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

ARIANNA NIEVES, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

CLUB SPORTS STUDIOS - PAYROLL LLC;
CSS RENAISSANCE LLC; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2024-00021743-CU-OE-CTL

CLASS ACTION

**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. Unpaid Split Shift Premiums
11. Failure to Provide Records
12. Unfair Competition
13. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ARIANNA NIEVES, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants CLUB SPORTS
4 STUDIOS - PAYROLL LLC; CSS RENAISSANCE LLC and DOES 1 through 50, inclusive
5 (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action filed for wage and hour violations of the
8 California Labor Code.

9 2. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
10 permitted to work in violation of the applicable IWC Wage Order.

11 3. Defendants’ underpayment of wages was facilitated by their company-wide practices
12 of encouraging employees to complete overtime work while off-the-clock and failure to pay split shift
13 premiums.

14 4. Defendants also failed to pay Labor Code § 226.7 premiums at the regular rate of
15 compensation for non-compliant meal periods and rest periods, including late, short, and missed meal
16 periods.

17 5. Defendants did not reimburse Plaintiff and Class Members for necessary expenses
18 incurred in furtherance of the Class Members’ job duties.

19 6. Defendants’ employment policies, practices, and payroll administration systems
20 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

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

23 **JURISDICTION & VENUE**

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

26 9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
27 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 conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Arianna Nieves

12. Plaintiff Nieves is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about January 2023 to December 12, 2023. Plaintiff worked as a Fitness Coach and Social Media 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.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiff brings the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

B. Defendants

14. Defendant Club Sports Studios - Payroll LLC is a Connecticut limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

15. Defendant CSS Renaissance LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

16. 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.

17. 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.

18. 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.

19. 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

20. 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.

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

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

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

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

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

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

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

23. 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

24. Plaintiff and Class Members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

25. Defendants repeatedly underpaid Plaintiff and Class Members by not accounting for all hours they worked. Plaintiff and Class Members were required to complete pre and post shift tasks, such as cleaning the gym and putting away gym equipment, while off the clock. Consequently, Plaintiff and Class Members' time records did not reflect all hours worked. This practice resulted in unpaid minimum, regular, and overtime wages for Plaintiff and Class Members.

26. Moreover, Defendants maintained an unlawful practice of scheduling Plaintiff and Class Members to work split shifts without paying split shift premiums. Defendants regularly scheduled Plaintiff and Class Members to instruct both morning and evening classes, resulting in large lapses of non-paid, non-working time in between shifts. For example, Plaintiff was regularly scheduled to instruct two to five classes in the morning and required to return work in the evening to instruct an additional three classes. Despite implementing split shifts, Defendants failed to accordingly pay Plaintiff and Class Members split shift premiums.

27. Further, due to employee responsibilities and the continuous flow of business, Plaintiff and Class Members suffered late, short, interrupted, and/or missed meal and rest periods. Plaintiff and Class Members would often work through meal and rest periods to ensure that each training session was staffed per Defendants' policy that two coaches be at each session with more than six or seven gym members. When Plaintiff and Class Members suffered these deficient meal and rest periods, Defendants did not pay Plaintiff and Class Members premiums. To the extent Defendants paid Plaintiff or Class Members due meal and rest premiums, Defendants underpaid these premiums due to Defendant's policy of unlawfully excluding split shift premiums from the regular rate of pay.

1 28. Defendants also failed to employ a proper paid sick leave accrual method. Despite
2 working 36 hours during the pay period from March 13, 2023, to March 26, 2023, Plaintiff did not
3 accrue any paid sick leave. Additionally, to the extent aggrieved employees earned pay in the same
4 pay period they earned other forms of non-excludable remuneration, Defendants underpaid those
5 wages due to the regular rate violations addressed above.

6 29. Defendants also required Plaintiff and Class Members to incur necessary, work-related
7 costs, without reimbursement. Plaintiff and Class Members were required to use their personal cell
8 phones to manage Defendants' social media accounts, create content for those accounts, and
9 communicate with coworkers regarding work schedules and duties. However, despite requiring
10 employees to incur these expenses, Defendants did not compensate employees for using their personal
11 devices for employment-related activities. Plaintiff further believes and alleges that other Class
12 Members also incurred these costs without reimbursement from Defendants.

