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August 8, 2025

SUBMITTED ONLINE at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Email Delivery to Counsel for *dba LA Fitness*
Fitness International, LLC
Jeffrey David <jdavid@calljensen.com>;
Julie Trotter <jtrotter@calljensen.com>

Re: Amended PAGA Notice – Case Number LWDA-CM-1021746-24
Austin Teffeteller/Fitness International, LLC dba LA Fitness
Our File No.: 5919-2001

Dear LWDA:

This office serves as legal counsel for Austin Teffeteller with respect to his claims Fitness International, LLC dba LA Fitness (hereafter "Employer").

In accordance with California's Private Attorneys General Act of 2004, as codified in Labor Code section 2698, et. seq (hereafter “PAGA”), Mr. Teffeteller hereby provides this amended notice regarding Employer's violations of numerous provisions of the California Labor Code and his intent to seek recovery of statutory penalties consistent with California Labor Code section 2699.5. Mr. Teffeteller provides further notice that he, on behalf of himself, and all similarly aggrieved current and former non-exempt employees of Employer, intends to utilize the protections and remedies afforded by PAGA.

Mr. Teffeteller was engaged as a non-exempt employee between 2019 and April 2023 by Employer and suffered one or more violations of the California Labor Code and therefore is an aggrieved employee within the meaning of California Labor Code section 2699(c). Employer has previously employed Mr. Teffeteller in the state of California as a Personal Trainer ("Trainer"). Mr. Teffeteller worked for Employer at the Corona, Lake Elsinore, and/or Norco locations. The other similarly aggrieved employees also hold and have held nonexempt positions with Employer at the same location and/or other various locations throughout California. These other facilities of Employer use common systems, policies and practices such that the nonexempt employees working therein suffered the same Labor Code violations as Mr. Teffeteller.

Mr. Teffeteller contends that Employer maintained and uniformly applied a companywide policy and/or practice that promotes off-the-clock work for its nonexempt employees, including the Trainers. This practice includes knowingly encouraging, aggrieved employees not to accurately record their actual time worked so that the Company can avoid paying all of the wages associated with its business model and improve its profitability at the expense of the nonexempt employees. Specifically, with regard to nonexempt employees, the Employer encourages its nonexempt employees to not record all of their time worked, including: when the employee actually works but cannot train a customer due to a customer cancellation; requiring the employee to work time off the clock both before and/or after a training session with a customer but not paying them for all of that time; requiring them to have unpaid "downtime" in between various customer training sessions that the Employer schedules; and/or requiring the employee to frequently check their schedules in off hours without compensation to determine client training sessions that the Employer has scheduled for them. The Employer also required nonexempt employees to spend time working before clocking in and after clocking, by, among other things, responding to text messages before and after their shifts or other off the clock activities, and rounding hours worked to the nearest quarter hour. These practices also require the nonexempt employees to remain under the Employer's control and available during various off hours so that the Employer can meet the changing needs of its customer base relative to the scheduling of training sessions. As such, these activities involve compensable time but the employees are not paid for all of this time worked and/or under the employer's control. While the Employer has some written policies which instruct nonexempt employees not to work off the clock, the Employer's actual practices intentionally and systemically differ from these policies and actually encourages and/or pressures the employees to disregard these policies, punishes them if they record total time worked, request pay for total time worked, or, for personal trainers request pay for customer cancellations of training sessions. The Employer also failed to properly factor in bonus, commissions, and other non-base hourly wages for purposes of determining the regular rate of pay for meal and rest period premiums, overtime wages, vacation wages, and sick pay wages. The Employer also engaged in improper rounding of nonexempt employees' time records.

As a result of these illegal pay practices, Mr. Teffeteller and all other similarly situated current and former nonexempt employees were not properly paid for all hours worked and/or overtime compensation for overtime hours worked in violation of various Labor Code sections including but not limited to sections: 201-204, 210, 246, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and/or 1199, and the applicable IWC Wage Orders. During the relevant time, Employer also failed and refused to fully compensate other similarly aggrieved current and former employees at a rate of not less than one and a half times the regular rate of pay for all overtime hours worked. Employer also failed to pay Mr. Teffeteller and all other similarly aggrieved current and former employees for all time that they were on duty, working, and/or under the control of the Employer. As a result, Mr. Teffeteller and all other similarly aggrieved current and former employees were not paid wages for the actual time that they worked and were not paid all of the wages they were owed. They were also not properly compensated for earned vacation in violation of Labor Code sections 203 and 227.3.

Employer further violated California law by failing to pay split shift premiums to aggrieved non-exempt employees, including Personal Trainers, who were regularly scheduled for multiple shifts within the same workday separated by significant unpaid time. These split shifts often resulted in total daily compensation falling below the minimum wage plus one additional hour at the state minimum wage, yet Employer did not pay the required premium. This practice violates Industrial Welfare Commission Wage Order No. 4-2001, Section 4(C), and Labor Code section 1197. Aggrieved employees were frequently required to report to work for client sessions in the morning, then return for additional sessions later in the day, with no compensation for the extended breaks between shifts.

