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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

YULISSA MEDINA, on behalf of herself  
and “aggrieved” employees pursuant to  
Labor Code section 2698, et seq.,

Plaintiff,

vs.

24 HOUR FITNESS USA, LLC., a  
California limited liability company; and  
DOES 1-10, inclusive.

Defendants.

Case No. 24CV089740

Assigned to Hon. Mark Fickes, Dept. 518

**DECLARATION OF EVAN S. GAINES IN  
SUPPORT OF UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA REPRESENTATIVE  
SETTLEMENT**

**DATE: March 5, 2026**

**TIME: 2:30 p.m.**

**DEPT.: 518**

**Reservation ID: 233298411480**

*Action Filed: August 30, 2024*

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23 Attorneys for Plaintiff Bruno Cruz  
24  
25  
26  
27  
28

1 I, EVAN S. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am  
3 the owner of Gaines Law Corporation, counsel for Plaintiff Yulissa Medina (“Medina” or  
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set  
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BA degree from the University California at Santa Barbara in 2005. I  
8 majored in Film Studies.

9 3. Thereafter, I attended the Michigan State University College of Law (“MSU”). At  
10 MSU, I was the recipient of jurisprudence awards (highest grade) in Client Counseling and  
11 Interviewing and Complex Civil Litigation. At MSU, I focused my studies on complex litigation.  
12 I earned my JD and became a member of the California Bar in 2012.

13 4. After becoming a member of the Bar, I practiced law with my father (Kenneth S.  
14 Gaines) and brother (Daniel F. Gaines) at Gaines & Gaines, APLC. In January 2024, I started my  
15 own law firm, Gaines Law Corporation. My practice specializes in litigation, with an emphasis in  
16 employment disputes like this one. Over 95% of my practice is devoted to complex employment  
17 litigation similar to the instant action.

18 5. My firm has represented employees in employment matters such as this one, with an  
19 emphasis in wage and hour issues. I have participated, and have been certified as Court-approved  
20 class counsel, in dozens of class and representative action matters since my admission to the Bar.  
21 A true and correct list of some of the cases in which I have been appointed as class counsel is  
22 attached hereto as **Exhibit “A”**.

23 **Factual and Procedural Background:**

24 6. On June 17, 2024, Plaintiff Medina served a PAGA notice letter to the LWDA and  
25 Defendant and thus exhausted the pre-filing requirements of the PAGA.

26 7. On or about August 30, 2024, Plaintiff Medina initiated the Action by filing a  
27 Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all  
28 other aggrieved employees.

1           8.     On July 9, 2025, Plaintiff Medina served an Amended PAGA Notice that includes  
2 the factual allegations, causes of action, Labor Code violations, and applicable theories of liability  
3 alleged in the operative complaints and LWDA letters in the *Cumpian* Action and *Cruz* Action.

4           9.     Thereafter, in conjunction with the Parties Settlement, on October 21, 2025, Plaintiffs  
5 collectively filed a First Amended Complaint, which added the *Cumpian* and *Cruz* plaintiffs as  
6 named plaintiffs and incorporated standalone class action and PAGA claims and allegations that  
7 had been alleged in *Cumpian* and *Cruz*. The First Amended Complaint alleges class and PAGA  
8 representative action claims against Defendant for (1) Failure To Pay All Minimum, Regular, And  
9 Overtime Wages Due (Labor Code §§ 204, 210, 218.5, 218.6, 226.7, 227.3, 245, 246, 246(1),  
10 246(i), 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199); (2) Failure To Provide Meal Periods Or  
11 Compensation In Lieu Thereof (Labor Code §§ 210, 226.7, and 512; IWC Wage Order 4-2001);  
12 (3) Failure To Provide Rest Periods Or Compensation In Lieu Thereof (Labor Code §§ 210 and  
13 226.7; IWC Wage Order 4-2001); (4) Failure To Reimburse All Business-Related Expenses  
14 (Labor Code §§ 1198, 2802, 2802(a), 2802(b), and 2802(c)); (5) Failure to Pay Sick Pay Wages  
15 (Labor Code §§ 201-203, 233, 245, 246); (6) Failure to Pay Vacation Wages (Labor Code § 227.3);  
16 (7) Failure To Comply With Itemized Employee Wage Statement Provisions (Labor Code §§ 226,  
17 226(s), 226(e)(1), 226(e)(2)(b)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5, and 1199); (8)  
18 Failure To Timely Pay Wages Due At Separation Of Employment (Labor Code §§ 201-204, 210,  
19 218.5, 218.6, 1194, 1197, 1197.5, 1198, 1199, 2926, and 2927); (9) Violation Of Business and  
20 Professions Code § 17200 *et seq.*; (10) Penalties Pursuant To Labor Code § 2699(f) Violations Of  
21 Labor Code §§ 201, 201.3, 202, 204, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(b)(iii), 226(h),  
22 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1174, 1174.5, 1194, 1197.1, 1194.5, 1197,  
23 1197.1, 1197.5, 1198 , 1198.5, 1199, 2926, and 2927 and Pursuant To Labor Code § 2699(a) For  
24 Violations Of Labor Code §§ 210, 226.3, 558, and 558(a)(1)-(3); and (11) Violation of California  
25 Equal Pay Act (Labor Code § 1197.5(A)) (the “First Amended Complaint”).

26           10.    Defendant denies any liability or wrongdoing of any kind associated with the claims  
27 alleged in the Action, and further denies that the Action is appropriate for class treatment for any  
28 purpose other than this settlement. Defendant contends that it has complied at all times with the

1 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable  
2 federal, state, and local laws and regulations. Defendant contends that, if this matter were litigated,  
3 Plaintiffs' claims could be maintained in court, could not be maintained as a class action, and could  
4 not be maintained as a PAGA representative action. It is Defendant's position that, if this case  
5 were to be litigated, class certification would be inappropriate because Plaintiffs are not adequate  
6 class representatives, Plaintiffs' claims are not typical of putative class members, and individual  
7 issues predominate over class issues. The Action, the negotiation and execution of this Settlement  
8 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the  
9 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf  
10 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any  
11 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and  
12 may not be used as, an admission or evidence of the appropriateness of these or similar claims for  
13 class certification in the Action or with respect to any other proceeding.

14 11. The Class Representatives contend that Defendant violated the California Labor  
15 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class  
16 certification.

17 **Investigation and Settlement Discussions**

18 12. My colleagues and I have conducted a thorough investigation into the facts and law  
19 during the prosecution of this class action case, including the exchange of extensive informal  
20 discovery and the review and verification of statistical data and other facts and information  
21 provided by Defendant. My colleagues and I also represent that we have investigated the  
22 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and  
23 potential defenses thereto, and the damages and other losses claimed by Plaintiffs.

24 13. On May 2, 2025, following their exchange of information and documents regarding  
25 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in  
26 arm's-length negotiations with the assistance of mediator Michael Ludwig, Esq., through which  
27 they were able to reach the resolution of the Action set forth herein.  
28

1           14. Based on our independent investigation and evaluation, My colleagues and I are of  
2 the opinion that settlement for the consideration and on the terms set forth in this Settlement  
3 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in  
4 light of all known facts and circumstances, including the risk of significant delay, the risk the  
5 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.  
6 Defendant and its counsel also agree that this settlement is fair and in the best interest of the  
7 Settlement Class.

8           15. The Parties agree that the Settlement Class described herein may be certified for  
9 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the  
10 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not  
11 approved, the certification will have no force or effect and will immediately be revoked. The  
12 Parties further agree that certification for purposes of the settlement is in no way an admission that  
13 class certification is proper under the more stringent standard applied for litigation and that  
14 evidence of this limited Settlement for settlement purposes only will not be admissible for any  
15 purpose in this or any other proceeding.

16           16. The parties jointly prepared the Settlement Of Class Action And Paga Representative  
17 Action (“Settlement Agreement” or “Settlement”). A true and correct copy of the Settlement is  
18 attached hereto as **Exhibit B**.

19           17. My office created a comprehensive damage analysis using sampling information  
20 obtained through informal discovery. This damage analysis reveals that the negotiated settlement  
21 falls within a realistic range of recovery on Class Members’ claims.

22           18. Plaintiffs allege that Defendant failed to authorize or permit Class Members to take  
23 timely, uninterrupted 30-minute meal periods on shifts greater than 5 hours in length in violation  
24 of Labor Code §§ 210, 226.7, and 512 and IWC Wage Order 4-2001. Labor Code § 512 provides  
25 that employers may not employ an employee for a work period of more than 5 hours without  
26 providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiffs and  
27 Class Members contend that they were routinely unable to take a lawful meal break when they  
28 worked shifts in excess of 5 hours in duration and a second meal break when they worked shifts

1 in excess of 10 hours in duration. Plaintiffs and Class Members further contend that Defendant  
2 continued to assert control over Plaintiffs and Class Members by, among other things, requiring,  
3 pressuring, or encouraging them to perform work tasks which could not be completed without  
4 working in lieu of taking mandatory meal periods, by requiring employees to keep their phones  
5 on to respond to emergencies and other situations, or by denying Plaintiffs and Class Members, or  
6 some of them, permission to take a meal period under the conditions required by law, and without  
7 properly compensating Plaintiffs and Class Members for meal periods that were not provided as  
8 required by law. Plaintiffs and Class Members also contend that Defendant did not inform  
9 Plaintiffs and Class Members of their right to, nor permitted Plaintiffs and Class Members to take,  
10 all of Plaintiffs' and Class Members' second meal periods when Plaintiffs and Class Members  
11 worked at least ten hours of work in a workday and otherwise unlawfully pressured Plaintiffs and  
12 Class Members to waive such breaks. Based on Plaintiffs' expert's analysis of a substantial sample  
13 of Defendant's time and payroll data for the entire PAGA Period and extrapolated over the Class  
14 Period, Defendant's meal period violation rate totals over 18.1% among all shifts worked in excess  
15 of 6 hours in duration (accounting for meal period waivers, which Defendant maintained  
16 statewide), which yields 153,654 unique meal break violations during the Class Period. and affects  
17 over 21.3% of all 211,580 PAGA pay periods worked during the PAGA Period. The potential  
18 classwide value of this claim exceeds \$3,076,153, although it was not without its challenges.  
19 Defendant argued that this claim could not be certified because individual inquires would  
20 predominate over common ones. It proffered a host of defenses to the merits of the claim which  
21 could substantially reduce its value. Defendant contends it has fully compliant written policies  
22 and procedures, which allow employees opportunities to take meal breaks in compliance with  
23 California law. Defendant also pays meal period premium payments for non-compliant meal  
24 breaks. Based on these defenses, a compromise was required to resolve this claim at this juncture  
25 of the litigation.

26 19. Defendant allegedly failed to provide Class Members with legally compliant rest  
27 periods, or premium wages of one hour's pay in lieu thereof, as required by Labor Code §§ 210  
28 and 226.7 and Wage Order 4-2001. Plaintiffs and Class Members contend they were routinely

1 unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof,  
2 but were not paid premium wages of one hour's pay for each missed rest period. Defendant  
3 continued to assert control over Plaintiffs and Class Members by requiring, pressuring, or  
4 encouraging them to perform work tasks which could not be completed without working in lieu of  
5 taking mandatory rest periods, by requiring Plaintiffs and Class Members to keep phones on to  
6 respond to emergencies and other situations, or by denying Plaintiffs and Class Members  
7 permission to take a rest period. While a 20% rest break violation rate would yield damages of  
8 nearly \$7,265.458, Defendant adamantly opposed this claim on multiple bases, including both on  
9 the merits (because it implemented what it argued was a compliant policy together with proper  
10 rest break practices) and as to class certification (based on its argument that assessing its rest period  
11 liability to hundreds of employees would result in hundreds of mini-trials, rendering class  
12 certification unmanageable). Based on the risks of future litigation, the Parties agreed to the  
13 compromise documented in the Settlement.

14 20. Plaintiffs allege that Defendant failed to pay all minimum, regular, and overtime  
15 wages due, in violation of §§ 204, 210, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558,  
16 558(a)(1)-(3), 1194, 1194.2, 1197.1, 1198 and 1199. Plaintiffs and Class Members contend that  
17 they were required to work off-the-clock and without compensation because Defendant did not  
18 compensate them for all hours worked. For example, they allege they would be required to  
19 respond to texts or calls from Defendant outside of work hours, they were required to perform  
20 work during uncompensated meal periods, and otherwise perform work before clocking in and/or  
21 after clocking out. They also contend that Defendant pays its female employees less than its male  
22 employees, in violation of Labor Code § 1197.5(a). Plaintiffs and Class Members also contend  
23 that Defendant also engages in a practice of improper rounding. Plaintiffs further allege that  
24 Defendants had a uniform policy and practice of rounding all time entries to reflect scheduled start  
25 and end times and scheduled meal period start and end times rather than paying Plaintiffs and  
26 Class Members for all hours and minutes they actually worked. Further, Plaintiffs and Class  
27 Members contend that Defendant failed to properly compute bonuses, including but not limited  
28 to, TRN Rev Bonus ("BFC"), CCOP Bonus ("CBN"), Net Rev Bonus ("NRC"), and Quarterly

1 Bonus (“BQC”), earned by Plaintiffs and Class Members into their regular rate of pay for purposes  
2 of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay  
3 wages at the correct rates. Based on Plaintiffs’ expert’s analysis of a substantial sample of  
4 Defendant’s time and payroll data for the entire PAGA Period and extrapolated over the Class  
5 Period, these claims were simply not demonstrated. For example, the data did not show any failure  
6 to incorporate non-base hourly wages into the regular rate of pay—the pay items TRN Rev Bonus  
7 (“BFC”), CCOP Bonus (“CBN”), Net Rev Bonus (“NRC”), and Quarterly Bonus (“BQC”) were  
8 all properly incorporated and blended into the regular rate of pay. The data also showed that  
9 Defendant did not utilize rounding in its time records, so this claim would similarly not be viable.  
10 The off-the-clock claim is simply not determinable in Plaintiffs’ expert analysis because it would  
11 not be present in the time sampling given the nature of the violation. Plaintiffs believed it was  
12 unlikely that a jury would entertain an award of any substantial damages (these claims were only  
13 alleged in the *Cruz* and *Cumpian* actions—Medina did not experience these violations). Defendant  
14 adamantly denies any of these violations took place and, if they did, were strictly on an  
15 individualized basis and would necessitate a Class Member by Class Member inquiry and would  
16 bar class certification. Based on the risks of future litigation, the Parties agreed to the compromise  
17 documented in the Settlement.

18 21. Plaintiffs further allege that Plaintiffs and Class Members were required to use their  
19 cell phone, work tools, and vacuums, and incur internet expenses and vehicle expenses (including  
20 the cost of mileage when Plaintiffs and Class Members drove personal vehicles while on the job),  
21 but were not fully reimbursed by Defendant for these expenses. Further, the wage statements  
22 produced by Defendant evidence no reimbursement for these expenses, which Plaintiffs contend  
23 violates Labor Code §§ 1198, 2802, 2802(a), 2802(b), and 2802(c). However, since not all Class  
24 Members incurred these expenses to perform their job for Defendant, Plaintiffs are unable to  
25 determine the amount of recoverable expense reimbursement. Only the *Cumpian* and *Cruz* Actions  
26 alleged this claim (Plaintiff Medina did not incur out of pocket expenses). Defendant adamantly  
27 opposes this claim, and argues that this claim is not proper for certification due to the  
28 individualized inquires which it will necessitate, argues that employees were not required to incur

1 these expenses, and that even if they were, reimbursement could have been sought, and it would  
2 have been paid. Defendant contends it has fully compliant expense reimbursement policies that  
3 allow non-exempt employees to recover expense reimbursement for all reasonable and necessary  
4 expenses incurred in connection with work-related duties. Defendant also provides certain non-  
5 exempt employees with a company-issued mobile device or a monetary allowance to cover the  
6 cost of any necessary business-related expenses due to the use of their personal cell phone and/or  
7 mileage, if any. The specific allowance amount varies based on the employee's role, and  
8 Defendant allows employees to submit an expense report and receive reimbursement in the event  
9 that an employee's necessary business-related usage of their mobile device exceeds the allowance  
10 amount provided under the policy. Similarly, if a position is not eligible for the automatic  
11 allowance or a company-issued mobile device, the policy provides that other positions should use  
12 Defendant's manual expense reimbursement process, and by doing so, will receive reimbursement  
13 for such expense if "any business-related use of a personal mobile device becomes necessary. A  
14 compromise was thus necessary to resolve this claim at this juncture of the litigation.

15 22. Plaintiffs allege that Defendant failed to issue Plaintiffs and Class Members  
16 accurately itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil  
17 penalties, primarily derivative of the claims alleged above. These penalty claims would total up to  
18 approximately \$21,158,000 (without stacking duplicative PAGA penalties), but required a  
19 substantial discount for settlement purposes because they are wholly derivative of the underlying  
20 unpaid wage, meal, and rest period claims (i.e., if Plaintiffs did not prevail on their underlying  
21 unpaid wage claims, they would likely not prevail on most or many of these penalty claims), they  
22 are subject to independent defenses of their own (including proof of injury and/or willfulness), and  
23 they are subject to reduction in the Court's discretion. As stated above, Plaintiffs believed it was  
24 unlikely that the Court would entertain an award of penalties which was substantial compared to  
25 the amount of the unpaid wages sought. As such, these claims required a compromise to resolve  
26 at this juncture of the litigation.

27 23. The discount negotiated for settlement here is a reasonable compromise, particularly  
28 considering that the risk of obtaining class certification on all or any of Plaintiffs' claims involves

1 a 50% or higher hurdle, especially with respect to the unpaid wage claims, meal and rest period  
2 claims, and expense reimbursement claims, to which Defendant maintains strong arguments to  
3 defeat class certification (in addition to multiple defenses on the merits of the claims). Class  
4 certification is a substantial risk in any class action case. Here, while Plaintiffs maintain that the  
5 requirements of class certification are met, Defendant has proffered numerous arguments why  
6 class treatment is not appropriate, including, but not limited to, and the fact that individualized  
7 inquires among class members predominate over common ones and Plaintiff's claims are not  
8 typical of the putative class. If Defendant was to defeat Plaintiffs' class certification motion, there  
9 would be no class wide relief whatsoever, and most class members would likely not file individual  
10 claims.

11 24. Plaintiffs also faced the risk of a loss on the merits on their claims. It is very possible  
12 that the Court would agree with Defendant's position that its policies and practices complied with  
13 the requirements of California law or could not be certified. In such a case, the value of the  
14 majority of Plaintiffs' claims would be zero.

15 25. Plaintiffs faced the risk that they would not obtain a maximum damage/penalty award  
16 on all (or any of) their claims. For example, Plaintiffs seek discretionary penalties pursuant to the  
17 PAGA. Even if Plaintiffs did prevail on these claims, it is possible that the Court would not impose  
18 all penalties (or any at all) pursuant to its discretionary power to reduce them.