13 30. Defendants did not pay Plaintiff and Class Members their wages in a timely manner
14 during employment. While employed by Defendants, Plaintiff was required to wait three months to
15 receive her bonus. Moreover, when she finally received her bonus payment, it was sent to her via
16 Apple Pay rather than via direct deposit and did not appear on her paystub.

17 31. Additionally, Defendants failed to pay Plaintiff and Class Members their wages in a
18 timely manner upon separation of employment. For example, Plaintiff was terminated on or about
19 December 12, 2023, but she did not receive her final wages until about six days after termination on
20 December 18, 2023.

21 32. Defendants failed to provide accurate itemized wage statements that included the
22 accurate gross or net wages and listed all applicable hourly wage rates. Specifically, Plaintiff's wage
23 statements did not list all applicable hourly rate in effect each pay period. Plaintiff was compensated
24 for work she completed as both a fitness instructor and social media manager, at different hourly rates.
25 However, Plaintiff's wage statements did not differentiate what work her wages were for. In fact,
26 Plaintiff was paid at three different hourly rates for three different pay periods, but her wage statements
27 do not provide any context for the hourly rate in each respective pay period. Plaintiff's wage statement
28 for pay date June 23, 2023, compensated her at an hourly rate of \$27.57, while a wage statement for

1 pay date July 10, 2023, paid her at an hourly rate of \$28.69, and another a wage statement for pay date
2 September 1, 2023 set her hourly rate at \$29.24.

3 33. Likewise, overtime, premiums, and sick leave were paid at inaccurate hourly wage rates
4 (i.e. the base rate instead of the regular rate). Further, Defendants failed to pay Plaintiff and Class
5 Members at least minimum wage for all hours worked, resulting in inaccurate hourly rates. Therefore,
6 Defendants have provided inaccurate and noncompliant wage statements to Class Members.

7 **FIRST CAUSE OF ACTION**

8 **MINIMUM WAGE VIOLATIONS**

9 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

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

11 34. All outside paragraphs of this Complaint are incorporated into this section.

12 35. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
13 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
14 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
15 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
16 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
17 liquidated damages).

18 36. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
19 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
20 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
21 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
22 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
23 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
24 Code § 1194.2.

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

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **Violation of Labor Code §§ 510 and 1194**

6 38. All outside paragraphs of this Complaint are incorporated into this section.

7 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
9 wages all overtime hours worked, and which further provide a private right of action for an employer's
10 failure to pay all overtime compensation for overtime hours worked.

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

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

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **Violation of Labor Code §§ 226.7 and 512**

24 42. All outside paragraphs of this Complaint are incorporated into this section.

25 43. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
27 meal period premiums in lieu thereof), and which further provide a private right of action for an
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1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

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

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

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

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7 and 516**

20 47. All outside paragraphs of this Complaint are incorporated into this section.

21 48. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

26 49. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

1 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
2 applicable orders).

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

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

10 51. All outside paragraphs of this Complaint are incorporated into this section.

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

17 53. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
18 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class
19 members, govern how Defendants were required to calculate paid sick leave.

20 54. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
21 of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their
22 sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the
23 regular rate of pay and/or calculated based on total wages earned).

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

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

3 **SIXTH CAUSE OF ACTION**

4 **UNTIMELY PAYMENT OF WAGES**

5 **Violation of Labor Code §§ 204, 210, 218**

6 57. All outside paragraphs of this Complaint are incorporated into this section.

7 58. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
9 period, and which further provide a private right of action for an employer's failure to comply with
10 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
11 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

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

23 **SEVENTH CAUSE OF ACTION**

24 **WAGE STATEMENT VIOLATIONS**

25 **Violation of Labor Code § 226**

26 61. All outside paragraphs of this Complaint are incorporated into this section.

27 62. This cause of action is brought by a wage statement subclass pursuant to Labor Code
28 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each

1 pay period, and which further provide a private right of action for an employer's failure to comply
2 with this obligation.