Mr. Teffeteller and all other similar aggrieved current and former nonexempt employees were not provided complete and accurate itemized wage statements. The deficiencies with the wage statements include, without limitation: the failure to include the accurate total hours worked; accurate gross, and net wages earned; overtime compensation; bonuses and commissions; regular rate of pay and other information required by California Labor Code section 226(a). As a result of violation of Labor Code sections 226 and 226.3, Mr. Teffeteller and/or all other aggrieved current and former employees have suffered injuries and damages, including: confusion over whether they received all wages earned and owed to them; difficulty and expense involved in reconstructing pay records and forcing them to make mathematical computations to analyze whether the wages paid properly compensated them for all of their hours actually worked.

Additionally, Mr. Teffeteller and all similar aggrieved current and former employees have been injured by Employer's intentional, multiple violations of the California Labor Code section 226(a), because they were denied both the legal right to receive and protect interest in receiving accurate and itemized wage statements pursued to California Labor Code section 226(a).

Employer also failed to maintain accurate records showing the correct start and stop time of meal periods since it automatically clocked out Mr. Teffeteller and all other similar aggrieved current and former nonexempt employees regardless of it they took the meal period or not in violation of Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198, and IWC Wage Order 4-2001.

With respect to reimbursement of their reasonable business expenses, Mr. Teffeteller and all other similarly aggrieved current and former employees were not reimbursed, or not fully and fairly reimbursed, for all of their business expenses they incurred in violation of the California Labor Code sections 2800 and 2802. Pursuant to California Labor Code sections, 2800 and 2802, an employer must indemnify and/or reimburse employees for all necessary, expenditures incurred by the employee indirect consequence of the discharge of his or her job duties or direct consequence of his or her obedience to the directions of the employer. These Labor Code sections were violated at relevant times due to Company-wide policy requiring Mr. Teller and all other aggrieved current former employees of Employer to use their personal phone/data plans for the performance of their job duties. Specifically, nonexempt employees are required to use their cell phones in order to determine their schedules for customer training sessions in off hours. As a result,, Mr. Teffeteller, and all other similar aggrieved current employees and were forced to incur data charges that have not been reimbursed by Employer.

Additionally, pursuant to *Murphy v Kenneth Cole Productions Inc.* (2007) 40 Cal.4th 1094, 1111-1112, California employers that cancel an employee's shift must compensate nonexempt employees for a minimum work day. However, Employer has a systemic practice of not paying reporting time pay or discouraging the payment of those wages when employees work a shift of less than four hours due to customer cancellations or other reasons beyond the employee's control. Reporting time is a form of wages that compensate employees for shifts they are scheduled to report to work, but who are not put to work or furnish with less than half of their or scheduled days' work because of inadequate scheduling, or lack of proper notice by the employer, or other business. These practices violate Labor Code sections 201-204, 221,223, 558, 1197, and applicable wage orders and/or various state regulations. Accordingly, Mr.

Teffeteller intends to bring a private civil action against Employer pursuant to PAGA for Employers violations of the California Labor Code. In his action, Mr. Teffeteller will seek fees and other relief provided under PAGA on behalf of himself and all other past and current employees similarly agreed.

With regard to Labor Code section 203, Employer has failed to timely pay the nonexempt employees their full and final wages, including due to the failure to properly track their time worked and to pay all of the time worked. Employer’s failure is a violation of Labor Code §§ 201, 202, and 203.

Mr. Teffeteller and the similarly aggrieved employees also provide notice of their intention to pursue claims pursuant to Labor Code sections 245 and 2810.5 regarding the failure to comply with California's paid sick leave laws.

Lastly, Employer failed to provide meal periods or pay correct premium wages to employees denied meal periods in violation of Labor Code §§ 226.7, 512, 516, and 558, and IWC Wage Order No. 4-2001 after they were denied a timely, uninterrupted 30 minute meal period for every shift that exceeded five hours or a second, timely, uninterrupted 30 minute meal period for every shift that exceeded ten hours in violation of Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, and 1194, and IWC Wage Order 4-2001, including because their location was short staffed or they were encouraged to focus on sales or discouraged from taking their meal periods.. Employer failed to authorize and permit a ten (10) minute rest period for each four (4) hour work period or major fraction thereof and failed to pay premiums for missed rest breaks at all and/or at the regular rate of pay in violation of Labor Code §§ 226.7, 516, and 558, and IWC Wage Order 4-2001.

Plaintiffs are informed and believe that the stated violations are ongoing, systematic and uniform. Plaintiffs intend to bring an action against Defendant under the PAGA to recover wages and penalties as provided by California law.[1]

In conclusion, we look forward to your investigation of these issues and stand ready to assist in that investigation if you undertake it. Alternatively, if the LWDA does not pursue these claims within the statutory review period, Mr. Teffeteller intends to pursue these claims on behalf of himself and the other aggrieved nonexempt employees worked during the PAGA period.

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[1] Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by
the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in
Labor Code § 2699.5, which states: The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

Very truly yours,

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THOMAS E. DAUGHERTY

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