19 26. Plaintiffs were also forced to recognize that Defendant exited bankruptcy  
20 proceedings in 2020 and has been operating with substantial financial limitations since, including  
21 closing a substantial number of location, and maintaining large amounts of debt it continues to  
22 restructure. The settlement here reflects a compromise that allows it to remain operational  
23 notwithstanding the tremendous strain this settlement will place on its finances. The settlement  
24 reflects a discount in light of Defendant's inability to pay a "full value" settlement and financial  
25 constraints and ongoing restructuring risks that would materially impact collectability.

26 27. Defendant strongly contends that its policies and practices are fully compliant and do  
27 not violate any laws. It contends that it paid all wages due, properly provided for all meal and rest  
28 periods, properly reimbursed all business expenses incurred, and fully compensated their

1 employees for all time worked. It further contends that the wage statements it provides to its  
2 employees are fully compliant with California law.

3 28. When the costs and risks of non-certification and loss on the merits are considered,  
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 29. The settlement for each Class Member is fair, reasonable and adequate, given the  
6 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such  
7 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the  
8 Action.

9 **Class Certification Requirements:**

10 30. To date, no class has been certified. The Stipulation of Settlement contains a  
11 provision pursuant to which we stipulate to the Court's provisional certification of the  
12 approximately 14,119-member Settlement Class, but do so for purposes of this settlement only.

13 31. In this case, the Class Members are identifiable from Defendant's employment and  
14 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.  
15 According to Defendant's records, the Class comprises approximately 14,119 employees.

16 32. The Class Members' claims all stem from a common source: members of the  
17 Settlement Class allege that Defendant violated the same Labor Code provisions in connection  
18 with their employment. All Class Members seek the same relief under the same California laws  
19 (related to unpaid wages due, unpaid meal and rest period premiums, inaccurate or incomplete  
20 wage statements, failure to timely pay wages due during employment and upon separation, failure  
21 to reimburse expenses, and derivative claims). Under these circumstances, the commonality  
22 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.

23 33. In this case, named Plaintiffs and proposed Class Representatives Yulissa Medina,  
24 Bruno Cruz, Desiree Cumpian, and Evelyn Pasquel-Herrera are former non-exempt employees  
25 who worked for Defendant in the State of California during the Class Period. They collectively  
26 contend that Defendant failed to pay all minimum, regular, and overtime wages due, failed to  
27 provide meal and rest periods, failed to comply with itemized employee wage statement  
28 provisions, failed to reimburse all business-related expenses, failed to pay sick pay wages, failed

1 to pay vacation wages, and failed to timely pay wages during employment and at the separation of  
2 employment, in violation of Labor Code §§ 201, 201.3, 202, 204, 210, 218.5, 218.6, 226(a),  
3 226(e)(1), 226(e)(2)(b)(iii), 226(h), 226.3, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558,  
4 1174, 1174.5, 1194, 1197.1, 1194.5, 1197, 1197.1, 1197.5, 1198 , 1198.5, 1199, 2926, and 2927  
5 among other Labor Code provisions. They have the same claims as those that the members of the  
6 Settlement Class would reasonably be expected to bring based on the course of conduct alleged  
7 herein.

8 34. Plaintiffs have also demonstrated that they will aggressively and competently assert  
9 the interests of the proposed Settlement Class; they have taken an active role in this litigation and  
10 have no apparent conflicts with other Class Members.

11 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

12 35. Concurrently with the filing of this Motion, my office is transmitting the Settlement  
13 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §  
14 2699(1)(2). Evidence of submission is attached hereto as **Exhibit C**.

15 I declare, under penalty of perjury, under the laws of the State of California, that the  
16 foregoing is true and correct. Executed on February 9, 2026 at Westlake Village, California.

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19 EVAN S. GAINES  
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# **EXHIBIT A**

*Adams v. Sam's West, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1403987

*Amenhotep v. Google, Inc.*, Santa Clara County Superior Court, Case No. 17CV311528

*Anaya v. Progressive Logistics Services, LLC*, Riverside County Superior Court, Case No. RIC1308270

*Aranda, et al. v. Universal Lumpers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

*Armendariz v. Integrated Pain Management Medical Group, Inc.*, Kern County Superior Court, Case No. BCV-19-100267-SDS

*Barrow, et al. v. Desmond Foods, L.P.*, Sacramento County Superior Court, Case No. 34-2015-00187227

*Bosser v. Hooked on Solar*, Yolo County Superior Court, Case No. CVCV-2016-876

*Bourland v. Horizon Personnel Services, Inc.*, Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

*Bowen v. IMI Material Handling Logistics, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

*Branson v. Mladen Buntich Construction*, San Bernardino County Superior Court, Case No. CIVDS1609129

*Calhoun v. Celadon Trucking Services, Inc.*, USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

*Carlisle, et al. v. Professional Technical Security Services, Inc.*, Case No. CGC18569791

*Carrillo v. Bimbo Bakeries, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1606813

*Cheifer, et al. v. WHGM, Inc.*, Los Angeles County Superior Court, Case No. LC104900

*Contreras v. Osmose Utilities Services, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1513998

*Contreras v. West American Service Corporation*, Kings County Superior Court, Case No. 14C0280

*Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf*, San Bernardino County Superior Court, Case No. CIVDS1719283

*Cunningham v. Performance Contracting, Inc.*, Contra Costa County Superior Court, Case No. C16-02157

*Dabney v. Coneybeare, LLC, et al.*, Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

*Dabney, et al. v. Panera, LLC.*, San Bernardino County Superior Court, Case No. CIVDS1516030

*Duran v. J.S. Homen Trucking, Inc.*, Imperial County Superior Court, Case No. ECU004017

*Esakhani v. Central Valley Gaming*, Stanislaus County Superior Court, Case No. 2020667

*Espinosa v. Taltech Construction, et al.*, Los Angeles County Superior Court, Case No. BC590176

*Espinosa v. Bodycote Thermal Processing, Inc.*, Los Angeles County Superior Court, Case No. BC501617

*Espinoza v. Pabco Building Products, LLC*, Los Angeles County Superior Court, Case No. VC065660

*Friel v. Midwest Construction Services, Inc.*, San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

*Gagnon v. Banc of California*, Contra Costa County Superior Court, Case No. C 15-00196

*Geer v. Applied Aerospace Structures Corp.*, San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

*Getz v. California Cinema Investments, Inc.*, Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

*Guerrero v. Main Electric Supply Company LLC*, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

*Gutierrez v. Asset Management Specialists, Inc.*, Fresno County Superior Court, Case No. 12CECG03577

*Hurtado v. Rush Truck Centers of California, Inc.*, Los Angeles County Superior Court, Case No. BC427672

*Ibrihim v. Imperfect Foods, Inc.*, San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

*Jenkins v. Sedgwick Claims Management Services, Inc.*, Los Angeles Superior Court, Case No. LC101648

*Job v. California Security Services*, Yuba County Superior Court, Case No. 14-0000820

*Kunsman v. Punch Bowl Sacramento, LLC, et al.*, Sacramento County Superior Court, Case No. 34-2018-00243175

*LaFear v. Encore Education Corporation*, San Bernardino County Superior Court, Case No. CIVDS1802251

*Lanzarin v. AWI Management Corporation*, Solano County Superior Court, Case No. FCS041809

*Lewis v. American Casino & Entertainment Properties LLC*, San Bernardino County Superior Court, Case No. CIVDS1719094

*Leon v. Piercing West Inc.*, Los Angeles County Superior Court, Case No. BC656874

*Lingad v. Top Quality Manufacturing, LLC*, Los Angeles County Superior Court, Case No. 24STCV03079

*Lopez v. Go Green Auto Spa Franchise, Inc., et al.*, Los Angeles County Superior Court, Case No. BC 562212

*Macias v. American Tire Distributors, Inc.*, Kern County Superior Court, Case No. BCV-18-101586

*Mayne v. John Muir Behavioral Health*, Contra Costa County Superior Court, Case No. C17-00998

*Molina v. Berkshire Hathaway Energy Company, et al.*, Imperial County Superior Court, Case No. ECU000522

*Myles v. Central Transport LLC*, San Bernardino County Superior Court, Case No. CIVDS1401434

*Ochoa v Agusa*, Kings County Superior Court, Case No. 24CU0042

*Osier v. Heritage Bag Company, et al.*, Imperial County Superior Court, Case No. ECU003651

*Ponce, et al. v. Express Dry, Inc.*, San Diego County Superior Court, Case No. 37-2024-00022921-CU-OE-CTL

*Rambeau v. C.C.M. Corporation, et al.*, Sacramento County Court, Case No. 34-2018-00244842

*Rankins v. Roman Empire Living Skills, Inc.*, Los Angeles County Superior Court, Case No. BC713399

*Richard v. A-Para Transit Corp.*, Alameda County Superior Court, Case No. HG17870373

*Roden v. Service Champions*, San Bernardino County Superior Court, Case No. CIVDS1613183

*Sebrell v. Pomeroy IT Solutions*, San Bernardino County Superior Court, Case No. CIVDS1721560

*Seymour v. Quest Service Group, LLC*, Sacramento County Superior Court, Case No. 34-2017-00206917

*Silva v. Driveline Retail Merchandising, Inc.*, Imperial County Superior Court, Case No. ECU003111

*Smith v. Steelcase, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1725850

*Sohal v. Foster Poultry Farms*, Stanislaus County Superior Court, Case No. 2026605

*Solorzano v. FDS Manufacturing Corporation*, Los Angeles County Superior Court, Case No. BC542532

*Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc.*, San Bernardino County Superior Court, Case No. CIVDS1712220

*Taylor v. A Plus Tree, LLC*, Solano County Superior Court, Case No. CU24-03172

*Thompson v. Sidhu Truck Line, Inc.*, Kern County Superior Court, Case No. BCV-15-101308-DRL

*Tripp v. California Guest Services, Inc.*, Plumas County Superior Court, Case No. CV16-00036

*Valdez v. Diamond Landscaping, Inc.*, Los Angeles County Superior Court, Case No. BC497097

*Valencia v. American Team Managers, Inc.*, Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

*Warner v. Waterdrops Express Car Wash, LLC*, Tulare County Superior Court, Case No. 265708

*White v. Sally Beauty Supply, LLC*, Imperial County Superior Court, Case No. ECU08177

*Winningham v. Storer Transportation Service*, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

*Woods, et al. v. F&B Innovations, LLC*, San Bernardino County Superior Court, Case No. CIVDS1717765

*Wright v. Social Vocational Services, Inc.*, Kern County Superior Court, Case No. BCV-15-101264

# **EXHIBIT B**

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Attorneys For Defendant  
24 HOUR FITNESS USA, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

YULISSA MEDINA, on behalf of herself and  
“aggrieved” employees pursuant to Labor Code  
section 2698, et seq.,

Plaintiff,

v.

24 HOUR FITNESS USA, LLC., a California  
limited liability company; and DOES 1-10,  
inclusive,

Defendant.

Case No. 24CV089740

**SETTLEMENT OF CLASS ACTION  
AND PAGA REPRESENTATIVE  
ACTION**

Judge: Hon. Mark Fickes  
Dept.: 518

Complaint Filed: August 30, 2024  
Trial Date: None Set

This Settlement is made and entered into, as of the date set forth below, between Plaintiffs Yulissa Medina (“Medina”), Desiree Cumpian (“Cumpian”), Evelyn Pasquel-Herrera (“Pasquel-Herrera”), and Bruno Cruz (“Cruz”), on behalf of themselves, as representatives of the putative Class described herein, and as PAGA representatives for the State of California (collectively “Plaintiffs”), and Defendant 24 Hour Fitness USA, LLC (“Defendant”)(together, the “Parties”).

**1. THE CONDITIONAL NATURE OF THIS SETTLEMENT**

1.1 This Settlement and all associated exhibits or attachments are made for the sole purpose of settling the Action and the claims alleged by Plaintiffs. This Settlement is made in compromise of disputed claims. Because this Action is being settled as a class action and PAGA representative action, this Settlement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional basis only. If the Court does not enter the Order of Final Approval, the proposed Judgment does not become a Final Judgment for any reason, and/or the Effective Date does not occur, this Settlement shall be deemed null and void *ab initio*; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Settlement and associated pleadings shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable.

1.2 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief, as well as denies the class and representative action allegations asserted in the *Medina* Action, as those terms are defined below. Defendant has agreed to resolve the *Medina* Action via this Settlement, but to the extent this Settlement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the *Medina* Action upon all procedural, merit-based, and factual grounds, including, without limitation, the ability to challenge class action and representative action treatment on any grounds, as well as asserting any and all other privileges and potential defenses. Plaintiffs and Class Counsel (as defined below) agree that Defendant retains and reserves these rights, and Plaintiffs and Class

Counsel agree not to argue or present any argument, and hereby waive any argument, that based on this Settlement, Defendant cannot contest the ability of Plaintiffs' claims to proceed on a class basis, and contest class certification and/or representative action treatment on any grounds whatsoever or assert any and all other privileges or potential defenses if the *Medina* Action were to proceed.

## 2. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

2.1 "Action" means the action currently entitled, *Yulissa Medina, on behalf of herself and "aggrieved" employees pursuant to Labor Code section 2698, et seq. v. 24 Hour Fitness USA, LLC, et al.*, Alameda Superior Court Case No. 24CV089740, that will be amended to include Desiree Cumpian, Evelyn Pasquel-Herrera, and Bruno Cruz as named plaintiffs and amended to include the substantive grounds for the PAGA and class claims alleged in the *Cumpian et al.* and *Cruz* Actions and respective LWDA letters. Following the amendment and Order Granting Preliminary Approval of the Settlement in the *Medina* Action, Cumpian, Pasquel-Herrera, and Cruz will dismiss the *Cumpian* and *Cruz* matters without prejudice, so that only the *Medina* Action remains and proceeds for approval by the Court.

2.2 "Class" or "Class Members" means all hourly or non-exempt current and former employees employed by Defendant in the State of California during the Class Period.

2.3 "Class Counsel" means the attorneys of Gaines Law Corporation, AK Employment Law Office, PC, Wilshire Law Firm, and D. Law, Inc.

2.4 "Class Period" means the time period from May 2, 2021, through and including July 1, 2025.

2.5 "Class Representatives" or "Plaintiffs" means Plaintiffs Yulissa Medina, Desiree Cumpian, Evelyn Pasquel-Herrera and Bruno Cruz.

2.6 "Class Representatives' Released Claims" means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the 24 Hour Fitness Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or

1 other source of law or contract, whether known or unknown, and whether anticipated or  
2 unanticipated, including all unknown claims covered by California Civil Code Section 1542, as  
3 quoted below, by the Class Representatives, arising at any time up to and including the date on  
4 which the Court enters the Order of Final Approval, for any type of relief, including without  
5 limitation claims for wages, premium and other forms of pay, unpaid/unreimbursed costs,  
6 penalties (including waiting time penalties), discrimination, harassment, retaliation, breach of  
7 contract, wrongful termination, failure to accommodate, defamation, libel, invasion of privacy,  
8 emotional distress, general damages, compensatory damages, liquidated damages, punitive  
9 damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable  
10 and declaratory relief. The Class Representatives' Released Claims also include, but are not  
11 limited to, the Released Class Claims and the Released PAGA Claims as well as any other claims  
12 under any provision of the Fair Labor Standards Act, the California Labor Code<sup>1</sup>, any applicable  
13 California Industrial Welfare Commission Wage Orders, any city or county Living Wage  
14 Ordinances, and claims under state or federal discrimination statutes, including, without  
15 limitation, the California Government Code; the Fair Employment and Housing Act; the Unruh  
16 Civil Rights Act, California Civil Code; the California Constitution; the California Business and  
17 Professions Code, including but not limited to Sections 17200 *et seq.*; the United States  
18 Constitution; the Age Discrimination in Employment Act and the Older Workers Benefit  
19 Protection Act; the Uniformed Services Employment and Reemployment Rights Act, Title VII of  
20 the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Civil Rights Act of 1991; the Family  
21 and Medical Leave Act, to the extent not prohibited by law; the Americans with Disabilities Act,  
22 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C.  
23 § 1001 *et seq.*; the Equal Pay Act; the Fair Credit Reporting Act; the Employee Retirement  
24 Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the  
25 Sarbanes-Oxley Act of 2002; the Fair Labor Standards Act; and all of their implementing  
26 regulations and interpretive guidelines; any and all claims for monetary recovery and personal or  
27 individual relief, except as prohibited by law; and any premiums, penalties, interest, punitive

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<sup>1</sup> References to the "Labor Code" herein shall be to the California Labor Code.

1 damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting based on any of  
2 the foregoing claims. For the avoidance of doubt, this is a complete and general release to the  
3 maximum extent permitted by law. Notwithstanding the foregoing, the release of the Class  
4 Representatives' Released Claims do not include (i) any claim or right for workers' compensation  
5 benefits; or (ii) any claim or right that is not waivable as a matter of law.

6 2.7 "Court" means the Superior Court of the State of California, County of Alameda.

7 2.8 "Database" shall mean the data file maintained by the Settlement Administrator in  
8 electronic form, that will include a list of each Class Member, including each person's name, last  
9 known address, last known telephone number, social security number, and number of Eligible  
10 Workweeks and Eligible Pay Periods.

11 2.9 "Defendant's Counsel" means the attorneys of Morgan, Lewis & Bockius LLP.

12 2.10 "Effective Date" means the date by which both of the following have occurred:  
13 (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and  
14 (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if  
15 no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if  
16 one or more Participating Class Members objects to the Settlement, the day after the deadline for  
17 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the  
18 day after the appellate court affirms the Judgment and issues a remittitur.

19 2.11 "Eligible Workweek" shall mean a week during the Class Period in which a Class  
20 Member performed work within the State of California.

21 2.12 "Eligible Pay Period" shall mean a pay period during the PAGA Period in which a  
22 PAGA Member performed work within the State of California.

23 2.13 "Final Approval Date" means the date on which the Court enters the Order of  
24 Final Approval.

25 2.14 "Final Approval Hearing" means a hearing set by the Court, to take place on a date  
26 established by the Court, for the purpose of (i) determining and approving the fairness, adequacy,  
27 and reasonableness of the Settlement pursuant to class action procedures and requirements;  
28 (ii) determining and approving the amount of the award of attorneys' fees and costs to Class

1 Counsel; (iii) determining and approving the amount payable to the Labor Workforce  
2 Development Agency of the State of California; (iv) determining the amounts of the Service  
3 Payments to the Class Representatives; and (v) entering the Judgment.

4 2.15 “Final Judgment” means the latest of the following dates: (i) if no Class Member  
5 files an objection to the Settlement, then the date the Court enters the Judgment and an Order of  
6 Final Approval of the Settlement; (ii) if a Class Member files an objection to the Settlement, then  
7 after the applicable date for seeking appellate review of the Court’s Order of Final Approval of  
8 the Settlement has passed, assuming no appeal or request for review is filed; or (iii) if an appeal is  
9 filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for  
10 writ of certiorari) resulting in the final judicial approval of the Settlement.