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

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

10 65. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
11 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
12 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
13 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
14 Code section 226(e).

15 **EIGHTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

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

18 66. All outside paragraphs of this Complaint are incorporated into this section.

19 67. This cause of action is brought by a waiting time subclass pursuant to Labor Code
20 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
21 employment, and which further provide a private right of action to recover statutory waiting time
22 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
23 wages.

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

69. 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

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

71. 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.

72. 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

UNPAID SPLIT SHIFT PREMIUMS

Violation of Labor Code § 1198; IWC Wage Orders

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

74. Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the class.

75. Section 4(C) of the applicable IWC Wage Orders requires that when "an employee works a split shift" the employer must pay one additional hour's pay at the minimum wage "in addition to the minimum wage for that workday." According to the IWC Wage Orders' definition sections, a "split shift" is defined as a work schedule that is "interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

76. Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

1 77. As described above, Defendants maintained an unlawful policy and practice of failing
2 to pay split shift premiums owed to Plaintiff and the class members. As such, Defendants are liable to
3 the class for all unpaid premiums, and associated penalties, interests, fees, and costs.

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5 **ELEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE RECORDS**

7 **Violation of Labor Code §§ 226, 432, and 1198.5**

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

9 79. Plaintiff brings this cause of action exclusively *in an individual capacity*.

10 80. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to
11 the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

12 81. Labor Code section 226(b) grants employees the right to inspect or receive “a copy of
13 records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750 for
14 an employer’s failure to comply with a request for records made under section 226.

15 82. Labor Code section 1198.5 requires employers to provide an employee’s “personnel
16 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750 for
17 an employer’s failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l)
18 allows an employee to seek injunctive relief to obtain an employer’s compliance with this section and
19 authorizes the recovery of attorneys’ fees and costs.

20 83. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor
21 Code section 1198, requires that employers maintain time records of when an employee begins and
22 ends each work period and when the employee takes meal periods, among other required employment
23 and payroll records. Section 7(C) states that “[a]n employee’s records shall be made available for
24 inspection by the employee upon reasonable request.”

25 84. Plaintiff requested from Defendants all records due under the IWC Wage Orders
26 (including the Records sections) and Labor Code sections 226, 432, and 1198.5. Specifically,
27 Defendants failed to produce Plaintiff’s offer letter, employment contract, and employee handbook,
28 despite Plaintiff’s request.

85. Defendants' unlawful acts and omissions deprived Plaintiff of the ability review the documents they received during their employment and to inspect and reconcile their actual time worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover the penalties and injunctive relief, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

TWELFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

87. 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.

88. Defendants' dependence 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.*

89. 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.

90. 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.

91. 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.

THIRTEENTH 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)

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

93. 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.

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

95. 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.”])

96. 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

1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures specified in Section 2699.3. “

3 97. Labor Code section 2699(f) provides: “For all provisions of this code except those for
4 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
5 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
6 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
7 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
8 each subsequent violation.”

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

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

14 100. On or about **April 30, 2024**, Plaintiff paid the requisite PAGA filing fee and provided
15 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
16 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
17 violations.

18 101. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
19 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
20 forth herein (the “PAGA notice”).

21 102. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
22 written PAGA notice from the LWDA.

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

26 104. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
27 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
28

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.*

105. 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 Split Shift Premium Wages.*** Violation of Labor Code § 1198; IWC Wage Orders.
- e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- k. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- l. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

106. 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 all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For 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 § 1021.5;
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. 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;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA; and
- n. For such other relief the Court deems just and proper.

Dated: July 8, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Arianna Nieves

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

April 30, 2024

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

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

Club Sports Studios - Payroll LLC
1011 3rd Avenue
New York, NY 10065

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

CSS Renaissance LLC
8905 Towne Centre Drive, Suite 106
San Diego, CA 92122

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **ARIANNA NIEVES** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendants”:

CLUB SPORTS STUDIOS - PAYROLL LLC;
CSS RENAISSANCE LLC

Defendants 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 position of Fitness Coach and Social Media Manager from about January 2023 to December 12, 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.

