end her meal period, and when she planned to clock-out of her shift. As such, Defendants' timekeeping records failed to account for instances when Plaintiff and other aggrieved employees performed work off-the-clock during their purported meal periods. For instance, Defendants' managers encouraged Plaintiff and other aggrieved employees to skip their meal periods when the gym was short staffed or to focus on enrolling clients for gym memberships. Similarly, Defendants' timekeeping records also failed to account for when Plaintiff and other aggrieved employees were provided meal periods of less than 30 minutes, despite their time records reflecting compliant 30-minute meal periods. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that requiring employees to work through any portion of meal period entitles them to payment for actual time worked as well as an additional hour of pay for the meal period premium). Moreover, Defendants did not compensate Plaintiff and other aggrieved employees for the time they spent responding to work-related text messages before and after their shifts. Specifically, Defendants' managers sent text messages to Plaintiff and other aggrieved employees before and after their scheduled shifts, including messages regarding increasing their enrollment of client gym

memberships. Since Plaintiff and other aggrieved employees were required to use their personal cellular phones to enroll new clients for gym memberships, Plaintiff and other aggrieved employees received, and responded to, text messages from potential new clients before and after their shifts. Since Plaintiff and other aggrieved employees were messaged off-the-clock with information necessary to perform their job duties, Defendants were required to compensate Plaintiff and other aggrieved employees for this time. As a result, Defendants required Plaintiff and other aggrieved employees to perform work while off-the-clock, and Defendants failed to compensate Plaintiff and other aggrieved employees for all minimum and overtime wages owed.

11. Defendants failed to provide Plaintiff and other aggrieved employees with all legally compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the fifth hour of work and second duty-free, 30-minute meal periods when they worked shifts in excess of ten hours. As mentioned, Plaintiff was frequently unable to take her meal period when the gym was short staffed, and when Defendants' managers encouraged her to skip her meal periods to work on enrolling new gym memberships. Moreover, since Defendants failed to accurately record Plaintiff and other aggrieved employees' meal periods due to their timekeeping policies and practices, Plaintiff and other aggrieved employees did not receive an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7. In the event Defendants paid meal period premiums, they were paid incorrectly. Specifically, Defendants paid Plaintiff and other aggrieved employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including, but not limited to, bonuses and payments denoted as "Commissions CA" and "Fitness % Bonus" (hereinafter referred to collectively as "Incentive Pay"). However, despite paying Plaintiff and other aggrieved employees Incentive Pay, Defendants paid meal period premium payments (denoted on paystubs as "Missed Meal Period"), at the employees' base hourly rate of pay, rather than at their respective regular rates of pay after incorporating the value of earned Incentive Pay. As a result, Defendants failed to compensate their aggrieved employees with an additional hour of premium pay at their respective

regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

12. Throughout Plaintiff's employment, Defendants regularly failed to authorize and permit Plaintiff and other aggrieved employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Specifically, even though Plaintiff regularly worked 10-hour shifts, Defendants only authorized and permitted *one* 10-minute rest for her entire shift. As with meal period premiums, Defendants failed to compensate their aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

13. During their respective employments with Defendants, Plaintiff and other aggrieved employees were not reimbursed for all necessary business expenses pursuant to Labor Code § 2802. Defendants required Plaintiff and other aggrieved employees to purchase personalized rubber stamps, and necessary replacement stamps, for gym promotional purposes. Since Plaintiff and other aggrieved employees were required to purchase rubber stamps for work purposes, Defendants are required to reimburse Plaintiff and other aggrieved employees for this necessary business expense.

14. As mentioned, Defendants required Plaintiff and other aggrieved employees to use their personal cellular phones to communicate with managers and clients for work-related purposes but did not reimburse Plaintiff and other aggrieved employees for a reasonable portion of their monthly cellular phone bills. As mentioned above, Defendants' managers frequently communicated with Plaintiff through her cellular phone before and after her shifts regarding her performance, including enrolling new gym members. Plaintiff and other aggrieved employees also communicated with new clients before and after their shifts regarding enrolling at Defendants' facility. Despite requiring Plaintiff and other aggrieved employees to utilize their personal cellular phones for work purposes, Defendants failed to reimburse these aggrieved employees for all necessary business expenses associated with using their personal cellular phones, in violation of Labor Code § 2802. Defendants were also mandated by *Cochran v.*

1 *Schwan's Home Service, Inc.*, (2014) 228 Cal. App. 4th 1137, to reimburse Plaintiff for a
2 reasonable portion of her cellular phone expenses.

3 15. Defendants also failed to pay Plaintiff and other aggrieved employees all sick pay
4 wages owed to them. Defendants' policies and practices dictated that sick pay payments be made
5 at an employee's base rate of pay, as opposed to their regular rate of pay. Because Plaintiff and
6 other aggrieved employees received Incentive Pay that was required to be included in their regular
7 rate of pay, but were not, Plaintiff and other aggrieved employees have not been paid all sick pay
8 wages owed to them.

9 16. As a result of Defendants' failure to pay all overtime wages, minimum wages, sick
10 pay wages, and meal and rest period premium wages owed, Defendants also maintained
11 inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other aggrieved
12 employees and failed to pay all final wages owed to Plaintiff and other aggrieved employees upon
13 their respective separations from employment.

14 17. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved
15 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' employees
16 who worked for Defendants in California from December 27, 2022, through the present.

17 **FIRST CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
21 fully set forth herein.

22 19. Defendants have committed several Labor Code violations against Plaintiff and
23 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
24 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
25 representative action against Defendants to recover the civil penalties due to Plaintiff, other
26 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
27 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and
28 \$200 for each subsequent violation or willful or intentional violation pursuant to Labor

Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failing to pay meal period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to pay Plaintiff and other aggrieved employees sick time pay at their regular rate of compensation in violation of Labor Code § 246;
- g. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;

- 1 h. Failing to timely pay final wages to Plaintiff and other aggrieved employees in
2 violation of Labor Code §§ 201-203;
- 3 i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
4 twice during each calendar month, in violation of Labor Code § 204; and
- 5 j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
6 employees, in violation of Labor Code §§ 558 and 1174.

7 20. On December 27, 2023, Plaintiff notified Defendants via certified mail, and the
8 California Labor and Workforce Development Agency (“LWDA”) via electronic submission of
9 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
10 civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the
11 California Labor Code identified above. Now that sixty-five days have passed from Plaintiff
12 notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements
13 for bringing a claim under the Private Attorneys General Act with respect to these violations.

14 21. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect her interests and the interests of other aggrieved employees, and to assess and collect the
16 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
17 she is entitled to receive under California Labor Code § 2699.

18 **PRAYER**

19 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
20 this suit is brought against Defendants, as follows:

21 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
22 employees, and the State of California according to proof pursuant to Labor Code §§ 558
23 and 2699 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
24 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
25 failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent
26 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
27 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
28 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent

1 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
2 each initial violation and \$200 for each subsequent violation per employee per pay period for
3 those violations of the Labor Code for which no civil penalty is specifically provided, based on
4 the Labor Code violations cited hereinabove;

5 2. On all causes of action, for attorneys' fees and costs as provided by Labor
6 Code § 2699 and Code of Civil Procedure § 1021.5; and

7 3. For such other and further relief the Court may deem just and proper.

8
9 Dated: March 4, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

10
11 By:



12 Fletcher W. Schmidt
13 Attorney for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28