11 2.16 “24 Hour Fitness Releasees” means 24 Hour Fitness USA, LLC, and all affiliated  
12 parties and entities (including past and present affiliates, parents, subsidiaries, related entities,  
13 including, but not limited to, 24 Hour Fitness), and each of their respective predecessors, related  
14 entities, owners, members, successors, shareholders, divisions, and each of these entities’  
15 respective past and present directors, officers, employees, partners, shareholders, members,  
16 agents, insurers, and representatives.

17 2.17 “Individual PAGA Payment” means the individual amounts paid from the PAGA  
18 Payment to the individual PAGA Members for settlement of claims for civil penalties under the  
19 PAGA.

20 2.18 “Individual Settlement Payment” means the settlement amount due each  
21 Settlement Class Member from the Settlement Pool.

22 2.19 “Judgment” means the judgment to be executed and filed by the Court pursuant to  
23 this Settlement following the Final Approval Hearing. Notice of the Judgment will be given to  
24 the Class via the Settlement Administrator’s website.

25 2.20 “LWDA” means the California Labor and Workforce Development Agency.

26 2.21 “LWDA Payment” means the payment to the LWDA from the PAGA Payment for  
27 settlement of claims for civil penalties under the PAGA.

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1           2.22   “Maximum Settlement Amount” means the total maximum amount payable under  
2 the terms of this Agreement by Defendant, which is the total gross sum of Three Million Twenty-  
3 Six Thousand Dollars and Zero Cents (\$3,026,000.00). The Maximum Settlement Amount shall  
4 not include the employer’s share of employer-side payroll taxes, which Defendant shall pay with  
5 respect to any amounts paid to Settlement Class Members that are attributable to the resolution of  
6 wage claims as described herein. The Maximum Settlement Amount shall be used to pay, as  
7 approved by the Court, Class Counsel’s attorneys’ fees and costs, Service Payments to Class  
8 Representatives, Settlement Administration Costs; the PAGA Payment to the LWDA and the  
9 PAGA Members, and the Individual Settlement Payments to the Settlement Class Members. The  
10 24 Hour Fitness Releasees shall not be required to pay anything above or beyond the Maximum  
11 Settlement Amount, under any circumstance, as a result of this Settlement, except Defendant’s  
12 obligation to pay the employer’s share of payroll taxes with respect to the wage portions of  
13 Settlement Class Members’ Individual Settlement Payments, and except as the Maximum  
14 Settlement Amount may be increased pursuant to the express terms of section 7.2.2.

15           2.23   “Notice of Class Action Settlement” means the document provided to Class  
16 Members to notify them of the settlement, substantially in the form attached as **Exhibit 1**, subject  
17 to Court approval.

18           2.24   “Operative Complaint” shall mean the proposed First Amended Complaint,  
19 attached hereto as **Exhibit 2**, which shall include Desiree Cumpian, Evelyn Pasquel-Herrera, and  
20 Bruno Cruz as named Plaintiffs and include the substantive class action and PAGA claims and  
21 pertinent facts alleged in the *Cumpian* Action and *Cruz* Action.

22           2.25   “Order of Final Approval” means the order entered by the Court granting final  
23 approval of the Parties’ Settlement and ordering the funding of the Maximum Settlement  
24 Amount.

25           2.26   “*Cumpian* Action” means the action entitled *Desiree Cumpian and Evelyn*  
26 *Pasquel-Herrera v. 24 Hour Fitness, USA, LLC*, Los Angeles Superior Court Case No.  
27 24STCV27774.

28    ///

1           2.27   “Cruz Action” means the action entitled *Bruno Cruz, on behalf of himself and*  
2 *others similarly situated, v. 24 Hour Fitness USA, LLC, et al.*, San Bernardino Superior Court  
3 Case No. CIVSB2433321.

4           2.28   “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

5           2.29   “PAGA Members” means all Settlement Class Members employed by Defendant  
6 at any time during the PAGA Settlement Period.

7           2.30   “PAGA Payment” means the payment in settlement of all claims for PAGA  
8 penalties, 75% of which will be distributed as the LWDA Payment to the LWDA and 25% of  
9 which will be distributed as Individual PAGA Payments to the PAGA Members.

10          2.31   “PAGA Period” means the time period from June 26, 2023 through and including  
11 July 1, 2025.

12          2.32   “Parties” means Plaintiffs and Defendant, collectively.

13          2.33   “Preliminary Approval Date” means the date the Court enters the Preliminary  
14 Approval Order.

15          2.34   “Preliminary Approval Order” means the order from the Court granting  
16 preliminary approval of the Settlement and providing for notice to the Class, an opportunity to opt  
17 out of the Settlement Class, an opportunity to submit timely objections to the Settlement, and  
18 setting the Final Approval Hearing.

19          2.35   “Qualified Settlement Fund” means the account or trust established by the  
20 Settlement Administrator to handle and administer the funding and payments related to the  
21 Settlement.

22          2.36   “Released Class Claims” shall mean all claims, rights, demands, liabilities, and  
23 causes of action asserted or that reasonably could have been asserted in the Operative Complaint,  
24 and any additional amendments thereto, which includes the claims made in the *Cumpian* Action  
25 and *Cruz* Action, based on facts and/or allegations pled therein, arising during the Class Period.  
26 Released Class Claims include, but not are not limited to, claims for failure to provide compliant  
27 meal periods and associated premium pay, failure to provide compliant rest periods and  
28 associated premium pay, failure to pay wages, including minimum wages, regular wages, straight

1 time wages, overtime wages, double time wages, wages for vested vacation time, sick pay, and  
2 premium pay, unequal pay, including under the California Equal Pay Act, failure to include all  
3 remuneration into the regular rate of pay, failure to provide accurate itemized wage statements,  
4 failure to timely pay wages during employment, failure to timely pay wages upon termination of  
5 employment, failure to maintain and/or keep requisite payroll records, failure to reimburse for  
6 necessary business-related expenses, unfair or unlawful business practices pursuant to California  
7 Business and Professions Code §§ 17200, *et seq.* and 17203, and any violation of the California  
8 Labor Code, including but not limited to, California Labor Code §§ 90.5(a), 201, 201.3, 202, 203,  
9 204, 210, 218.5, 218.6, 226, 226(a), 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(9), 226(e), 226(e)(1),  
10 226(e)(2)(B)(iii), 226(h), 226.2, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 246(1), 246(i), 510, 512,  
11 512(a), 558, 558.1, 558(a)(1)–(3), 1174, 1174.5, 1182.12, 1185, 1194, 1194(a), 1194.2, 1197,  
12 1197.1, 1197.5(a), 1198, 1198.5, 1199, 2800 2802, 2802(a), 2802(b), 2802(c), 2926, and 2927,  
13 and any violation of the Industrial Welfare Wage Orders, including, but not limited to, Industrial  
14 Welfare Commission Wage Order 2-2001, any violations of local, city, and/or county laws, , and  
15 all claims for interest, penalties, attorneys’ fees, costs and any other monetary relief based upon  
16 the claims described above and including, but not limited to, pursuant to Labor Code §§ 210,  
17 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil Code §§ 3287(b) and 3289, costs,  
18 attorneys’ fees, injunctive relief, declaratory relief, or accounting that are based on or related to  
19 the alleged Labor Code and Business & Professions Code violations referenced above, that  
20 accrued or accrue through the Class Period.

21       2.37 “Released PAGA Claims” means all claims for civil penalties under PAGA that  
22 have been asserted or that reasonably could have been asserted in the Operative Complaint,  
23 Medina’s LWDA Notice letters, and any amendments thereto, as well as the LWDA Notice  
24 letters that the plaintiffs in the *Cumpian* and *Cruz* Actions sent to the LWDA, and any  
25 amendments thereto, based on the facts and/or allegations pled therein, arising during the PAGA  
26 Period. Released PAGA Claims include, but are not limited to, claims for failure to provide  
27 compliant meal periods and associated premium pay, failure to provide compliant rest periods and  
28 associated premium pay, failure to pay wages, including minimum wages, regular wages, straight

1 time wages, overtime wages, double time wages, wages for vested vacation time, sick pay, and  
2 premium pay, unequal pay, including under the California Equal Pay Act, failure to include all  
3 remuneration into the regular rate of pay, failure to provide accurate itemized wage statements,  
4 failure to timely pay wages during employment, failure to timely pay wages upon termination of  
5 employment, failure to maintain and/or keep requisite payroll records, failure to reimburse for  
6 necessary business-related expenses, unfair or unlawful business practices pursuant to California  
7 Business and Professions Code §§ 17200, et seq. and 17203, and any violation of the California  
8 Labor Code, including but not limited to, California Labor Code sections 90.5(a), 201, 201.3,  
9 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(9), 226(e),  
10 226(e)(1), 226(e)(2)(B)(iii), 226(h), 226.2, 226.3, 226.7, 227.3, 245 et seq., 246, 246(1), 246(i),  
11 510, 512, 512(a), 558, 558.1, 558(a)(1)–(3), 1174, 1174.5, 1182.12, 1185, 1194, 1194(a), 1194.2,  
12 1197, 1197.1, 1197.5(a), 1198, 1198.5, 1199, 2800 2802, 2802(a), 2802(b), 2802(c), 2926, and  
13 2927, and any violation of the Industrial Welfare Wage Orders, including, but not limited to,  
14 Industrial Welfare Commission Wage Order 2-2001, and all claims for interest, penalties,  
15 attorneys’ fees, costs and any other monetary relief based upon the claims described above.

16 2.38 “Service Payments” means the amounts approved by the Court to be paid to the  
17 Class Representatives and payable from the Maximum Settlement Amount, in recognition of their  
18 efforts in coming forward as Class Representatives and as consideration for a full, general, and  
19 comprehensive release of the Class Representatives’ Released Claims, which shall be in addition  
20 to their portion of the Settlement Pool.

21 2.39 “Settlement” shall mean this written Settlement, signed by the Class  
22 Representatives, Defendant, and counsel for all of the Parties.

23 2.40 “Settlement Administration Costs” means the costs payable from the Maximum  
24 Settlement Amount to the Settlement Administrator for administering this Settlement in  
25 accordance with the Settlement Administrator’s responsibilities outlined in this Settlement  
26 Agreement.

27 2.41 “Settlement Administrator” means an experienced and reputable third-party  
28 administrator mutually agreed upon by the Parties who shall be responsible for the administration

of the Settlement, distribution of any amounts owed under this Settlement, payment of applicable taxes associated with withholdings and deductions, and matters necessarily related thereto, pursuant to the terms of this Settlement, and subject to appointment by the Court. The Parties have selected CPT Group as Settlement Administrator.

2.42 “Settlement Class” or “Settlement Class Members” mean all Class Members who do not timely submit a signed and valid Opt-Out Request to the Settlement Administrator.

2.43 “Settlement Pool” is the portion of the Maximum Settlement Amount available for distribution to the Settlement Class, which shall equal the Maximum Settlement Amount minus the PAGA Payment, Court-approved attorneys’ fees and costs, Settlement Administration Costs, and the Court-approved Class Representative Service Payments.

### 3. DESCRIPTION OF THE LITIGATION

3.1 On June 17, 2024, Plaintiff Yulissa Medina filed a Representative Action Complaint for civil penalties pursuant to PAGA against Defendant in the California Superior Court, County of Alameda, captioned *Yulissa Medina v. 24 Hour Fitness USA, LLC (Alameda County Superior Court, Case No. 24CV089740)*. The *Medina* Action seeks civil penalties under PAGA based on the following alleged Labor Code violations: (1) failure to provide compliant meal breaks and pay premium wages for non-compliant meal breaks; (2) failure to provide compliant rest breaks and pay premium wages for non-compliant rest breaks; (3) failure to provide accurate, itemized wage statements; and (4) failure to pay wages due at separation. Plaintiff Medina seeks civil penalties on behalf of a group of allegedly aggrieved employees defined as non-exempt California employees who currently work or formerly worked for Defendant. On July 9, 2025, Plaintiff Medina served an Amended LWDA Notice that includes the factual allegations, causes of action, Labor Code violations, and applicable theories of liability alleged in the operative complaints and LWDA letters in the *Cumpian* Action and *Cruz* Action.

3.2 On October 23, 2024, Desiree Cumpian and Evelyn Pasquel-Herrera (collectively, the *Cumpian* plaintiffs”) filed a Class Action Complaint against Defendant 24 Hour Fitness USA, LLC in the California Superior Court, County of Los Angeles, captioned *Desiree Cumpian and Evelyn Pasquel-Herrera v. 24 Hour Fitness, USA, LLC*, Los Angeles County Superior Court,

1 24STCV27774. The Class Action Complaint in *Cumpian* alleges class claims on behalf of all of  
2 Defendant's current and former non-exempt employees in California based on: (1) failure to pay  
3 minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal  
4 periods; (4) failure to authorize and permit rest periods; (5) failure to pay final wages at  
5 termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify  
6 employees for expenditures; (8) violation of California Equal Pay Act; and (9) unfair business  
7 practices. On November 6, 2024, the *Cumpian* plaintiffs served a LWDA Notice with the  
8 LWDA. On January 21, 2025, the *Cumpian* plaintiffs filed a First Amended Class Action  
9 Complaint that adds a cause of action for civil penalties under PAGA on behalf of themselves, the  
10 state of California, and Defendant's non-exempt employees in California based on the same  
11 underlying alleged Labor Code violations.

12 3.3 On November 4, 2024, Bruno Cruz filed a Class Action Complaint against  
13 Defendant 24 Hour Fitness USA, LLC in the California Superior Court, County of San  
14 Bernardino, captioned *Bruno Cruz v. 24 Hour Fitness, USA, LLC, San Bernardino County*  
15 *Superior Court, CIVSB2433321*. The Class Action Complaint in *Cruz* alleges class claims on  
16 behalf of all of Defendant's current and former non-exempt employees in California based on:  
17 (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) non-compliant  
18 meal-breaks; (4) non-compliant rest-breaks; (5) failure to pay vacation wages; (6) failure to  
19 provide paid sick time; (7) failure to reimburse for necessary expenditures; (8) failure to provide  
20 accurate itemized wage statements; (9) failure to keep required payroll records; (10) failure to pay  
21 final wages at termination; (11) and violation of Business and Professions Code. On November 4,  
22 2024, Cruz served a PAGA Notice with the LWDA. On January 8, 2025, the plaintiff in *Cruz*  
23 filed a First Amended Class Action Complaint that adds a cause of action for civil penalties  
24 pursuant to the PAGA on behalf of himself, the state of California, and Defendant's non-exempt  
25 employees in California based on the same underlying alleged Labor Code violations.

26 3.4 Through substantial and extensive informal discovery, Defendant provided  
27 Medina's counsel with personnel documents and records, timekeeping and payroll data, and  
28 written policies reflecting and relating to employees' time worked, time recording, overtime, rates

1 of pay, workweeks, wages paid, and meal and rest breaks, expense reimbursement during the  
2 Class Period, among other records.

3 3.5 The Parties had numerous discussions and informal negotiations regarding the  
4 claims and defenses in the cases. On May 2, 2025, Medina and Defendant attended a full-day  
5 mediation conducted by an experienced neutral wage and hour mediator, Michael Ludwig, Esq.  
6 Following the mediation, each side, represented by its respective counsel, was able to agree to  
7 settle the Action based upon a mediator's proposal which was memorialized in the form of a  
8 Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of  
9 Understanding and any other agreements, understandings, or representations between the Parties  
10 regarding the subjects addressed herein. All of the terms of the settlement are contained within  
11 this Settlement Agreement. At all times, the Parties' settlement negotiations have been non-  
12 collusive, adversarial, and at arm's length.

13 3.6 Discussions between counsel for the Parties, informal discovery, as well as the  
14 respective investigation and evaluation of Plaintiffs' claims by the Parties, have permitted each  
15 side to assess the relative merits of the claims and the defenses to those claims. The Parties agree  
16 that the above-described investigation and evaluation, as well as informal discovery and the  
17 information exchanged during the settlement negotiations, are sufficient to assess the merits of  
18 the respective Parties' positions and to compromise the issues on a fair and equitable basis.

#### 19 4. **CONDITIONS PRECEDENT TO SETTLEMENT TAKING EFFECT**

20 4.1 The Parties enter into this Settlement on a conditional basis. This Settlement will  
21 become effective only upon the occurrence of all of the following events:

22 4.1.1 Plaintiff Medina will amend her currently pending Complaint to include and  
23 add causes of action alleged in the *Cruz* and *Cumpian* Actions, including causes of action for the  
24 alleged failure to indemnify employee for expenditures under Labor Code § 2802, for the alleged  
25 violation of the California Equal Pay Act § 1197.5, for the alleged failure to provide pay  
26 minimum, straight time, and overtime and double time wages under Labor Code §§ 204, 1194,  
27 1194.2, 1197, 1197.1, 1198, for the alleged failure to provide paid sick leave under Labor Code  
28 §§ 245, 246, for the alleged failure to pay vacation wages under Labor Code § 227.3, for the

1 alleged failure to keep required payroll records under Labor Code §§ 1174, 1174.5, and for the  
2 alleged unfair business practices under Cal. Bus. & Prof. Code §§ 17200, *et seq.*; to include and  
3 add Plaintiffs Desiree Cumpian, Evelyn Pasquel-Herrera, and Bruno Cruz as named Plaintiffs;  
4 and to include and add a PAGA cause of action asserting all of the allegations and Labor Code  
5 violations in the *Cumpian* and *Cruz* Actions and their respective LWDA Notice letters, with this  
6 First Amended Complaint becoming the Operative Complaint that will be the pleading through  
7 which the Parties effectuate the Settlement with the Court.;

8 4.1.2 Following the filing of the First Amended Complaint and Order Granting  
9 Preliminary Approval of the Settlement in *Medina*, the *Cumpian* Plaintiffs and *Cruz* Plaintiff  
10 immediately will dismiss without prejudice the lawsuits that they have filed;

11 4.1.3 The Court enters the Preliminary Approval Order consistent with all of the  
12 material terms of the Settlement;

13 4.1.4 The Court enters the Order of Final Approval consistent with all of the  
14 material terms of the Settlement; and

15 4.1.5 The Effective Date occurs, and any challenge to the Settlement, whether by  
16 objection or appeal, is resolved in favor of enforcement of the Settlement.

17 4.2 Unless the Court orders otherwise or as agreed to in writing by the Parties, this  
18 Settlement shall be deemed null and void *ab initio* upon the failure of any one or more of the five  
19 (5) conditions identified *supra* in Section 4.1 to occur.

## 20 5. **BENEFITS OF THE SETTLEMENT TO THE PARTIES**

21 5.1 Based on their own independent investigations and evaluations, Class Counsel is of  
22 the opinion that the Settlement with Defendant for the consideration and terms set forth herein,  
23 considering the alleged representative and class claims, and the risk of loss, is fair, reasonable, and  
24 adequate in light of all known facts and circumstances, and is in the best interests of the Class and  
25 the State of California. Class Counsel is also of the opinion that the total consideration and payment  
26 set forth in this Settlement is adequate in light of the uncertainties surrounding the risk of further  
27 litigation, that the PAGA claim could be deemed unmanageable, and the defenses that Defendant  
28 has asserted and/or could assert as to the substantive merits of the claims.