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 “aggrieved employees” and the “PAGA Period”).

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 -

Unpaid Hours Worked/Minimum Wage 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.

Plaintiff and the aggrieved employees were required to complete pre and post shift tasks, such as cleaning the gym, setting up and putting away gym equipment, without adequate compensation. These pre and post shift tasks could take up to one and a half hours. However, Defendants only paid Plaintiff and aggrieved employees an additional fifteen minutes before and after their shift for time spent completing those pre and post shift tasks. Moreover, Defendants did not maintain any timekeeping practices for tracking additional time spent completing pre and post shift work, therefore, Plaintiff and aggrieved employees did not have access to timesheets to track all hours worked and ensure they were adequately compensated. Thus, Defendants only compensated employees per class they were scheduled to instruct and no more than 15 minutes for pre and post shift work, not actual hours worked, resulting in unpaid wages.

Likewise, Defendants failed to pay Plaintiff and aggrieved employees for missed meal and rest periods. Due to Defendants’ policy and practice that two coaches be at every training session if more than six or seven gym members were present for a class, Plaintiff was often required to work through meal and rest periods to adhere to company practices. Defendants did not pay Plaintiff any meal or rest period premiums for those missed breaks.

Additionally, Defendants required Plaintiff and aggrieved employees to participate in mandatory training lasting from fifty minutes to one hour, once or twice per month. However,

upon information and belief Plaintiff and aggrieved employees were not compensated for time spent completing these mandatory trainings.

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 and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

Defendants unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendants should have (but failed to) pay overtime “at a rate no less than ***one and one-half times the regular rate of pay*** for an employee” and “twice the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

First, as stated in the minimum wage section above, Defendants failed to compensate Plaintiff and the aggrieved employees for all hours worked when completing pre and post shift tasks. Plaintiff and aggrieved employees were required to clean the gym, set up and put away gym equipment, without compensation. Defendants maintained a policy and practice of not

providing employees with timesheets to track all time spent completing pre and post shift tasks, resulting in unpaid overtime wages when Plaintiff and aggrieved employees worked more than 8 hours in a day and over 40 hours in a workweek.

Second, Defendants failed to pay overtime and double time at the “regular rate of pay.” As further discussed in the “Split Shift Premium” section below, Defendants did not pay Plaintiff and aggrieved employees split shift premiums when it scheduled Plaintiff and aggrieved employees to work both morning and evening shifts. Consequently, Defendants failed to include split shift premium income in the overtime and double time rates in the pay periods when employees worked overtime hours.

Third, upon information and belief, Defendants also paid Plaintiff and aggrieved employees additional remuneration, such as bonuses, that it did not include in the overtime and double time rates in the pay periods when employees worked overtime hours, resulting in unpaid overtime 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 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.

First, Defendants did not employ a proper accrual method as required by Labor Code section 246. Plaintiff and the aggrieved employees did not accrue paid sick leave with each pay period despite working over 30 hours in a pay period. As illustrated below, Plaintiff worked 36 hours in one pay period but did not accrue any paid sick leave.

EARNINGS STATEMENT				ADVISE OF DEPOSIT		
CSS RENAISSANCE LLC (Legal Address) 1011 3rd Avenue, Manhattan New York, NY 10065 Phone: 9545525783				PAY PERIOD: 03/13/2023 - 03/26/2023		
(Work address) 8905 Towne Centre Drive, Suite 106 San Diego, CA 92122 Phone: 9545525783				PAY DATE: 03/31/2023		
PAID TO: Arianna Nieves [REDACTED]				GROSS PAY: \$918.21		
				NET PAY: \$795.56		
TIME OFF	USED (HOURS)	ACCRUED (HOURS)	BALANCE (HOURS)	SUMMARY	CURRENT	YTD
Sick Leave Policy	0.00	0.00	0.00	Gross Pay	\$918.21	\$3,809.21
Studio Vacation Policy	0.00	0.00	0.00	Taxes	\$122.65	\$435.25
				Employer Taxes	\$108.81	\$423.05
EARNINGS	RATE	HOURS	CURRENT	Net Pay		
Base Pay	\$25.00	36.00	\$900.00	\$795.56		\$3,373.96
Additional Pay	-	-	\$18.21			

Extract from Plaintiff’s Wage Statement with a Pay Date of March 31, 2023 showing that Plaintiff did not accrue any paid sick leave.