1           5.2     Class Counsel has weighed the monetary benefit under the Settlement to the  
2 Settlement Class against the expenses and length of continued proceedings that would be necessary  
3 to prosecute the Action against Defendant through manageability motions, summary judgment, trial  
4 and possible appeals. Class Counsel has also considered the uncertain outcome and risk of any  
5 litigation, especially in complex actions such as class and representative actions, as well as the  
6 difficulties and delay inherent in such litigation. As a result, Class Counsel has determined that the  
7 settlement set forth in this Settlement is in the best interests of the Class.

8       **6.       DEFENDANT'S POSITION**

9           6.1     Defendant and the 24 Hour Fitness Releasees specifically and generally deny any  
10 and all liability or wrongdoing of any sort with regard to the claims alleged, make no concessions  
11 or admissions of liability of any sort, and contend that for any purpose other than Settlement, the  
12 Action is not appropriate for class action or PAGA representative action treatment. Nonetheless,  
13 Defendant has concluded that further conduct of the Action would be protracted, distracting and  
14 expensive, and that it is desirable that the Action be fully and finally settled in the manner and  
15 upon the terms and conditions set forth in this Settlement. Defendant has also considered the  
16 uncertainty and risks inherent in any litigation. Defendant has therefore determined that it is  
17 desirable and beneficial to it to settle the Action in the manner and upon the terms and conditions  
18 set forth in this Settlement.

19          6.2     Neither this Settlement, nor any document referred to in it, nor any actions taken  
20 pursuant to this Settlement, is or should be construed as an admission by Defendant of any fault,  
21 wrongdoing, or liability whatsoever. Nor should the Settlement be construed as an admission that  
22 Plaintiffs could meet any of the requirements to maintain a class action or a PAGA representative  
23 action. There has been no final determination by any court as to the merits of the claims asserted  
24 by Plaintiffs against Defendant.

25          6.3     Defendant has concluded that it is desirable and beneficial that the Action be  
26 settled in a manner and upon such terms and conditions set forth herein in order to avoid further  
27 expense, inconvenience and distraction of further legal proceedings, and the risk of the outcome  
28 of the Action.

1     **7.     OPERATIVE TERMS OF SETTLEMENT**

2             The Parties agree as follows:

3             7.1     Conditional Class Certification

4                     7.1.1 The Parties stipulate, for purposes of this settlement only, to the certification  
5 by the Court of the Class.

6                     7.1.2 If, for any reason, the Court does not approve this Settlement, fails to enter  
7 the Judgment, or if this Settlement is terminated for any other reason, Defendant shall, and hereby  
8 does, retain the right to dispute the appropriateness of any action proceeding as a class action.

9             7.2     Maximum Settlement Amount

10                    7.2.1 Defendant shall pay a non-reversionary amount not to exceed the Maximum  
11 Settlement Amount to resolve the Action on a class and PAGA representative basis, subject to  
12 section 7.2.2. The Maximum Settlement Amount shall be used to pay, as approved by the Court,  
13 Class Counsel's attorneys' fees and costs, Service Payments to Plaintiffs, Settlement  
14 Administration Costs; the PAGA Payment to the LWDA and the PAGA Members, and the  
15 Individual Settlement Payments to the Settlement Class Members. Notwithstanding the  
16 foregoing, in addition to the Maximum Payment Amount, Defendant will pay the employer's  
17 share of payroll taxes on the portion of each Individual Settlement Payment allocated the  
18 settlement claims for alleged unpaid wages.

19                    7.2.2 This Settlement is based on an estimated count of approximately 756,683  
20 workweeks by Settlement Class Members in the Class Settlement Period. If during the Class  
21 Period the Settlement, Class Members have collectively worked more than 832,352 Eligible  
22 Workweeks (*i.e.*, a more than 10% increase in the 756,683 workweeks estimated at the time of  
23 mediation), then the Maximum Settlement Amount will increase at the rate of \$3.99/workweek by  
24 the actual number of workweeks in excess of 832,352 (*e.g.*, if the actual number of workweeks is  
25 determined to be 835,000, then the Maximum Settlement Amount shall be increased by  
26 \$10,565.52), or, at Defendant's option, the Class Period and Class Release shall end as of the date  
27 the actual number of Eligible Workweeks exceed 832,352.

28     ///

1           7.3    Class Representative Service Payments

2           7.3.1 The Class Representatives' Service Payments, which are in addition to their  
3 Individual Settlement Payments from the Settlement Pool and Individual PAGA Payments as  
4 PAGA Members will, subject to Court approval, be paid out of the Maximum Settlement Amount  
5 and will not exceed \$20,000 for Plaintiff Medina, \$20,000 for Plaintiff Cumpian, \$20,000 for  
6 Plaintiff Pasquel-Herrera, and \$20,000 for Plaintiff Cruz for their services and assistance to the  
7 Class. For purposes of tax withholding, the Service Payments will be reported on an IRS Form  
8 1099. Class Representatives shall be solely and legally responsible for paying any and all  
9 applicable taxes on their Service Payments and shall indemnify, defend, and hold 24 Hour Fitness  
10 Releasees harmless from any claim or liability for taxes, penalties or interest arising as a result of  
11 the Service Payments. Any amount of the Class Representatives Service Payments that is not  
12 awarded by the Court shall revert to the Settlement Pool.

13           7.4    Attorneys' Fees and Costs

14           7.4.1 Class Counsel shall apply to the Court for an award of reasonable attorneys'  
15 fees not to exceed approximately one third of the Maximum Settlement Amount (\$1,008,565.80),  
16 and will seek an award of costs for reimbursement of Class Counsel's out-of-pocket costs  
17 incurred up to an additional \$20,000, to be paid out of the Maximum Settlement Amount.  
18 Defendant will not oppose an application for fees and costs by Class Counsel in accordance with  
19 the terms of this Settlement. The Settlement Administrator shall issue IRS Forms 1099 to Class  
20 Counsel for the payments made pursuant to this section. Class Counsel shall be solely and legally  
21 responsible for paying any and all applicable taxes on their fees and costs award and shall  
22 indemnify, defend, and hold 24 Hour Fitness Releasees harmless from any claim or liability for  
23 taxes, penalties or interest arising as a result of any payments received by Class Counsel pursuant  
24 to this Agreement. Any amount of Class Counsel's requested fees and costs that is not awarded  
25 by the Court shall revert to the Settlement Pool.

26           7.5    Settlement Administrator

27           7.5.1 The Settlement Administration Costs incurred by the Settlement  
28 Administrator as a result of the procedures and processes expressly required by this Settlement

1 shall be paid out of the Maximum Settlement Amount and currently are estimated not to exceed  
2 \$70,000. Under no circumstances will Defendant be required to contribute additional funds,  
3 above and in addition to the Maximum Settlement Amount, to cover any additional Settlement  
4 Administration Costs. The Settlement Administration Costs shall include all costs of  
5 administering the Settlement, including all tax document preparation, custodial fees, and  
6 accounting fees incurred by the Settlement Administrator; all costs and fees associated with  
7 establishing and maintaining a Qualified Settlement Fund; all costs and fees associated with  
8 preparing, issuing and mailing the Notice of Class Action Settlement and other correspondence to  
9 Class Members; all costs and fees associated with communicating with Class Members, Class  
10 Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing,  
11 reviewing, and paying the payments due under this Settlement, and resolving disputed claims; all  
12 costs and fees associated with calculating tax withholdings and payroll taxes, making related  
13 payment to federal and state tax authorities, and issuing tax forms relating to payments made  
14 under the Settlement; all costs and fees associated with preparing any tax returns and any other  
15 filings required by any governmental taxing authority or agency; all costs and fees associated  
16 with preparing any other notices, reports, or filings to be prepared in the course of administering  
17 payments due under this Settlement; and any other costs and fees incurred and/or charged by the  
18 Settlement Administrator in connection with the execution of its duties under this Settlement.

19 7.5.2 The actions of the Settlement Administrator shall be governed by the terms  
20 of this Settlement and any Orders from the Court and any agreement by Class Counsel and  
21 Defendant's Counsel regarding communications with the Settlement Administrator. Absent any  
22 agreement, Defendant and Defendant's Counsel may communicate with the Settlement  
23 Administrator without notice and/or copies to Class Counsel.

24 7.5.3 In the event that either Defendant's Counsel or Class Counsel take the  
25 position that the Settlement Administrator is not acting in accordance with the terms of the  
26 Settlement, such Defendant's Counsel or Class Counsel shall meet and confer first with opposing  
27 counsel and/or, if necessary, with the Settlement Administrator or the Court to attempt to resolve  
28 the issue.

1           7.6    Calculation of Individual Settlement Payments

2           7.6.1 Each Settlement Class Member will be entitled to receive an Individual  
3 Settlement Payment, which will be paid out of the Settlement Pool. The amount of each  
4 Individual Settlement Payment will be calculated on a *pro rata* basis, based on the Eligible  
5 Workweeks each Settlement Class Member worked during the Class Period. There is no need for  
6 a Settlement Class Member to submit a claim form in order to be eligible for and to receive an  
7 Individual Settlement Payment.

8           7.6.2 To determine each Class Member's estimated "Individual Settlement  
9 Payment," the Settlement Administrator will use the following formula: estimated Individual  
10 Settlement Payment = (individual Eligible Workweeks ÷ all Class Member Eligible Workweeks)  
11 × Settlement Pool.

12           7.6.3 The Parties recognize that the Individual Settlement Payments to be paid to  
13 Class Members reflect settlement of a dispute over claimed wages, expenses, interest, penalties,  
14 and other alleged damages.

15           7.6.4 All Individual Settlement Payments to Settlement Class Members shall be  
16 allocated as follows for tax purposes: 50% of each Individual Settlement Payment reflects  
17 compromise of a claim for alleged unpaid wages; 50% of each Individual Settlement Payment  
18 reflects compromise of a claim for alleged penalties, expenses, and interest. The portion of the  
19 Individual Settlement Payment attributable to unpaid wages will be subject to regular and/or  
20 applicable payroll and income tax withholdings and deductions and will be reported on an IRS  
21 Form W-2. Settlement Class Members will each indemnify and hold harmless 24 Hour Fitness  
22 Releasees for any taxes due or owing by them with respect such payments and/or any penalties  
23 and interest owed by 24 Hour Fitness Releasees for the failure to withhold with respect to such  
24 payments. The Settlement Administrator shall make appropriate tax withholdings from the  
25 portion of each Individual Settlement Payment designated as unpaid wages, and shall pay the  
26 employer portion of payroll taxes with funds separate from the Maximum Settlement Payment to  
27 be furnished by Defendant. Settlement Class Members will be responsible for paying all other  
28 taxes due on their Individual Settlement Payments. Other than as set forth above, the Settlement

1 Administrator will not make any deductions, withholdings, or additional payments, including  
2 without limitation, medical or other insurance payments or premiums, employee 401(k)  
3 contributions or matching employer contributions, wage garnishments to the extent permitted by  
4 law, or charity withholdings, from or with respect to the Individual Settlement Payments, and  
5 entry of the Order of Final Approval by the Court shall be deemed authority not to make any such  
6 deductions, withholdings, or additional payments.

7       7.7    PAGA Payment

8               7.7.1 The total amount of \$151,000 from the Maximum Settlement Amount will  
9 be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-five percent  
10 (75%) of which shall be the LWDA Payment to paid to the LWDA and the remaining twenty-five  
11 (25%) of which shall be distributed to the PAGA Members as Individual PAGA Payments. Any  
12 portion of the PAGA Payment not approved by the Court shall be added to the Settlement Pool  
13 and any additional amount ordered by the Court shall be paid from the Maximum Settlement  
14 Amount.

15              7.7.2 The 25% of the PAGA Payment to be distributed to the PAGA Members as  
16 Individual PAGA Payments and shall be distributed on a *pro rata* share based on the number of  
17 Eligible Pay Periods each PAGA Member worked during the PAGA Period.

18              7.7.3 All Individual PAGA Payments shall be allocated as 100% penalties, for  
19 which an IRS Form 1099 will be issued. PAGA Members will be responsible for paying all taxes  
20 due on their Individual PAGA Payments. The Settlement Administrator will not make any  
21 deductions, withholdings, or additional payments, including without limitation, medical or other  
22 insurance payments or premiums, employee 401(k) contributions or matching employer  
23 contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or  
24 with respect to the Individual PAGA Payments.

25       7.8    Circular 230 Disclaimer

26              7.8.1 Each Party to this Settlement (for purposes of this section, the  
27 “acknowledging party” and each Party to this Settlement other than the acknowledging party, an  
28 “other party”) acknowledges and agrees that (1) no provision of this Settlement, and no written

1 communication or disclosure between or among the Parties or their attorneys and other advisers,  
2 is or was intended to be, nor shall any such communication or disclosure constitute or be  
3 construed or be relied upon as, tax advice within the meaning of United States Treasury  
4 Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has  
5 relied exclusively upon his, her, or its own, independent legal and tax counsel for advice  
6 (including tax advice) in connection with this Agreement, (b) has not entered into this Settlement  
7 based upon the recommendation of any other party or any attorney or advisor to any other party,  
8 and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to  
9 any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3)  
10 no attorney or advisor to any other party has imposed any limitation that protects the  
11 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such  
12 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or  
13 tax structure of any transaction, including any transaction contemplated by this Settlement.

14           7.9    No Effect on Employee Benefits

15                   7.9.1 Neither the Settlement nor any amounts paid under the Settlement will  
16 modify any previously credited hours or service under any employee benefit plan, policy, or  
17 bonus program sponsored by 24 Hour Fitness Releasees. Such amounts will not form the basis  
18 for additional contributions to, benefits under, or any other monetary entitlement 24 Hour Fitness  
19 Releasees' sponsored benefit plans, policies, or bonus programs. The payments made under the  
20 terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis,  
21 as salary, earnings, wages, or any other form of compensation for the purposes of the 24 Hour  
22 Fitness Releasees' benefit plans, policies, or bonus programs. The 24 Hour Fitness Releasees  
23 retain the right to modify the language of their benefit plans, policies and bonus programs to  
24 effectuate such intent.

25           7.10   Releases

26                   7.10.1 Class Representatives' Release. Upon the Effective Date, and subject to  
27 Defendant's payment of the Maximum Settlement Amount, Plaintiffs fully and finally release the  
28 24 Hour Fitness Releasees from any and all claims, known and unknown, under federal, state

1 and/or local law, statute, ordinance, regulation, common law, or other source of law, including  
2 but not limited to the Released Claims (“Plaintiffs’ Released Claims”). Plaintiffs’ Released  
3 Claims includes all claims, whether known or unknown. Even if Plaintiffs discover facts in  
4 addition to or different from those that Plaintiffs now know or believe to be true with respect to  
5 the subject matter of Plaintiffs’ Released Claims, those claims will remain released and forever  
6 barred. Accordingly, Plaintiffs expressly waive and relinquish the provisions, rights and benefits  
7 of section 1542 of the California Civil Code, which reads:

8 *A general release does not extend to claims that the creditor or*  
9 *releasing party does not know or suspect to exist in his or her favor*  
10 *at the time of executing the release and that, if known by him or*  
11 *her, would have materially affected his or her settlement with the*  
12 *debtor or released party.*

13 7.10.2 Settlement Class Member Release. Upon the Effective Date, and subject to  
14 Defendant’s payment of the Maximum Settlement Amount, all Participating Class Members fully  
15 and finally release the 24 Hour Fitness Releasees from all of the Released Class Claims that arose  
16 during the Class Settlement Period.

17 7.10.3 PAGA Member Release. Upon the Effective Date and subject to  
18 Defendant’s payment of the Maximum Settlement Amount, Plaintiffs, as authorized  
19 representatives and “private attorney generals” of the State of California and on behalf of the  
20 LWDA and as a representative of the PAGA Members, fully and finally release the 24 Hour  
21 Fitness Releasees from all PAGA Released Claims for the PAGA Settlement Period.

## 22 8. NOTICE TO CLASS

### 23 8.1 Preliminary Approval

24 8.1.1 Class Counsel and Defendant’s Counsel shall jointly submit to the Court  
25 this Settlement and exhibits thereto for preliminary approval by the Court. Class Counsel will  
26 prepare and file the motion for preliminary approval and supporting papers for the Court. Class  
27 Counsel will provide copies of all documents to be filed with the Court to Defendant at least five  
28 (5) court days before the documents are filed, for review and comments by Defendant. The  
Court’s preliminary approval of this Settlement shall be embodied in an order certifying the Class  
for settlement purposes only, preliminarily approving the Settlement and providing for Notice of

1 Class Action Settlement to be mailed to the Class in materially the same format attached hereto as  
2 **Exhibit 1**, and which will also set the date for the Final Approval Hearing.

3 8.2 Notice

4 8.2.1 No later than twenty-one (21) calendar days after the Court issues the  
5 Preliminary Approval Order, Defendant shall provide to the Settlement Administrator in  
6 electronic form, a list of each Class Member, including each person's name, last known address,  
7 last known telephone number, social security number, and number of Eligible Workweeks and  
8 Eligible Pay Periods, that will become the Database. The Database shall be based on Defendant's  
9 personnel, payroll, and/or other business records and provided in a format reasonably acceptable  
10 to the Settlement Administrator. The Settlement Administrator shall maintain the Database, and  
11 all data contained within the Database, as private and confidential and shall not disclose such data  
12 to Class Counsel or to any persons or entities other than counsel for Defendant, unless otherwise  
13 required by law. The confidential nature of the Database shall not inhibit Class Counsel's ability  
14 to do its fiduciary duty to the Class. For purposes of carrying out the Settlement and resolving  
15 questions from Class Members and/or disputes regarding the Settlement, Class Counsel may be  
16 granted access to specific information pertaining to individual Class Members' Eligible  
17 Workweeks and Eligible Pay Periods and only to the extent necessary to carry out the fiduciary  
18 duties necessary of Class Counsel. To the extent the Settlement Administrator receives inquiries  
19 from individual Class Members, the Settlement Administrator will apprise the Parties of the fact  
20 of the inquiry without disclosing the Class Member's name. The Settlement Administrator will  
21 attempt to resolve any such inquiry and may involve the Parties' respective counsel to the extent  
22 necessary. In the event the inquiry cannot be resolved adequately by the Settlement  
23 Administrator and, if necessary, the Parties, then the Parties shall meet and confer in good faith  
24 regarding whether disclosure of the individual Class Member's name to Class Counsel will assist  
25 in resolution of the inquiry. If Class Counsel is contacted by a Class Member regarding his/her  
26 data, the Settlement Administrator shall identify and disclose that specific Class Member's data  
27 upon notice to Defendant and at the request of Class Counsel. The information in the Database is  
28 being supplied solely for purposes of the administration of the settlement and cannot be used by

1 the Settlement Administrator for any purpose other than to administer the Settlement. Upon  
2 receipt of the Database, the Settlement Administrator shall check with the U.S. Postal Service  
3 National Change of Address Database and update any addresses for the Class Members.

4 8.2.2 Within thirty-five (35) calendar days of the Preliminary Approval Date, the  
5 Settlement Administrator will send via United States first class mail the Notice of Class Action  
6 Settlement to the Class Members. The Notice of Class Action Settlement shall advise Class  
7 Members of their options, which include submitting an Opt-Out Request to the class settlement;  
8 submitting an objection to the Settlement and receiving an Individual Settlement Payment and an  
9 Individual PAGA Payment (if applicable); or taking no action and receiving an Individual  
10 Settlement Payment and an Individual PAGA Payment (if applicable).

11 8.2.3 If any Notice of Class Action Settlement is returned to the Settlement  
12 Administrator as undeliverable, the Settlement Administrator shall run a skip-trace using that  
13 Class Member's social security number in an effort to attempt to ascertain the current address of  
14 the Class Member. If such an address(es) is ascertained, the Settlement Administrator shall re-  
15 mail the Notice of Class Action Settlement within three (3) business days. If alternative  
16 addresses are obtained for a Class Member, the Settlement Administrator shall send the Notice of  
17 Class Action Settlement to up to two (2) alternative addresses. If any Notice of Class Action  
18 Settlement is returned to the Settlement Administrator with a forwarding address, the Settlement  
19 Administrator will promptly re-mail the Notice of Class Action Settlement to the address within  
20 three (3) business days of receipt.

21 8.2.4 Class Members, except for the Class Representatives, will have forty-five  
22 (45) calendar days from the date on which the Notice of Class Action Settlement was first mailed  
23 ("Response Deadline") within which to opt-out of the class portion of this Settlement; however,  
24 exercising this option has no effect on the PAGA portion of this settlement, PAGA Members will  
25 be mailed an Individual PAGA Payment and be bound by the release of the Released PAGA  
26 Claims regardless of whether they opt out of the class settlement. Class Members who want to  
27 opt out must timely submit a signed and dated written request to be excluded from the class  
28 portion of the Settlement to the Settlement Administrator ("Opt-Out Request"). The Opt-Out

1 Request must be postmarked on or before the Response Deadline, include the case name, case  
2 number, the Class Member's name, address, and last four of their social security number, must be  
3 signed by the Class Member, and must state in substance that the Class Member wishes to  
4 exclude themselves or opt out of the settlement. Class Members who do not timely submit an  
5 executed Opt-Out Request shall be deemed a Settlement Class Member and bound by this  
6 Settlement, including the Class Released Claims. Class Members who timely submit an executed  
7 Opt-Out Request will not be bound by the Class Released Claims and will not receive an  
8 Individual Settlement Payment. The Notice of Class Action Settlement shall advise Class  
9 Members of their ability to opt-out of the class portion of the Settlement and of the consequences  
10 thereof, and further inform them that they cannot opt out of the PAGA portion of the settlement.  
11 Neither the Parties nor any of their counsel will solicit any Class Member to submit an Opt-Out  
12 Request.

13 8.2.5 Class Members, except for the Class Representatives, may object to the  
14 Settlement in person at the Final Approval Hearing and/or in writing. Class Members, except for  
15 the Class Representatives, will have until the Response Deadline within which to mail a written  
16 objection to the Settlement and a notice of intention to appear at the Final Approval Hearing, to  
17 the Settlement Administrator. Only Class Members who have not filed an Opt-Out Request may  
18 object to the Settlement. The written objection should state the Class Member's name and  
19 address and describe the reason(s) why the Class Member objects to the Settlement and include or  
20 attach any documents upon which the objection is based. The Parties and their counsel agree that  
21 they will not solicit, encourage, counsel or advise any individual to object to the Settlement.

22 8.2.6 Within seven (7) calendar days after the Response Deadline, the Settlement  
23 Administrator shall provide to Class Counsel and Defendant's Counsel a status report setting  
24 forth the number of Notices of Class Action Settlement returned as undeliverable, the number of  
25 Opt-Out Requests and the number of objections, if any.

26 8.2.7 If three percent (3%) or more of the total number of Class Members submit  
27 timely and valid Opt-Out Requests, then Defendant shall have the option, in its sole and exclusive  
28 discretion, to void the Settlement. To exercise this option, Defendant must send written

1 notification to Class Counsel within ten (10) calendar days of receiving the report from the  
2 Settlement Administrator stating the total number of timely and valid Opt-Out Requests. If  
3 Defendant chooses to exercise this option, the effect will be precisely the same as if Final  
4 Approval did not occur, as discussed herein. In the event Defendant exercises this option,  
5 Defendant will be solely responsible for any Settlement Administration Costs incurred to the date  
6 of revocation.

### 7 8.3 Final Approval

8 8.3.1 Prior to the Final Approval Hearing, Plaintiffs will move the Court for entry  
9 of the Order of Final Approval (and associated entry of Judgment): (a) certifying the Class for  
10 Settlement purposes only, (b) finding the Settlement fair, reasonable, adequate, and in the best  
11 interests of the Class Members, (c) approving the PAGA Payment to the LWDA and the PAGA  
12 Members; (d) approving Class Counsel's application for an award of attorneys' fees and costs, (e)  
13 approving Class Representatives' application for Service Payments, (f) approving the payment of  
14 reasonable Settlement Administration Costs, and (g) releasing and barring any further Released  
15 Class Claims by Settlement Class Members and Released PAGA Claims by or on behalf of the  
16 PAGA Members. The Parties and their respective counsel shall make all reasonable efforts to  
17 secure entry of the Order of Final Approval. The proposed Order of Final Approval (and the  
18 associated proposed Judgment) shall be filed with the Court with the motion for final approval, or  
19 as otherwise directed by the Court.

20 8.3.2 Class Representatives and Class Counsel agree that they shall be responsible  
21 for justifying the amount of the Service Payments and attorneys' fees and costs to the Court, and  
22 they agree to submit, as appropriate, the necessary materials to justify these payments. If the  
23 Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or  
24 costs, or less than the amount requested for the Service Payments for the Class Representatives,  
25 only the awarded amounts shall be paid and shall constitute satisfaction of the obligations of  
26 Defendant under this Settlement.

27 8.3.3 Defendant shall have the sole right to void and withdraw from this  
28 Agreement if at any time prior to the Final Approval Date: (a) three percent (3%) or more of all

1 Class Members opt out of the Settlement; or (b) the Settlement is construed in such a fashion that  
2 Defendant would be required to pay more than the Maximum Settlement Amount, exclusive of  
3 the employer's share of payroll taxes; or (c) the Court does not certify a settlement class releasing  
4 all of the Released Class Claims and all of the Released PAGA Claims defined in this Agreement,  
5 or does not approve the PAGA settlement, or otherwise makes an order inconsistent with any of  
6 the material terms (as determined by Defendant) of this Agreement.

7 8.3.4 If an appeal results in an order materially modifying, setting aside, or  
8 vacating any portion of the Settlement, with the exception of any modification of the amount of  
9 attorneys' fees or costs to be paid to Class Counsel, or the amount of the Service Payments paid  
10 to the Class Representatives, each party adversely impacted by the order shall have the absolute  
11 right, at its sole discretion, to treat such order as an event preventing Final Approval. To exercise  
12 this right, the party must inform the other party and the Settlement Administrator, in writing, of  
13 the exercise of this right, within ten (10) calendar days of receiving notice of any order  
14 modifying, setting aside, or vacating any portion of the Settlement. Before either Party elects to  
15 exercise its right to treat such order as an event permanently preventing Final Approval, that Party  
16 must meet and confer in good faith with the other Party to determine if an agreement can be  
17 reached modifying this Settlement to the mutual satisfaction of the Parties.

18 8.3.5 If the Final Approval or Final Judgment does not occur, or if this Settlement  
19 is terminated or canceled pursuant to its terms, the Parties to this Settlement shall be deemed to  
20 have reverted to their respective status as of the date and time immediately prior to the execution  
21 of this Settlement. In such an event, if the Settlement is not approved by the Court substantially  
22 in the form agreed to by the Parties, or if the Settlement is terminated, cancelled, declared void, or  
23 fails to become effective in accordance with its terms, or if the Judgment does not become a Final  
24 Judgment, or if the Final Approval Date does not occur, this Settlement (except for those  
25 provisions relating to non-admission, denial of liability set forth herein, and the confidentiality  
26 agreements entered into by the Parties) shall be deemed null and void, its terms and provisions  
27 shall have no further force and effect and shall not be used in this Action or in any other  
28 proceeding for any purpose, and any Judgment or order entered by the Court in accordance with

1 the terms of the Settlement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any other  
2 provision of this Settlement, no order of the Court, or modification or reversal on appeal of any  
3 order of the Court, reducing the amount of any attorneys' fees or costs to be paid to Class  
4 Counsel, or reducing the amount of any Service Payment paid to the Class Representatives, shall  
5 constitute grounds for cancellation or termination of the Settlement, or grounds for limiting any  
6 other provision of the Judgment.

7 8.4 Funding and Distribution of the Settlement Proceeds

8 8.4.1 Within thirty (30) calendar days after the Effective Date, Defendant shall  
9 pay the Maximum Settlement Amount and an amount sufficient to pay the employer's share of  
10 payroll taxes, into the Qualified Settlement Fund set up, held, and controlled by the Settlement  
11 Administrator.

12 8.4.2 Within forty-five (45) calendar days of the Effective Date, the Settlement  
13 Administrator shall issue Individual Settlement Payments to Settlement Class Members and the  
14 Individual PAGA Payments to the PAGA Members.

15 8.4.3 After one hundred eighty (180) calendar days of issuance, funds from  
16 undeposited Individual Settlement Payment and Individual PAGA Payment checks will be held  
17 by the Settlement Administrator; if the Class Member or PAGA Member to whom the  
18 undeposited check is issued does not contact Class Counsel or the Settlement Administrator  
19 concerning his or her settlement payment check(s) within one-hundred eighty (180) calendar days  
20 of issuance, the Settlement, including its release, will be binding on that Settlement Class  
21 Member or PAGA Member, and the amount of that uncashed settlement payment will be  
22 distributed to the East Bay Children's Law Offices as a *cy pres* beneficiary . The Parties agree  
23 that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384,  
24 as the entire Settlement Pool will be paid out to Settlement Class Members, regardless of whether  
25 they all cash their Individual Settlement Payments.

26 8.4.4 Within forty-five (45) calendar days of the Effective Date, the Settlement  
27 Administrator shall issue the LWDA Payment to the State of California LWDA.

28 ///

1                   8.4.5 Within forty-five (45) calendar days of the Effective Date, the Settlement  
2 Administrator shall pay the Court-approved attorneys' fees and costs to Class Counsel. Class  
3 Counsel shall provide to the Settlement Administrator, the pertinent taxpayer identification  
4 number and IRS Form W-9 within ten (10) calendar days after the Final Approval Date.

5                   8.4.6 Within forty-five (45) calendar days of the Effective Date, the Settlement  
6 Administrator shall send a check by mail for the Court-approved Service Payments to the Class  
7 Representatives or Class Counsel.

8 **9. MISCELLANEOUS PROVISIONS**

9                   9.1 Neither the acceptance nor the performance by Defendant of the terms of this  
10 Settlement, nor any of the related negotiations or proceedings, is or shall be claimed to be,  
11 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in  
12 the Complaint, the representative character of the Action, the validity of any of the claims that  
13 were or could have been asserted by Plaintiffs, Class Members and/or PAGA Members in the  
14 Action, of any liability or guilt of Defendant in the Action. Nothing in this Settlement shall be  
15 construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or  
16 wrongdoing toward Plaintiffs, the Class Members, or any other person, and Defendant  
17 specifically disclaims any liability, culpability, negligence, or wrongdoing toward Plaintiff, the  
18 Class Members, and any other person. Each of the Parties has entered into this Settlement with  
19 the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,  
20 and contingencies.

21                   9.2 The Parties agree to cooperate fully with one another to accomplish and implement  
22 the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of  
23 such other documents and the taking of such other action as may reasonably be necessary to  
24 fulfill the terms of this Settlement. The Parties to this Settlement shall exercise reasonable  
25 efforts, including all efforts contemplated by this Settlement and any other efforts that may  
26 become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set  
27 forth herein.

28 ///

1           9.3     Unless otherwise specifically provided herein, all notices, demands, or other  
2     communications given hereunder shall be in writing and shall be deemed to have been duly given  
3     as of the third business day after mailing by United States certified mail, return receipt requested,  
4     addressed as follows:

5                     To the Class Counsel:

6                     Evan S. Gaines  
7                     GAINES LAW CORPORATION  
8                     4550 East Thousand Oaks Blvd., Suite 100  
                      Westlake Village, CA 91362

9                     Ayse Kent  
10                    AK EMPLOYMENT LAW OFFICE, PC  
                      100 Pine Street, Suite 1250  
                      San Francisco, CA 94111

11                    John G. Yslas  
12                    WILSHIRE LAW FIRM  
13                    660 S. Figueroa St., Sky Lobby  
                      Los Angeles, CA 90017

14                    Roman Shkodnik  
15                    D. Law, Inc.  
                      450 N. Brand Blvd. Suite 840  
                      Glendale, CA 91203

16                    To Defendant:

17                    Eric Meckley  
18                    Nicole L. Antonopoulos  
19                    Sarah A. Davidson  
20                    Morgan, Lewis & Bockius LLP  
                      One Market, Spear Street Tower  
                      San Francisco, California 94105-1126

21           9.4     The Parties hereto agree that the terms and conditions of this Settlement are the  
22     result of lengthy, intensive, arm's-length negotiations between the Parties and that this Settlement  
23     shall not be construed in favor of or against any party by reason of the extent to which any party  
24     or its counsel participated in the drafting of this Settlement.

25           9.5     Plaintiffs, Class Counsel and all attorneys associated with Class Counsel agree that  
26     they will not issue any press releases, initiate any contact with the press, provide any information  
27     to the press, or otherwise publicize or cause to be publicized this case, this settlement, or the facts  
28     leading up to the case or settlement, and represent that they have not done so prior to signing this

1 Agreement. As an absolute condition of this Agreement, Class Counsel will not post anything  
2 relating to this matter on any website or other form of social media. Any communication about  
3 the Settlement to Class Members other than Plaintiffs prior to the Court-approved mailing will be  
4 limited to a statement that a settlement has been reached and the details will be communicated in  
5 a forthcoming Court-approved Notice of Class Action Settlement.

6 9.6 The Class Representatives, by signing this Settlement, are bound by the terms  
7 herein and further agrees not to request to be excluded from the Settlement and not to object to  
8 any terms of this Settlement. Any such request for exclusion or objection shall therefore be void  
9 and of no force or effect. Defendant, Class Counsel, and the Class Representatives waive their  
10 rights to file an appeal, writ, or any challenge whatsoever to the terms of this Settlement, except  
11 either Party may appeal in the event an objector's objection is upheld by the trial court.

12 9.7 Neither Class Counsel nor any other attorneys acting for, or purporting to act for,  
13 the Class, Class Members, or Plaintiffs, may recover or seek to recover any amounts for fees,  
14 costs, or disbursements from the Defendant or the 24 Hour Fitness Releasees, except as expressly  
15 provided herein.

16 9.8 This Settlement may not be changed, altered, or modified, except in writing signed  
17 by the Parties hereto and approved by the Court. This Settlement may not be discharged except  
18 by performance in accordance with its terms or by a writing used by the Parties hereto.

19 9.9 This Settlement shall be binding upon and inure to the benefit of the Parties hereto  
20 and their respective heirs, trustees, executors, administrators, successors, and assigns.

21 9.10 The Parties agree that it is impossible or impractical to have each Class Member  
22 sign this Settlement. It is agreed therefore, that for purposes of seeking approval of the Class  
23 Settlement, this Settlement may be executed on behalf of the proposed Class by Class Counsel  
24 and the Class Representatives.

25 9.11 This Settlement shall become effective upon its execution by all of the  
26 undersigned. The Parties may execute this Settlement in counterparts, and execution of  
27 counterparts shall have the same force and effect as if all Parties had signed the same instrument.

28 ///

1           9.12    The Court shall retain jurisdiction with respect to the implementation and  
2 enforcement of the terms of the Settlement, and all Parties hereto submit to the jurisdiction of the  
3 Court for purposes of implementing and enforcing the Settlement. Any action to enforce this  
4 Settlement shall be commenced and maintained only in the Court.

5           9.13    Paragraph titles or captions contained in the Settlement are inserted as a matter of  
6 convenience and for reference, and in no way define, limit, extend, or describe the scope of this  
7 Settlement, or any provision thereof.

8           IN WITNESS WHEREOF, this Settlement is executed by the Parties and their duly  
9 authorized attorneys, as of the day and year herein set forth.

10  
11 **AGREED TO AND UNDERSTOOD.**

12  
13 Dated: 09 / 29 / 2025, 2025

  
\_\_\_\_\_  
YULISSA MEDINA

14  
15 Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
DESIREE CUMPIAN

16  
17 Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
EVELYN PASQUEL-HERRERA

18  
19 Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
BRUNO CRUZ

20  
21 Dated: \_\_\_\_\_, 2025

24 HOUR FITNESS USA, LLC

22  
23 By: \_\_\_\_\_

24  
25 Its: \_\_\_\_\_

9.12 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement. Any action to enforce this Settlement shall be commenced and maintained only in the Court.

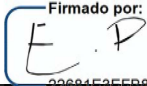
9.13 Paragraph titles or captions contained in the Settlement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement, or any provision thereof.

IN WITNESS WHEREOF, this Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

**AGREED TO AND UNDERSTOOD.**

Dated: \_\_\_\_\_, 2025  
YULISSA MEDINA

Dated: 09/30/2025, 2025  
Signed by:   
1515EB718521408  
DESIREE CUMPIAN

Dated: 09/30/2025, 2025  
Firmado por:   
22681E3EFD0C4F3...  
EVELYN PASQUEL-HERRERA

Dated: \_\_\_\_\_, 2025  
BRUNO CRUZ

Dated: \_\_\_\_\_, 2025 24 HOUR FITNESS USA, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

9.12 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement. Any action to enforce this Settlement shall be commenced and maintained only in the Court.

9.13 Paragraph titles or captions contained in the Settlement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement, or any provision thereof.