Second, to the extent aggrieved employees earned sick pay in the same pay period they earned other forms of non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in

that workweek,” as the regular rate should have included fringe benefits for the reasons aforementioned.

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 Split Shift Premium Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendants violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the aggrieved employees.

Section 4(C) of the applicable IWC Wage Orders requires that when “an employee works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition to the minimum wage for that workday.” According to the IWC Wage Orders’ definition sections, a “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

Defendants maintained an unlawful policy and practice of failing to pay split shift premium wages to the aggrieved employees. Defendants regularly scheduled Plaintiff and aggrieved employees to instruct both morning and evening classes, resulting in large lapses of non-paid, non-working time in between shifts. Plaintiff was regularly scheduled to instruct two to five classes in the morning and required to return to work in the evening to instruct an additional three classes. Defendants did not pay Plaintiff or aggrieved employees split shift premiums despite establishing a work schedule that was interrupted by non-paid, non-working periods.

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, and 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.

First, upon information and belief, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with understaffing and the high demands of the job. Due to Defendants' policy and practice that two coaches be at every training session if more than six or seven gym members were present for a class, upon information and belief, Plaintiff and aggrieved employees were often required to work through meal periods to adhere to company practices. Upon information and belief, Defendants had a policy and practice of failing to pay all meal period premiums at the regular rate of pay to Plaintiff and other aggrieved employees.

Second, upon information and belief, to the extent Defendants paid meal period premiums in the same pay period that the aggrieved employees earned split shift premiums or other forms of non-excludable remuneration, Plaintiff believes and alleges that Defendants underpaid these premiums by failing to factor all forms of non-discretionary income into 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 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 fraction 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.

Upon information and belief, Defendants failed to provide compliant rest periods and pay rest period premiums to Plaintiff and aggrieved employees. Defendants maintained a policy and practice that mandated that two coaches instruct sessions with more than six or seven clients. To comply with Defendants' policy, Plaintiff regularly worked through her rest periods to ensure that each class was sufficiently staffed. Upon information and belief, Defendants did not pay rest period premiums to employees who were unable to take rest periods.

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). 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. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

Additionally, Defendant failed to pay Plaintiff and aggrieved employees’ bonuses in a timely manner. Plaintiff did not receive her bonus until three months after she had earned it. Moreover, when Plaintiff finally received her bonus earnings, she received them via Apple Pay rather than direct deposit like her regular 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 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. Additionally, Plaintiff’s final wages were not paid immediately upon termination. Plaintiff was terminated on or about December 12, 2023 but did not receive her final wages until about six days after termination on December 18, 2023.

EARNINGS STATEMENT

CLUB SPORTS STUDIOS - PAYROLL LLC
 (Legal Address)
 1011 3rd Avenue, Manhattan
 New York, NY 10065
 Phone: 9545525783

(Work address)
 8905 Towne Centre Drive, Suite 106
 San Diego, CA 92122
 Phone: 9545525783

PAID TO:
 Arianna Nieves

ADVICE OF DEPOSIT

PAY PERIOD:
 12/04/2023 - 12/12/2023

PAY DATE:
 12/18/2023

GROSS PAY:
 \$984.80

NET PAY:
 \$847.74

TIME OFF	USED (HOURS)	ACCRUED (HOURS)	BALANCE (HOURS)
Sick Leave Policy	0.00	0.00	29.08

EARNINGS	RATE	HOURS	CURRENT	YTD
Base Pay	\$28.01	35.16	\$984.80	\$22,259.40

EMPLOYEE TAXES WITHHELD	CURRENT	YTD

SUMMARY	CURRENT	YTD
Gross Pay	\$984.80	\$22,259.40
Taxes	\$137.06	\$3,583.41
Employer Taxes	\$75.34	\$1,996.85
Net Pay	\$847.74	\$18,675.59
Acct# ...663 Trace: 021000027645133	\$847.74	

Extract of Plaintiff's wage statement with a pay date of December 18, 2023 for the pay period covering December 4, 2023 to December 12, 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. Likewise, 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.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked when completing pre and post shift duties while off the clock.