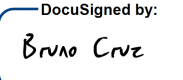
IN WITNESS WHEREOF, this Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

**AGREED TO AND UNDERSTOOD.**

Dated: \_\_\_\_\_, 2025 YULISSA MEDINA

Dated: \_\_\_\_\_, 2025 DESIREE CUMPIAN

Dated: \_\_\_\_\_, 2025 EVELYN PASQUEL-HERRERA

Dated: 10/1/2025, 2025   
BRUNO CRUZ

Dated: \_\_\_\_\_, 2025 24 HOUR FITNESS USA, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_



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Dated: September 29, 2025

  
\_\_\_\_\_  
Evan S. Gaines  
Gaines Law Corporation  
Counsel for Plaintiff Medina

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Ayse Kent  
AK Employment Law Office, PC  
Counsel for Plaintiff Medina

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
John G. Yslas  
Wilshire Law Firm  
Counsel for Plaintiffs Cumpian and Pasquel-Herrera

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Roman Shkodnik  
D. Law, Inc.  
Counsel for Plaintiff Cruz

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Eric Meckley  
Nicole L. Antonopoulos  
Sarah A. Davidson  
Morgan, Lewis & Bockius LLP  
Counsel for Defendant

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Dated: \_\_\_\_\_, 2025

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Evan S. Gaines  
Gaines Law Corporation  
Counsel for Plaintiff Medina

Dated: October 1, 2025

  
\_\_\_\_\_  
Ayse Kent  
AK Employment Law Office, PC  
Counsel for Plaintiff Medina

Dated: September 30, 2025

  
\_\_\_\_\_  
John G. Yslas  
Wilshire Law Firm  
Counsel for Plaintiffs Cumpian and Pasquel-Herrera

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Roman Shkodnik  
D. Law, Inc.  
Counsel for Plaintiff Cruz

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Eric Meckley  
Nicole L. Antonopoulos  
Sarah A. Davidson  
Morgan, Lewis & Bockius LLP  
Counsel for Defendant

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Dated: \_\_\_\_\_, 2025

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Evan S. Gaines  
Gaines Law Corporation  
Counsel for Plaintiff Medina

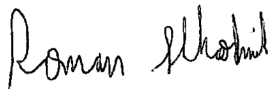
Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Ayse Kent  
AK Employment Law Office, PC  
Counsel for Plaintiff Medina

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
John G. Yslas  
Wilshire Law Firm  
Counsel for Plaintiffs Cumpian and Pasquel-Herrera

Dated: October 1, 2025

  
\_\_\_\_\_  
Roman Shkodnik  
D. Law, Inc.  
Counsel for Plaintiff Cruz

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Eric Meckley  
Nicole L. Antonopoulos  
Sarah A. Davidson  
Morgan, Lewis & Bockius LLP  
Counsel for Defendant

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Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Evan S. Gaines  
Gaines Law Corporation  
Counsel for Plaintiff Medina

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Ayse Kent  
AK Employment Law Office, PC  
Counsel for Plaintiff Medina

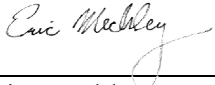
Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
John G. Yslas  
Wilshire Law Firm  
Counsel for Plaintiffs Cumpian and Pasquel-Herrera

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Roman Shkodnik  
D. Law, Inc.  
Counsel for Plaintiff Cruz

Dated: October 15, 2025

  
\_\_\_\_\_  
Eric Meckley  
Nicole L. Antonopoulos  
Sarah A. Davidson  
Morgan, Lewis & Bockius LLP  
Counsel for Defendant

# EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

YULISSA MEDINA, on behalf of herself and  
“aggrieved” employees pursuant to Labor Code  
section 2698, et seq.,

Plaintiffs,

v.

24 HOUR FITNESS USA, LLC., a California  
limited liability company; and DOES 1-10,  
inclusive,

Defendant.

CASE NO: 24CV089740

Assigned to Hon. Mark Fickes, Dept. 518

**NOTICE OF CLASS ACTION  
SETTLEMENT**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT  
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

*This is not a lawsuit against you. You are not being sued.*

*Your legal rights are affected whether you act or do not act.*

To: All current and former non-exempt employees of 24 Hour Fitness USA, LLC who performed work within the State of California at any time from May 2, 2021 through July 1, 2025 (the “Class”).

- YOU ARE NOTIFIED THAT: A proposed class action settlement has been reached between Plaintiffs Yulissa Medina, Desiree Cumpian, Evelyn Pasquel-Herrera, and Bruno Cruz (collectively, “Plaintiffs”) and Defendant 24 Hour Fitness USA, LLC (“Defendant”) (Plaintiffs and Defendant are collectively referred to as the “Parties”), in the case entitled *Medina, et al. v. 24 Hour Fitness USA, LLC*, Alameda County Superior Court, Case No. 24CV089740, which may affect your legal rights. On [Preliminary Approval Date], the Court granted preliminary approval of the settlement and scheduled a hearing on [ ] at [ ] (“Final Approval Hearing”) to determine whether the Court should grant final approval of the Settlement.
- The settlement resolves a wage and hour class action and a Private Attorneys General Act of 2004 (“PAGA”) lawsuit against Defendant, alleging that Defendant failed to (1) pay all minimum, regular, straight, and overtime wages due, (2) properly compute bonuses, commission wages, incentive pay, shift differentials, sick pay, and/or other non-base hourly wages, (3) provide meal periods or compensation in lieu thereof, (4) provide rest periods or compensation in lieu thereof, (5) reimburse all business expenses, (6) comply with itemized employee wage statement provisions, (7) provide wage statements or separate written documents each pay period stating the amount of available paid sick leave or paid time off, and (8) timely pay wages due at the separation of employment. The settlement also alleges violation of the Business and Professions Code and seeks to recover penalties pursuant to PAGA. The Settlement avoids the costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.

- Defendant denies liability and believes all appropriate wages were paid and that Defendant otherwise fully complied with any Labor Code obligations. The Parties disagree on how much money might have been awarded if the Plaintiffs were successful in certifying a class action and had won at trial.
- The Court has not made a ruling on the merits of the case or decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Of Class Action And PAGA Representative Action (“Settlement” or “Settlement Agreement”).
- The settlement will provide the total gross amount of \$3,026,000 to resolve the claims as to all individuals who worked for Defendant as non-exempt employees in California at any time from May 2, 2021 and July 1, 2025 and as to the State of California. The Lawyers for the employees will ask the Court to award them up to \$1,008,565.80 as attorneys’ fees and \$20,000 as expenses from the total settlement amount for investigating the facts, litigating the case, and negotiating the settlement. This money will be paid from the settlement amount.
- **THE CLASS MEMBERS ARE ELIGIBLE TO RECEIVE A MONETARY PAYMENT FROM THE CLASS AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.**
- **24 HOUR FITNESS USA, LLC WILL NOT RETALIATE IN ANY MANNER AGAINST YOU FOR PARTICIPATING OR CHOOSING NOT TO PARTICIPATE IN THIS SETTLEMENT.**

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing</b>                                        | You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.                                                                                     |
| <b>Exclude Yourself</b>                                  | To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement, although you still qualify to be paid a share of the PAGA Settlement. You cannot exclude yourself from the PAGA portion of the Settlement. This is the only option that allows you to ever be part of any other lawsuit against 24 Hour Fitness USA, LLC about the legal claims that were brought in this case. |
| <b>Objecting</b>                                         | Write to the Settlement Administrator about why you do not like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.                                                                                                                                                                                                                                                                                                                                      |
| <b>Go to a Hearing</b>                                   | Ask to speak in Court about the fairness of the settlement, as detailed below.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a class action and PAGA lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

## **WHAT IS THIS LAWSUIT ABOUT?**

On August 30, 2024, Plaintiff Yulissa Medina a former employee of Defendant 24 Hour Fitness USA, LLC, filed this lawsuit in the Alameda County Superior Court. The lawsuit alleges violations of the California Labor Code. It was subsequently amended on [REDACTED] to add additional Plaintiffs Desiree Cumpian, Evelyn Pasquel-Herrera, and Bruno Cruz and additional class action and PAGA representative claims.

The lawsuit seeks to certify a class of all hourly or non-exempt current and former employees employed by Defendant in the State of California at any time between May 2, 2021 and July 1, 2025 ("Class Settlement Period"). Specifically, the lawsuit alleges that members of the Class were not (1) paid all minimum, regular, straight, and overtime wages due, (2) paid incentive pay, shift differentials, sick pay, and/or other non-base hourly wages at the correct rates of pay, (3) provided meal periods or compensation in lieu thereof, (4) provided rest periods or compensation in lieu thereof, (5) reimbursed all business expenses, (6) issued itemized employee wage statement provisions, (7) provided wage statements or separate written documents each pay period stating the amount of available paid sick leave or paid time off, and (8) timely paid wages due at the separation of employment.. The Settlement seeks recovery of unpaid wages, liquidated damages, unreimbursed expenses, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the allegations in the lawsuit. Defendant denies that it owes the Class Members any remedies and believes that it paid the Class Members fully and fairly. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

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### Defendant's Attorney:

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Nicole L. Antonopoulos, Esq.  
Sarah Davidson, Esq.  
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San Francisco, California 94105-1596

## **SUMMARY OF THE SETTLEMENT**

### **A. Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believe they would have prevailed on their claims at a trial. Defendant does not believe that the Court would have certified a class action or that Plaintiffs would have won anything from a trial. There has been no certification of any class and no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement, to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

### **B. Who is in the Settlement Class? Who is an Aggrieved Employee**

The Settlement encompasses a class composed of all hourly or non-exempt current and former employees employed by Defendant in the State of California at any time between May 2, 2021 and July 1, 2025.

Aggrieved Employees are those Class Members employed between June 26, 2023 and July 1, 2025 (the "PAGA Period").

### **C. What does the Settlement provide?**

#### **1. Maximum Settlement Amount.**

The Settlement provides that Defendant will pay the total gross amount of \$3,026,000 (the "Maximum Settlement Amount") to settle the lawsuit.

#### **2. Net Settlement Proceeds.**

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to the Aggrieved Employees and Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members and subject to approval by the Court, which are as follows:

- (a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$1,008,565.80;
- (b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$20,000;
- (c) **Enhancement Payments to the Class Representative** in an amount set by the Court, not to exceed \$20,000 each for their service in the lawsuit;
- (d) **Settlement Administration Costs** which are currently estimated to not exceed \$70,000, for administering the settlement; and
- (e) **PAGA Payment** in the total amount of \$151,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$113,250, shall be paid to the

California Labor and Workforce Development Agency (“LWDA”). The remaining 25% or \$37,750, shall be included in the Net Settlement Proceeds for payment to the Aggrieved Employees.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

**D. What Are You Giving Up To Get A Payment Or Stay In The Class?**

Upon the Effective Date, and subject to Defendant’s payment of the Maximum Settlement Amount, all Participating Class Members fully and finally release the 24 Hour Fitness Releasees from all of the Released Class Claims that arose during the Class Settlement Period. Aggrieved Employees will release any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiffs’ Complaint during employment in a non-exempt position in California during the PAGA Period. The “Released Parties” shall include Defendant, as well as all affiliated parties and entities (including past and present affiliates, parents, subsidiaries, related entities, including, but not limited to, 24 Hour Fitness), and each of their respective predecessors, related entities, owners, members, successors, shareholders, divisions, and each of these entities’ respective past and present directors, officers, employees, partners, shareholders, members, agents, insurers, and representatives.

Unless you exclude yourself, you will give up any right to sue the Released Parties for the claims being released by this Settlement. If you have a claim or lawsuit already filed against 24 Hour Fitness USA, LLC or any of the Released Parties, you should speak to your lawyer in that case. You may need to exclude yourself from this Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

**E. How Is My Share Of The Settlement Calculated?**

Each participating Class Member (those who do not opt out of the Settlement) shall receive an “Individual Payment Amount,” which is distributable to each Class Member who participates in the Settlement (*i.e.*, who does not submit a valid request for exclusion form) and each Aggrieved Employee even if they opt out of the class settlement.

The class portion of the Individual Payment Amounts will be determined by dividing the Net Settlement Proceeds, less the \$37,750 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Settlement Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Settlement Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amounts will be determined by dividing the PAGA settlement amount (\$37,750) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period.

For tax purposes, each Individual Payment Amount will be apportioned 50% as wages (and will be subject to regular and/or applicable payroll and income tax withholdings and deductions and will be reported on an IRS Form W-2) and 50% as penalties (reported on an IRS Form 1099, if required). The

PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked approximately [REDACTED] weeks while employed as a non-exempt employee in California within the period from May 2, 2021 and July 1, 2025. Based on these weeks worked, you would be eligible for an Individual Payment Amount of approximately \$[REDACTED]. Defendant's records reflect that you worked approximately [REDACTED] weeks while employed as a non-exempt employee in California within the period from June 26, 2023 and July 1, 2025. Based on these weeks worked, you would be entitled to an PAGA payment share of approximately \$[REDACTED]. These amounts are subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2025. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

The complaint was subsequently amended on [REDACTED] to add standalone class action claims, additional Labor Code claims, and Desiree Cumpian, Evelyn Pasquel-Herrera, and Bruno Cruz as additional Plaintiffs.

#### **F. When Will I Be Paid?**

After the Court grants final approval of the settlement, you will receive your Individual Payment Amount within 30 days of the Effective Date of the Settlement.

### **THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Mark Fickes of the Alameda County Superior Court, Department 518, located at Hayward Hall of Justice, 24405 Amador Street, Hayward, CA 94544. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorney's fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiffs as an enhancement payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

**IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT BY MAIL IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you change your address, you must promptly

update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [REDACTED].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement, although you will still be bound by the PAGA Settlement and receive a PAGA settlement payment. If you opt out, you will not be bound by a class judgment in this case, and you will have the right to file and pursue your own individual claims in a lawsuit against the Defendant. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED].

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above information is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Of Class Action And PAGA Representative Action” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Alameda County Superior Court, located at Hayward Hall of Justice, 24405 Amador Street, Hayward, CA 94544.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at [address], [telephone number].

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

**BY ORDER OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA**

# EXHIBIT 2

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Attorneys for Plaintiffs Yulissa Medina

*[Additional Counsel on Following Page]*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

YULISSA MEDINA, on behalf of herself and  
“aggrieved” employees pursuant to Labor  
Code section 2698, et seq.,

Plaintiff,

vs.

24 HOUR FITNESS USA, LLC., a California  
limited liability company; and DOES 1-10,  
inclusive.

Defendants.

Case No. 24CV089740

Assigned to Hon. Mark Fickes, Dept. 518

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT  
FOR:**

- 1. FAILURE TO PAY ALL MINIMUM,  
REGULAR, AND OVERTIME WAGES DUE  
(LABOR CODE §§ 204, 210, 218.5, 218.6, 226.7,  
227.3, 245, 246, 246(1), 246(i), 510, 512, 1194,  
1194.2, 1197.1, 1198 AND 1199)**
- 2. FAILURE TO PROVIDE MEAL PERIODS  
OR COMPENSATION IN LIEU THEREOF  
(LABOR CODE §§ 210, 226.7, AND 512; IWC  
WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE REST PERIODS OR  
COMPENSATION IN LIEU THEREOF  
(LABOR CODE §§ 210 AND 226.7; IWC WAGE  
ORDER 4-2001)**
- 4. FAILURE TO REIMBURSE ALL BUSINESS-  
RELATED EXPENSES (LABOR CODE §§ 1198,  
2802, 2802(a), 2802(b), AND 2802(c))**
- 5. FAILURE TO PAY SICK PAY WAGES  
(LABOR CODE §§ 201-203, 233, 245, 246)**
- 6. FAILURE TO PAY VACATION WAGES  
(LABOR CODE § 227.3)**

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**7. FAILURE TO PROVIDE ACCURATE, ITEMIZED EMPLOYEE WAGE STATEMENTS (LABOR CODE §§ 226, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5, AND 1199)**

**8. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-204, 210, 218.5, 218.6, 1194, 1197, 1197.5, 1198, 1199, 2926, AND 2927)**

**9. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

**10. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 201.3, 202, 204, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h), 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1174, 1174.5, 1194, 1197.1, 1194.5, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2926, AND 2927 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, 558, AND 558(a)(1)-(3)**

**11. VIOLATION OF CALIFORNIA EQUAL PAY ACT (LABOR CODE § 1197.5(A))**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: August 30, 2024*

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20  
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1 Plaintiffs YULISSA MEDINA (“Medina”), DESIREE CUMPIAN (“Cumpian”), EVELYN  
2 PASQUEL-HERRERA (“Pasquel-Herrera”), and BRUNO CRUZ (“Cruz”) (collectively “Plaintiffs”),  
3 individually and on behalf of all similarly situated individuals (the “Class”), on behalf of the general  
4 public, and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,  
5 complain of 24 HOUR FITNESS USA, LLC., a California limited liability company, and/or any  
6 subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

7 **I.**

8 **INTRODUCTION AND FACTUAL BACKGROUND**

9 1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure  
10 § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and all employees who currently work or  
11 formerly worked for Defendants as non-exempt employees within the State of California.

12 2. From May 2, 2021 through and including July 1, 2025 (the “liability period”),  
13 Defendants have had consistent policies of failing to: pay Plaintiffs and Class Members (as defined  
14 below) all minimum, regular, straight, overtime, and/or otherwise unpaid wages earned during the  
15 course of employment; provide Plaintiffs and Class Members with accurately itemized wage  
16 statements; provide legally compliant meal and rest periods, or compensation in lieu thereof to Plaintiffs  
17 and Class Members; pay Plaintiffs and Class Members for all vacation wages and/or sick time; provide  
18 Plaintiffs and Class Members with wage statements or separate written documents each pay period  
19 stating the amount of available paid sick leave or paid time off provided in lieu of sick leave; reimburse  
20 Plaintiffs and Class Members for necessary business expenses; and timely pay Plaintiffs’ and Class  
21 Members’ wages during employment and upon separation of employment.

22 3. Plaintiffs, on behalf of themselves and Class Members, bring this action pursuant to  
23 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(B)(iii),  
24 226(h), 226.3, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1174, 1174.5, 1194,  
25 1194(a), 1194.2, , 1194.5, 1197, 1197.1, 1197.5(a) 1197.5, 1198 , 1198.5, 1199, 2802, 2082(a)-(c),  
26 2926, and 2927 seeking compensation for all unpaid wages, liquidated damages, unreimbursed  
27 expenses, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’  
28 fees and costs.

4. Plaintiffs, on behalf of themselves and Class Members, and pursuant to Business & Professions Code §§ 17200-17208, seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

5. Plaintiffs, on behalf of themselves and all Aggrieved Employees (as defined herein) pursuant to Labor Code §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiffs and the Class Members throughout California, including in Alameda County, California.

## II.

## PARTIES

### A. Plaintiff

7. Plaintiff MEDINA was employed by Defendants through January 2024 in Alameda County, California.

8. Plaintiff DESIREE CUMPIAN was employed by Defendants from June 2022 to approximately February 2024 in Los Angeles County, California.

9. Plaintiff EVELYN PASQUEL-HERRERA was employed by Defendants from June 2022 to approximately February 2024 in Orange County, California.

10. Plaintiff BRUNO CRUZ was employed by Defendants during the liability period in San Bernardino County, California.

11. During their work with Defendants, Plaintiffs were:

- a. Willfully denied the payment of all minimum, regular, straight, and overtime wages due;
- b. Willfully denied meal and rest periods or compensation in lieu thereof;
- c. Willfully denied the reimbursement of all business expenses;
- d. Willfully denied the payment of sick pay wages;
- e. Willfully denied the payment of vacation wages;
- f. Willfully denied accurately itemized wage statements;

- g. Willfully denied being provided with wage statements stating the amount of available paid sick leave or paid time off provided in lieu of sick leave;
- h. Willfully denied payment of all earned wages twice per month; and
- i. Willfully denied timely payment of all wages due during employment and upon separation of their employment.

**B. Defendants**

12. Defendant 24 HOUR FITNESS USA, LLC. is a California limited liability company, that employed Plaintiffs and Class Members throughout California, including Alameda County, California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

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

**III.**

**CLASS ACTION ALLEGATIONS**

16. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the following Class composed of and defined as follows:

1 All persons employed as non-exempt employees by Defendants in  
2 California at any time from May 2, 2021 through July 1, 2025 (*i.e.*,  
3 “Class Members”).

4 17. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or  
5 modify this class description with greater specificity or further division into subclasses or limitation to  
6 particular issues.

7 18. This action has been brought and may properly be maintained as a class action under  
8 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of  
9 interest in the litigation and the proposed Class are easily ascertainable.

10 **A. Numerosity**

11 19. The potential Class Members as defined are so numerous that joinder of all Class  
12 Members is impracticable. While the precise number of Class Members has not been ascertained at  
13 this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants currently  
14 employ, and during the relevant time periods employed, over 5,000 persons in the State of California  
15 who fall within the Class definition.

16 20. Accounting for turnover during the relevant period necessarily increases this number.  
17 Plaintiffs allege Defendants’ employment records would provide information as to the number and  
18 location of Class Members. Joinder of Class Members is not practicable.

19 **B. Commonality**

20 21. There are questions of law and fact common to the Class that predominate over any  
21 questions affecting only individual Class Members. These common questions of law and fact include,  
22 without limitation:

- 23 a. Whether Defendants failed to pay all minimum, regular, straight, overtime,  
24 and/or otherwise unpaid wages earned to Plaintiffs and Class Members , in  
25 violation of Labor Code §§ 201.3, 204, 210, 218.5, 218.6, 226.7, 227.3, 245,  
26 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)–(3), 1194, 1194(a), 1194.2, 1197.1,  
27 1197.5(a), 1198 and 1199;

- b. Whether Defendants failed to properly provide meal or rest periods or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§ 210, 226.7 and 512, 558, and IWC Wage Order 4-2001;
- c. Whether Defendants failed to reimburse Plaintiff and Class Members for all business-related expenses, in violation of Labor Code §§ 1198, 2802, 2802(a), 2802(b), and 2802(c);
- d. Whether Defendants failed to pay Plaintiffs and Class Members with sick pay wages in violation of Labor Code § 246;
- e. Whether Defendants failed to pay vacation wages to Plaintiffs and Class Members in violation of Labor Code § 227.3;
- f. Whether Defendants failed to provide Plaintiffs and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h) 226.3, 246(i), 1174, 1174.5 1198, 1198.5, and 1199;
- g. Whether Defendants failed to timely pay Plaintiffs and Class Members all wages due and owing during employment and at the separation of their employment, in violation of Labor Code §§ 201-204, 210, 218.5, 218.6, 1194, 1197, 1197.5, 1198, 1199, 2926, and 2927; and
- h. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

**C. Typicality**

22. The claims of the named Plaintiffs are typical of the claims of Class Members. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

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**D. Adequacy of Representation**

23. Plaintiffs will fairly and adequately represent and protect the interests of Class Members. Counsel who represent Plaintiffs are competent and experienced in litigating large employment class actions.

**E. Superiority of Class Action**

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class Members is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

25. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**IV.**

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

**FAILURE TO PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES DUE  
(LABOR CODE §§ 204, 210, 218.5, 218.6, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1194,  
1194.2, 1197.1, 1198 AND 1199)**

26. Plaintiffs incorporate paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. During the liability period, Plaintiffs and Class Members were required to work off-the-clock and without compensation because Defendants did not compensate them for all hours worked. For example, they would be required to respond to texts or calls from Defendants outside of work hours, they were required to perform work during uncompensated meal periods, and otherwise perform work before clocking in and/or after clocking out. None of this time was compensated even though

1 Defendants are required to pay them since an employer is obligated to pay the wages of an hourly  
2 employee for all time that the employee is under the control of the employer, and this includes all the  
3 time the employee is suffered or permitted to work, whether or not required to do so. When Plaintiffs  
4 and Class Members worked off-the-clock, they were under the control of Defendants and required to  
5 be compensated for all hours worked (and is also a record keeping violation, in violation of Labor Code  
6 §§ 1174 and 1174.5. Furthermore, Defendants pay their female employees less than its male employees,  
7 in violation of Labor Code § 1197.5(a). These instances deprived Plaintiff and Class Members of  
8 significant hours worked and wages due, and constitute violations of Labor Code §§ 204, 210, 218.5,  
9 218.6, 510, 558, 1174, 1174.5, 1194, 1194(a), 1194.2, 1197, 1197.1, 1197.5(a), and 1198 and IWC  
10 Wage Order 4-2001.

11 28. Defendants engaged in a practice of improper rounding. Defendants had a uniform  
12 policy and practice of rounding all time entries to reflect scheduled start and end times and scheduled  
13 meal period start and end times rather than paying Plaintiffs and Class Members for all hours and  
14 minutes they actually worked. This practice of rounding all time entries was generally done to the  
15 detriment of Plaintiff and Class Members, and these unlawfully rounded time entries were input into  
16 Defendants' payroll system from which wage statements and payroll checks were created.

17 29. Defendants failed to properly compute bonuses, including, but not limited to, the  
18 Quarterly Bonus, Ccop Bonus, Net Rev Bonus, Trn Rev Bonus, commission wages, incentive pay, shift  
19 differentials, and/or other non-base hourly wages earned by Plaintiffs and Class Members into their  
20 regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages,  
21 vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 210, 226.7,  
22 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1194, 1194.2, 1197.1, 1198 and 1199.  
23 Defendants paid Plaintiffs and Class Members commission wages only; however, Defendants failed to  
24 properly blend these wages, and instead paid Plaintiffs and Class Members meal and rest period  
25 premiums, overtime wages, vacation wages, and sick pay wages based only on the base hourly rate of  
26 pay, if at all, thus depriving Plaintiffs and Class Members of all meal and rest period premiums,  
27 overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 210, 226.7,  
28 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1194, 1194.2, 1197.1, 1198 and 1199.

30. As a result of the unlawful acts of Defendants in willfully failing to pay all wages earned, Plaintiffs and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code §§ 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1194, 1197.1, 1198 and 1199, and liquidated damages pursuant to Labor Code § 1194.2.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

V.

## SECOND CAUSE OF ACTION

## PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

## FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

**(LABOR CODE §§ 210, 226.7, AND 512 AND IWC WAGE ORDER 4-2001)**

31. Plaintiffs incorporate paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

33. Plaintiffs and Class Members were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay at the proper rate of pay for each missed first or second meal period. Defendants continued to assert control over Plaintiffs and Class Members by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, by requiring employees to keep their phones on to respond to emergencies and other situations, or by denying Plaintiffs and Class Members, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Plaintiffs and Class Members for meal periods that were not provided as required by law. Defendants also did not inform Plaintiffs and Class Members of their right to, nor permitted Plaintiffs and Class Members to take, all of Plaintiffs' and Class Members' second meal periods when Plaintiffs

1 and Class Members worked at least ten hours of work in a workday and otherwise unlawfully pressured  
2 Plaintiffs and Class Members to waive such breaks. Plaintiffs and Class Members were simply denied  
3 the vast majority of their entitled meal periods. This violates Labor Code §§ 210, 226.7, and 512 and  
4 IWC Wage Order 4-2001.

5 34. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiffs seek  
6 the payment of all meal period compensation and unpaid wages that Class Members are owed for four  
7 years preceding the filing of this Action, according to proof.

8 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

9 **VI.**

10 **THIRD CAUSE OF ACTION**

11 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

12 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

13 **(LABOR CODE §§ 210 AND 226.7 AND IWC WAGE ORDER 4-2001)**

14 35. Plaintiffs incorporate paragraphs 1 through 34 of this Complaint as though fully set forth  
15 herein.

16 36. Plaintiffs and Class Members are entitled to one hour of pay for each day that  
17 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and  
18 IWC Wage Order 4-2001.

19 37. Plaintiffs and Class Members were routinely unable to take a 10-minute rest period for  
20 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's  
21 pay for each missed rest period and/or not paid premium wages at the regular rate of pay. Defendants  
22 continued to assert control over Plaintiffs and Class Members by requiring, pressuring, or encouraging  
23 them to perform work tasks which could not be completed without working in lieu of taking mandatory  
24 rest periods, by requiring Plaintiffs and Class Members to keep phones on to respond to emergencies  
25 and other situations, or by denying Plaintiffs and Class Members permission to take a rest period. Due  
26 to the busy nature of their work, Plaintiffs and Class Members were simply denied and not authorized  
27 to take their legally entitled rest periods and were never paid premium wages for missed rest periods.  
28 This violates Labor Code §§ 210, 226.7 and IWC Wage Order No. 4-2001

38. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiffs seek the payment of all rest period compensation and unpaid wages that Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VII.

#### FOURTH CAUSE OF ACTION

## PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

## FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

**(LABOR CODE §§ 1198, 2802, 2802(a), 2802(b), AND 2802(c))**

39. Plaintiffs incorporate paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. Pursuant to California Labor Code § 2802, Defendants must indemnify Plaintiffs and Class Members for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

41. Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses incurred in direct consequence of the discharge of their duties, including but not limited to personal cell phone usage, work tools, vacuums, internet expenses, vehicle expenses, and the cost of mileage when Plaintiffs and Class Members drove personal vehicles while on the job in violation of Labor Code §§ 2802, 2802(a), 2802(b), 2802(c), and 1198. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. These instances violate Labor Code § 2802.

42. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

43. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY SICK PAY WAGES

(LABOR CODE §§ 201-203, 210, 233, 246(c))

44. Plaintiffs incorporate paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated 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 of employment." Under Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as damages.

46. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and Class Members at the incorrect rate of pay. Plaintiffs and Class Members regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and Class Members at the base hourly pay, as opposed to the regular rate of pay, and/or failed to include all remuneration, such as bonus pay including, but not limited to, Quarterly Bonus, Ccop Bonus, Net Rev Bonus, Trn Rev Bonus, in calculating the regular rate of pay for the purpose of paying sick time. As a result, Defendants underpaid sick pay wages to Plaintiffs and Class Members.

1           47.     Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave, vested  
2 sick pay wages are due and to be paid no later than the payday for the next regular payroll period after  
3 accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an  
4 employer discharges an employee, wages earned and unpaid at the time of discharge are due and  
5 payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid  
6 wages no later than 72 hours after an employee quits his or her employment, unless the employee has  
7 given 72-hour notice of his or her intention to quit, in which case the employee is entitled to his or her  
8 wages at the time of quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab.  
9 Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab.  
10 Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at  
11 the same rate until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.  
12 Lab. Code § 210 provides penalties for untimely payments during employment. Under Cal. Lab. Code  
13 §§ 203, 210 and 218, employees may sue to recover applicable penalties.

14           48.     As alleged herein and as a matter of policy and practice, Defendants routinely underpays  
15 sick pay wages and thus did not timely pay Plaintiffs and Class Members all owing and underpaid sick  
16 pay wages. As a result, Defendants violates Cal. Lab. Code §§ 201-203, 210, 233, and 246, among  
17 other Labor Code provisions. Plaintiffs are informed and believe that Defendants knew, or should have  
18 known, of the mandates of the Labor Code as it relates to Plaintiffs' allegations. Because Defendants  
19 willfully fails to timely pay Plaintiffs and Class Members all sick pay wages due, Defendants are subject  
20 to applicable penalties.

21           49.     Such a pattern, practice, and uniform administration of corporate policy is unlawful and  
22 entitles Plaintiffs and Class Members to underpaid sick pay wages, including interest thereon,  
23 applicable penalties, attorney's fees, and costs of suit.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY VACATION WAGES

(LABOR CODE §§ 201-203, 210, 233, 246(c))

50. Plaintiffs incorporate paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served.

52. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, including, but not limited to, Quarterly Bonus, Ccop Bonus, Net Rev Bonus, Trn Rev Bonus, to Plaintiffs and Class Members but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

53. Therefore, Plaintiffs and Class Members seek to recover penalties pursuant to Labor Code § 227.3.

VIII.

SEVENTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO KEEP, MAINTAIN, AND PROVIDE ACCURATE, ITEMIZED EMPLOYEE

WAGE STATEMENTS

(LABOR CODE §§ 226, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5,

AND 1199

54. Plaintiffs incorporate paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized

1 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)  
2 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
3 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may  
4 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
5 which the employee is paid, (7) the name of the employee and only the last four digits of his or her  
6 social security number or an employee identification number other than a social security number, (8)  
7 the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in  
8 effect during the pay period and the corresponding number of hours worked at each hourly rate by the  
9 employee. Defendants have failed to comply with Labor Code § 226(a).

10 56. Defendants failed to issue Plaintiffs and Class Members wage statements that fully and  
11 accurately itemized the requirements set forth in Labor Code §§ 226, 226(a), 226(e)(1),  
12 226(e)(2)(B)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5, and 1199. Plaintiffs and Class Members  
13 were not paid all wages due, as stated above. As such, the wage statements provided by Defendants  
14 failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3,  
15 total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation  
16 of Labor Code §§ 226, 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay  
17 period and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and  
18 226.3.

19 57. As a consequence of Defendants' willful conduct in failing to provide Plaintiffs Class  
20 Members with accurately itemized wage statements, Plaintiffs and Class Members have been injured  
21 because they are not able to ascertain all of the information required by Labor Code § 226(a). As a  
22 result, Plaintiffs and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover  
23 the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100  
24 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of  
25 \$4,000 per employee, and are entitled to an award of costs, reasonable attorneys' fees, and injunctive  
26 relief, pursuant to Labor Code § 226(h).

27 58. Also, California Labor Code § 1174 requires that all employers shall keep accurate time  
28 and wage records for all employees. California Labor Code § 1174.5 further requires that any employee

1 suffering injury due to a willful violation of the aforementioned obligations may seek damages,  
2 including civil penalties, from the employer.

3 59. During the course of Plaintiffs and Class Members' employment, Defendants  
4 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required  
5 by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime,  
6 and premium pay as discussed above.

7 60. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor  
8 Code § 1174.5. for the three (3) years prior to the filing of this Complaint. Wherefore, Plaintiffs and  
9 the Class they seek to represent request relief as described below.

10 **IX.**

11 **EIGHTH CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

14 **(LABOR CODE §§ 201-204, 210, 218.5, 218.6, 1194, 1197, 1197.5, 1198, 1199, 2926, AND 2927)**

15 61. Plaintiffs incorporate paragraphs 1 through 60 of this Complaint as though fully set forth  
16 herein.

17 62. California Labor Code § 201 and § 202 require Defendants to pay employees all wages  
18 due within 72 hours after resignation of employment or the day of termination of employment. Labor  
19 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,  
20 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full  
21 or an action is commenced. The penalty cannot exceed 30 days of wages.

22 63. Defendants paid Plaintiffs and Class Members their final wages beyond the time frames  
23 set forth in Labor Code §§ 201-204, 210, 218.5, 218.6, 558, 1194, 1197, 1197.5, 1198, 1199, 2926, and  
24 2927. Plaintiffs and Class Members were not paid all wages due and owing throughout the course of  
25 their employment, as detailed above. Consequently, at the time of their separation from employment  
26 with Defendants, they were not paid all final wages due and owing for the entirety of their employment  
27 and were not paid all wages owed. This violates Labor Code §§ 201-204, 210, 218.5, 218.6, 558, 1194,  
28

1 1197, 1197.5, 1198, 1199, 2926, and 2927 and is alleged on behalf of Plaintiffs and certain Class  
2 Members no longer employed by Defendants.

3 64. More than 30 days have passed since Plaintiffs and Class Members have left  
4 Defendants' employ.

5 65. As a consequence of Defendants' willful conduct in not paying wages owed timely upon  
6 separation of employment, Plaintiffs and Class Members are entitled to up to 30 days' wages as a  
7 penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of  
8 employment.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **X.**

11 **NINTH CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 66. Plaintiffs incorporate paragraphs 1 through 65 of this Complaint as though fully set forth  
16 herein.

17 67. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf and  
18 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to  
19 Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this  
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public,  
21 and all Class Members. Plaintiffs seek to enforce important rights affecting the public interest within  
22 the meaning of Code of Civil Procedure § 1021.5.

23 68. Plaintiffs are "persons" within the meaning of Business & Professions Code § 17204,  
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
25 appropriate equitable relief.

26 69. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business  
27 practices.  
28

1           70.     Wage and hour laws express fundamental public policies. Properly providing employees  
2 with all wages and expense reimbursement due is a fundamental public policy of this State and of the  
3 United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously  
4 minimum labor standards, to ensure that employees are not required or permitted to work under  
5 substandard and unlawful conditions, and to protect law-abiding employers and its employees from  
6 competitors who lower their costs by failing to comply with minimum labor standards.

7           71.     Defendants have violated statutes and public policies. Through the conduct alleged in  
8 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business  
10 practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs, and all  
11 persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all  
12 employees under law.

13           72.     Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
14 §17200 *et seq.* of the Business & Professions Code.

15           73.     Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of  
16 reasonable care should have known that the conduct was unlawful. As such, it is a violation of § 17200  
17 *et seq.* of the Business & Professions Code.

18           74.     As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others  
19 similarly situated have been damaged in a sum as may be proven.

20           75.     Unless restrained by this Court, Defendants will continue to engage in the unlawful  
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should  
22 make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent  
23 the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice  
24 prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of  
25 profits which may be necessary to restore Plaintiffs and all Class Members to the money Defendants  
26 have unlawfully failed to pay.

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**XI.**

**TENTH CAUSE OF ACTION**

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

**PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201, 201.3, 202, 204, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h),  
226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1174, 1174.5, 1194, 1197.1, 1194.5, 1197, 1197.1,  
1197.5, 1198, 1198.5, 1199, 2926, AND 2927 AND PURSUANT TO LABOR CODE § 2699(a)  
FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, 558, AND 558(a)(1)-(3)**

76. Plaintiffs incorporate paragraphs 1 through 75 of this Complaint as though fully set forth herein.

77. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.* against Defendants on behalf of all other non-exempt employees in California employed by Defendants between June 26, 2023 through and including July 1, 2025 (“Aggrieved Employees”).

78. Furthermore, Defendants failed to provide wage statements or separate written documents to Plaintiffs and Aggrieved Employees each pay period stating the amount of available paid sick leave or paid time off provided in lieu of sick leave, in violation of Labor Code § 246(i).