Defendants provided Plaintiff and the aggrieved employees with deficient wage statements that did not list all applicable hourly rates in effect during each pay period. For example, Plaintiff was compensated for work she completed as both a fitness instructor and a social media manager. Defendants and Plaintiff agreed to that she would be paid at a rate of \$20 per hour for social media management and \$30 per hour for instructing. However, Plaintiff’s wage statements do not differentiate what wages represent earnings for. As illustrated below, Plaintiff was paid at three different hourly rates for three different pay periods, yet her wage statements do not provide any context for the hourly rate, resulting in confusion about the accuracy of Plaintiff’s compensation.

EARNINGS STATEMENT																						
CLUB SPORTS STUDIOS - PAYROLL LLC (Legal Address) 1011 3rd Avenue, Manhattan New York, NY 10065 Phone: 9545525783 (Work address) 8905 Towne Centre Drive, Suite 106 San Diego, CA 92122 Phone: 9545525783			ADVICE OF DEPOSIT PAY PERIOD: 06/05/2023 - 06/18/2023 PAY DATE: 06/23/2023 GROSS PAY: \$1,302.50 NET PAY: \$1,089.16																			
PAID TO: Arianna Nieves																						
THIS IS NOT A CHECK																						
TIME OFF	USED (HOURS)	ACCRUED (HOURS)	BALANCE (HOURS)																			
Sick Leave Policy	0.00	0.00	9.08																			
Studio Vacation Policy	0.00	0.00	18.16																			
EARNINGS	RATE	HOURS	CURRENT	YTD																		
Base Pay	\$27.57	47.25	\$1,302.50	\$5,664.10																		
<table border="1"> <thead> <tr> <th>SUMMARY</th> <th>CURRENT</th> <th>YTD</th> </tr> </thead> <tbody> <tr> <td>Gross Pay</td> <td>\$1,302.50</td> <td>\$5,664.10</td> </tr> <tr> <td>Taxes</td> <td>\$213.34</td> <td>\$858.47</td> </tr> <tr> <td>Employer Taxes</td> <td>\$154.36</td> <td>\$671.20</td> </tr> <tr> <td>Net Pay</td> <td>\$1,089.16</td> <td>\$4,805.63</td> </tr> <tr> <td>Acct# : 663 Trace: 021000020582230</td> <td>\$1,089.16</td> <td></td> </tr> </tbody> </table>					SUMMARY	CURRENT	YTD	Gross Pay	\$1,302.50	\$5,664.10	Taxes	\$213.34	\$858.47	Employer Taxes	\$154.36	\$671.20	Net Pay	\$1,089.16	\$4,805.63	Acct# : 663 Trace: 021000020582230	\$1,089.16	
SUMMARY	CURRENT	YTD																				
Gross Pay	\$1,302.50	\$5,664.10																				
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Employer Taxes	\$154.36	\$671.20																				
Net Pay	\$1,089.16	\$4,805.63																				
Acct# : 663 Trace: 021000020582230	\$1,089.16																					

Extract of Plaintiff's wage statement for pay date June 23, 2023 showing an hourly rate of \$27.57.

EARNINGS STATEMENT																			
CLUB SPORTS STUDIOS - PAYROLL LLC (Legal Address) 1011 3rd Avenue, Manhattan New York, NY 10065 Phone: 9545525783 (Work address) 8905 Towne Centre Drive, Suite 106 San Diego, CA 92122 Phone: 9545525783			ADVICE OF DEPOSIT PAY PERIOD: 06/19/2023 - 07/02/2023 PAY DATE: 07/10/2023 GROSS PAY: \$1,122.50 NET PAY: \$954.07																
PAID TO: Arianna Nieves																			
THIS IS NOT A CHECK																			
TIME OFF	USED (HOURS)	ACCRUED (HOURS)	BALANCE (HOURS)																
Sick Leave Policy	0.00	3.33	12.41																
EARNINGS	RATE	HOURS	CURRENT	YTD															
Base Pay	\$28.60	39.25	\$1,122.50	\$6,786.60															
<table border="1"> <thead> <tr> <th>SUMMARY</th> <th>CURRENT</th> <th>YTD</th> </tr> </thead> <tbody> <tr> <td>Gross Pay</td> <td>\$1,122.50</td> <td>\$6,786.60</td> </tr> <tr> <td>Taxes</td> <td>\$168.43</td> <td>\$1,026.91</td> </tr> <tr> <td>Employer Taxes</td> <td>\$133.08</td> <td>\$804.21</td> </tr> <tr> <td>Net Pay</td> <td>\$954.07</td> <td>\$5,759.69</td> </tr> </tbody> </table>					SUMMARY	CURRENT	YTD	Gross Pay	\$1,122.50	\$6,786.60	Taxes	\$168.43	\$1,026.91	Employer Taxes	\$133.08	\$804.21	Net Pay	\$954.07	\$5,759.69
SUMMARY	CURRENT	YTD																	
Gross Pay	\$1,122.50	\$6,786.60																	
Taxes	\$168.43	\$1,026.91																	
Employer Taxes	\$133.08	\$804.21																	
Net Pay	\$954.07	\$5,759.69																	

Extract of Plaintiff's wage statement for pay date July 10, 2023 showing an hourly rate of \$28.60.

EARNINGS STATEMENT

CLUB SPORTS STUDIOS - PAYROLL LLC
 (Legal Address)
 1011 3rd Avenue, Manhattan
 New York, NY 10065
 Phone: 9545525783

(Work address)
 8905 Towne Centre Drive, Suite 106
 San Diego, CA 92122
 Phone: 9545525783

PAID TO:
 Arianna Nieves

apt 151 4560 Mission Gorge Place
 San Diego, CA 92120
 SSN: ...8014

ADVICE OF DEPOSIT

PAY PERIOD:
 08/14/2023 - 08/27/2023

PAY DATE:
 09/01/2023

GROSS PAY:
 \$2,010.00

NET PAY:
 \$1,612.29

TIME OFF	USED (HOURS)	ACCRUED (HOURS)	BALANCE (HOURS)
Sick Leave Policy	0.00	0.00	15.74

EARNINGS	RATE	HOURS	CURRENT	YTD
Base Pay	\$29.24	68.75	\$2,010.00	\$12,671.60

EMPLOYEE TAXES WITHHELD	CURRENT	YTD

SUMMARY	CURRENT	YTD
Gross Pay	\$2,010.00	\$12,671.60
Taxes	\$397.71	\$2,056.53
Employer Taxes	\$153.77	\$1,263.39
Net Pay	\$1,612.29	\$10,615.07
Acct# ...663 Trace: 021000024275710	\$1,612.29	

Extract of Plaintiff's wage statement for pay date September 1, 2023 showing an hourly rate of \$29.24.

Additionally, Defendant did not include all earnings, such as bonuses, in wage statements. Plaintiff was awarded a bonus for approximately \$60.00, however, she never received a wage statement that reflected those additional earnings.

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, Plaintiff and the aggrieved employees were required to use their personal cell phones to download the Slack application to communicate with coworkers regarding work related assignments and tasks. Additionally, as a social media manager in addition to working as a fitness instructor, Plaintiff was required to use her personal cell phone to manage Defendants’ social media pages, take pictures and videos to create social media content, and use her personal data storage to store content that she would later share online for Defendants. Plaintiff was not reimbursed the expenses she incurred by using her personal cell phone for work purposes.

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 Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable

request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request, including Plaintiff’s offer letter, employment contract, and employee handbook.

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), 1174.5 (\$500), and 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,

A handwritten signature in black ink, appearing to read "Mariela Romo". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mariela Romo

Cc Plaintiff Arianna Nieves

Nickie Basilone
Club Sports Group, Human Resources
nbasilone@clubsportsgroup.com

Gary Romero
Club Sports Group, Compensation and Benefits Specialist
gromero@clubsportsgroup.com