79. Additionally, Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, Defendants failed and refused to pay Plaintiffs and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that Plaintiffs and other Aggrieved Employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. Defendants owe Plaintiffs and other Aggrieved Employees the legally required wages for unpaid wages, and Plaintiffs and other Aggrieved Employees suffered damages in those amounts. Defendants are liable to Plaintiffs

1 and other Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to  
2 pay all earned wages twice per month.

3 80. For each such violation, Aggrieved Employees are entitled to penalties in an amount to  
4 be shown at the time of trial subject to the following formula:

- 5 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and  
6 \$200 for each subsequent violation of Labor Code §§ 201, 201.3, 202,  
7 204, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h), 226.7,  
8 227.3, 245, 246, 246(1), 246(i), 510, 512, 1174, 1174.5, 1194, 1197.1,  
9 1194.5, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2926, and 2927; and  
10 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by  
11 Labor Code §§ 210, 226.3, 558, and 558(a)(1)-(3).

12 81. Penalties recovered will be allocated 75% to the Labor and Workforce Development  
13 Agency, and 25% to the affected employees.

14 82. On June 17, 2024 and July 8, 2025, Plaintiff Medina sent letters, by online submission  
15 to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and  
16 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* See  
17 **Exhibit 1**, attached hereto and incorporated by this reference herein (Medina PAGA Notices dated June  
18 17, 2024 and July 8, 2025).

19 83. On November 4, 2024, Plaintiff Cruz sent a letter, by online submission to the LWDA  
20 and by certified mail, to Defendants setting forth the facts and theories of the violations alleged against  
21 Defendants, as prescribed by Labor Code § 2698 *et seq.* See **Exhibit 2**, attached hereto and  
22 incorporated by this reference herein (Cruz PAGA Notice dated November 4, 2024 without draft  
23 complaint).

24 84. On November 6, 2024, Plaintiffs Cumpian and Pasquel-Herrera sent a letter, by online  
25 submission to the LWDA and by certified mail, to Defendants setting forth the facts and theories of the  
26 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* See **Exhibit 3**,  
27 attached hereto and incorporated by this reference herein (Cumpian and Pasquel-Herrera PAGA Notice  
28 dated November 6, 2024).

85. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of their respective PAGA Notice letters. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

XI.

## ELEVENTH CAUSE OF ACTION

**PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

**FOR VIOLATIONS OF THE CALIFORNIA EQUAL PAY ACT**

86. Plaintiffs incorporate paragraphs 1 through 85 of this Complaint as though fully set forth herein.

78. Defendants have and continue to pay Plaintiffs and female Class Members at a rate less than male Class Members in violation of the California Equal Pay Act, California Labor Code §§1197.5, et seq.

79. Plaintiffs and female Class Members were performing substantially similar work as male Class Members with respect to their skill, effort, and responsibility.

87. Plaintiffs and female Class Members were performing substantially similar work under similar working conditions as male Class Members.

88. Defendants caused, attempted to cause, contributed to, or caused the continuation of the wage rate violations of the California Equal Pay Act.

89. Defendants willfully or recklessly disregarded the fact that their conduct was in violation of the California Equal Pay Act.

90. Defendants' unequal treatment of Plaintiffs and female Class Members and/or their willful or reckless disregard for their violation of the California Equal Pay Act is and was caused by conscious and/or unconscious sexual bias.

91. As a result of Defendants' conduct alleged herein and/or Defendant's willful, knowing, and intentional violations of the California Equal Pay Act, Plaintiffs and female Class Members have suffered and will continue to suffer harm, including, but not limited to, lost wages, lost benefits, and other financial loss.

92. Plaintiffs and female Class Members should be awarded all legal and equitable remedies, including wages, liquidated damages, and reasonable attorneys' fees under California Labor Code § 1197.5 and California Code of Civil Procedure § 1021.5.

93. The aforementioned acts were committed by Defendants, and each of them, by and through their respective officers, directors, managing agents, agents, and/or representatives and/or were known to, aided, abetted, authorized by, ratified by, and/or otherwise approved by their respective officers, directors, managing agents, and/or representatives. The above acts of Defendants, and each of them, were despicable and committed knowingly, willfully, fraudulently, and/or maliciously, with the intent to harm, injure, vex, annoy, and oppress Plaintiffs and female Class Members and with a conscious disregard of their rights. By reason thereof, Plaintiffs and female Class Members seeks punitive and exemplary damages from Defendants in an amount to be proven at trial.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages, pursuant to Labor Code §§ 218.5, 218.6, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1194, 1194(a), 1197, 1197.1, 1198, and 1199, in the amount of all unpaid wages due to Plaintiffs and Class Members;
2. For liquidated damages, pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiffs and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code § 226.7;
5. For reimbursement of all expenses incurred by Plaintiffs and Class Members, pursuant to Labor Code §§ 1198, 2802, 2802(a), 2802(b), and 2802(c));
6. For penalties pursuant to Labor Code § 226, 226(a), 226(e)(1), and 226(e)(2)(B)(iii), for Plaintiffs and Class Members;

7. For injunctive relief pursuant to Labor Code § 226(h) for Plaintiffs and Class Members;
8. For penalties pursuant to Labor Code § 203 for Plaintiffs and Class Members;
9. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class Members;
11. An award of prejudgment and post-judgment interest;
12. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1194, 1198, and other applicable law;
13. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, and other applicable law; and
14. Such other and further relief as this Court may deem just and proper.

Dated: Respectfully submitted,

GAINES LAW CORPORATION

By:   
EVAN S. GAINES  
Attorney for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: Respectfully submitted,

GAINES LAW CORPORATION

By:   
EVAN S. GAINES  
Attorney for Plaintiffs

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the action.  
3 My business address is 4550 E. Thousand Oaks Blvd., Suite 100 Westlake Village, CA 91362.

4 \_\_\_\_\_ (For messenger) my business address is:

5 On , I served the foregoing document described as **FIRST AMENDED CLASS AND REPRESENTATIVE**  
6 **ACTION COMPLAINT** the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes  
7 addressed as follows:

8 **MORGAN, LEWIS & BOCKIUS LLP**

9 **Eric Meckley, Esq.**

10 **Nicole L. Antonopoulos, Esq.**

11 **Sarah A. Davidson, Esq.**

12 **One Market, Spear Street Tower**

13 **San Francisco, California 94105-1596**

14 **eric.meckley@morganlewis.com**

15 **nicole.antonopoulos@morganlewis.com**

16 **sarah.davidson@morganlewis.com**

17 **cc: adele.doyle@morganlewis.com**

18 **ATTORNEYS FOR DEFENDANT**

19 **24 HOUR FITNESS USA, LLC**

20 On the above date:

21 \_\_\_\_\_ (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was  
22 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing  
23 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of  
24 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter  
25 date is more than one day after date of deposit for mailing in affidavit.

26 \_\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or  
27 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or  
28 driver authorized by the express carrier to receive documents.

\_\_\_\_\_ (BY FACSIMILE TRANSMISSION) On , at \_\_\_\_\_ a.m./p.m., at Westlake Village, California, I served the  
above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California  
Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s)  
of the receiving facsimile machine was (\_\_\_\_) \_\_\_\_ - \_\_\_\_ . A transmission report was properly issued by the sending facsimile  
machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet  
and the transmission report are attached to this proof of service.

☒ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission  
via email on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on , at Westlake Village, California.

27 

28 **EVAN S. GAINES, ESQ.**

# EXHIBIT 1

June 17, 2024

***Via Certified Mail***

Labor & Workforce Development Agency  
By online submission

24 Hour Fitness USA, LLC  
1265 Laurel Tree Lane, Suite 200  
Carlsbad, CA 92011

Defendant mailed certified # 9589071052700506686514

Agent for Service of Process for 24 Hour Fitness USA, LLC  
CSC – Lawyers Incorporating Service  
Becky DeGeorge  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

Agent mailed certified # 9589071052700506686507

Re: ***Labor Code Violations of 24 Hour Fitness USA, LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Yulissa Medina, a former non-exempt California employee of 24 Hour Fitness USA, LLC (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by the Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and its other non-exempt California employees (“Aggrieved Employees”).

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Wage Order 4-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour’s pay at the proper rate of pay for each missed first or second meal period. Our client and Aggrieved Employees were simply denied the vast majority of their entitled meal periods. This violates Labor Code §§ 226.7, 512, 558, and IWC Wage Order 4-2001.

Defendant also failed to pay correct premium wages to our client and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour’s pay for each missed rest period. Due to the busy nature of their work, our client and

Labor & Workforce Development Agency  
24 Hour Fitness USA, LLC  
CSC – Lawyers Incorporating Service  
June 17, 2024  
Page 2

Aggrieved Employees were simply denied and not authorized to take their legally entitled rest periods and were never paid premium wages for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001.

Our client further alleges that Defendant failed to provide her and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and 226.3. Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant failed to pay all wages due to her and certain Aggrieved Employees at the separation of employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

**GAINES LAW CORPORATION**

By:   
EVAN S. GAINES

July 8, 2025

*Via Certified Mail*

Labor & Workforce Development Agency  
By online submission

24 Hour Fitness USA, LLC  
1265 Laurel Tree Lane, Suite 200  
Carlsbad, CA 92011

Defendant mailed certified # 9589 0710 5270 2440 3887 83

Agent for Service of Process for 24 Hour Fitness USA, LLC  
CSC – Lawyers Incorporating Service  
Pecky DeGeorge  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

Agent mailed certified # 9589 0710 5270 2440 3887 90

Re: ***Labor Code Violations of 24 Hour Fitness USA, LLC – Compliance Letter of  
California Labor Code § 2698 - Private Attorneys General Act  
LWDA-CM-1034313-24***

Dear LWDA:

This letter supplements our previous correspondence sent on June 17, 2024 and alleges additional claims.

This office represents Yulissa Medina, a former non-exempt California employee of 24 Hour Fitness USA, LLC (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by the Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and its other non-exempt California employees (“Aggrieved Employees”).

Our client alleges that Defendant failed to pay all minimum, regular, straight, and overtime wages earned during the course of employment, in violation of Labor Code §§ 204, 210, 218.5, 218.6, 510, 558, 1194, 1194(a), 1194.2, 1197, 1197.1, and 1198. Our client and Aggrieved Employees were required to work off-the-clock and without compensation because Defendant did not compensate them for all hours worked. For example, they would be required to respond to texts or calls from Defendant outside of work hours, they were required to perform work during uncompensated meal periods, and otherwise perform work before clocking in and/or after clocking out. None of this time was compensated even though Defendant is required to pay them since an employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When our client and Aggrieved Employees

work off-the-clock, they were under the control of Defendant and required to be compensated for all hours worked (and is also a record keeping violation, in violation of Labor Code §§ 1174 and 1174.5. Furthermore, Defendant pays its female employees less than its male employees, in violation of Labor Code § 1197.5(a). These instances deprived our client and other Aggrieved Employees of significant hours worked and wages due, and constitute violations of Labor Code §§ 204, 210, 218.5, 218.6, 510, 558, 1174, 1174.5, 1194, 1194(a), 1194.2, 1197, 1197.1, 1197.5(a), and 1198 and IWC Wage Order 4-2001.

Our client alleges that Defendant engaged in a practice of improper rounding. Defendant had a uniform policy and practice of rounding all time entries to reflect scheduled start and end times and scheduled meal period start and end times rather than paying our client and other Aggrieved Employees for all hours and minutes they actually worked. This practice of rounding all time entries was generally done to the detriment of our client and other Aggrieved Employees, and these unlawfully rounded time entries were input into Defendant's payroll system from which wage statements and payroll checks were created.

Our client alleges that Defendant failed to properly compute bonuses, commission wages, incentive pay, shift differentials, and/or other non-base hourly wages earned by our client and Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 210, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1194, 1194.2, 1197.1, 1198 and 1199. Defendant paid our client and other Aggrieved Employees commission wages only; however, Defendant failed to properly blend these wages, and instead paid our client and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based only on the base hourly rate of pay, if at all, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 210, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 558, 558(a)(1)-(3), 1194, 1194.2, 1197.1, 1198 and 1199.

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 210, 226.7, 512, and 558, and IWC Wage Order 4-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay at the proper rate of pay for each missed first or second meal period. Defendant continued to assert control over our client and other Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, by requiring employees to keep their phones on to respond to emergencies and other situations, or by denying our client and other Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without

properly compensating our client and other Aggrieved Employees for meal periods that were not provided as required by law. Defendant also did not inform our client and other Aggrieved Employees of their right to, nor permitted our client and other Aggrieved Employees to take, all of our client and other Aggrieved Employees' second meal periods when our client and other Aggrieved Employees worked at least ten hours of work in a workday and otherwise unlawfully pressured our client and other Aggrieved Employees to waive such breaks. Our client and Aggrieved Employees were simply denied the vast majority of their entitled meal periods. This violates Labor Code §§ 226.7, 512, 558, and IWC Wage Order 4-2001.

Defendant also failed to pay correct premium wages to our client and other Aggrieved Employees who were denied rest periods, in violation of Labor Code §§ 210, 226.7 and IWC Wage Order No. 4-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Defendant continued to assert control over our client and other Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, by requiring our client and other Aggrieved Employees to keep phones on to respond to emergencies and other situations, or by denying our client and other Aggrieved Employees permission to take a rest period. Due to the busy nature of their work, our client and Aggrieved Employees were simply denied and not authorized to take their legally entitled rest periods and were never paid premium wages for missed rest periods. This violates Labor Code §§ 210, 226.7 and IWC Wage Order No. 4-2001.

Defendant also failed to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, including but not limited to personal cell phone usage, work tools, vacuums, internet expenses, vehicle expenses, and the cost of mileage when our client and other Aggrieved Employees drove personal vehicles while on the job in violation of Labor Code §§ 2802, 2802(a), 2802(b), 2802(c), and 1198. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. These instances violate Labor Code § 2802.

Our client further alleges that Defendant failed to provide her and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226, 226(a), 226(e)(1), 226(e)(2)(B)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5, 1199. Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226, 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client alleges that Defendant failed to provide wage statements or separate written documents each pay period stating the amount of available paid sick leave or paid time off provided in lieu of sick leave, in violation of Labor Code § 246(i).

Our client further alleges that Defendant failed to pay all earned wages twice per month. Based on Defendant's failure to pay our client and other Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code §§ 201.3, 204, 210, 218.5, 558, 1174, and 1194. Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, Defendant failed and refused to pay our client and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that our client and other Aggrieved Employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. Employer owes Plaintiffs and other Aggrieved Employees the legally required wages for unpaid wages, and Plaintiffs and other Aggrieved Employees suffered damages in those amounts. Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Our client further alleges that Defendant failed to pay all wages due to her and certain Aggrieved Employees at the separation of employment based on the time frames required by Labor Code §§ 201-204, 210, 218.5, 218.6, 558, 1194, 1197, 1197.5, 1198, 1199, 2926, and 2927. As stated above, our client and certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-204 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

Defendant's conduct has been and continues to be unfair, unlawful, and harmful to our client and other Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

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Labor & Workforce Development Agency  
24 Hour Fitness USA, LLC  
CSC – Lawyers Incorporating Service  
July 8, 2025  
Page 5

Our office awaits your response.

Very truly yours,

**GAINES LAW CORPORATION**

By:   
\_\_\_\_\_  
EVAN S. GAINES

cc: Eric Meckley, Esq.  
Nicole L. Antonopoulos, Esq.  
Sarah A. Davidson, Esq.

# EXHIBIT 2

**VIA ON-LINE SUBMISSION ONLY TO:**

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act  
Attn. PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

24 Hour Fitness USA, LLC  
1265 Laurel Tree Lane, Suite 200  
Carlsbad, CA 92011  
Certified Mail Tracking Number: 9414 8112 0620 5434 9672 57

CSC Lawyers Incorporating Service, Agent for Service  
24 Hour Fitness USA, LLC  
2710 Gateway Oaks Drive Suite 150N  
Sacramento, CA 95833  
Certified Mail Tracking Number: 9414 8112 0620 5434 9833 56

24 Hour Fitness  
2580 S Archibald Ave  
Ontario, CA 91761  
Certified Mail Tracking Number: 9414 8112 0620 5434 9874 22

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA  
*Cruz v. 24 Hour Fitness USA, LLC, et al.***

Gentlepersons:

This office represents Plaintiff Josephine Levario (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, 24 Hour Fitness USA, LLC; 24 Hour Fitness; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter.



The Complaint is being concurrently filed in San Bernardino County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

### **Relevant Facts**

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by cleaning and being required to complete assignments before clocking in and after clocking out. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also used a time-keeping system that allowed Aggrieved Employees to keep track of the hours they worked. However, instead of having Aggrieved Employees record the times they actually started and stopped working, Defendants had a uniform policy and practice of rounding all time entries to reflect scheduled start and end times and scheduled meal period start and end times rather than paying Aggrieved Employees for all hours and minutes they actually worked. This practice of rounding all time entries was generally done to the detriment of Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants also knew or reasonably should have known about issues with the cellphone application used for timekeeping that prevented Plaintiff and Aggrieved Employees from recording all hours and minutes worked, resulting in work time for which they were not compensated.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.



Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay were calculated and paid.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Furthermore, Defendants had a consistent policy and practice of instructing Employees to record or alter their meal period time records to conform to the schedule, regardless of whether Employees took meal periods that were shorter than thirty minutes, took meal periods after their fifth hour of work, or took no meal period at all. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for



expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, work tools such as vacuums and leaf blowers, and mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked due to rounding as discussed above.

Moreover, Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

**PAGA Claim Details, Legal Bases for Violations and Penalties:**

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

**Failure to Pay Minimum Wages**

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action



pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks, rounding of timekeeping entries, and working “pre-shift” and “post-shift” without compensation by cleaning and being required to complete assignments before clocking in and after clocking out. Moreover, Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as alleged herein was willful,



intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

**Failure to Pay Wages and Overtime in Violation of Labor Code § 510**

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above—including the time they worked “pre-shift” and “post-shift” without compensation by cleaning, being required to complete assignments before clocking in and after clocking out, and being required to respond to work-related phone calls and texts received while off-the-clock, as well as time spent working while clocked out for meal breaks—caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.



When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

#### **Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties**

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendants' control due to Defendants' policy and practice requiring Aggrieved Employees to keep phones on to respond to emergencies and other situations, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Specifically, Defendants had a uniform policy and practice of instructing Employees to record or alter their meal period time records to conform to the schedule, regardless of whether Employees took meal periods that were shorter than thirty minutes, took meal periods after their fifth hour of work, or took no meal period at all. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly



calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

**Rest-Break Liability Under Labor Code § 226.7 and Penalties**

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands and requiring Aggrieved Employees to keep phones on to respond to emergencies and other situations. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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### **Failure to Pay Vacation Wages**

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

### **Failure to Comply with Labor Code §§ 245 *et seq.* and 246**

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1). Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.*, 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

### **Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802**

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including but not limited to personal cell phone usage, work tools such as vacuums and leaf blowers, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the



applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

**Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226**

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage



Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

**Failure to Issue Semimonthly Payments in Violation of Labor Code § 204**

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.



Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

#### **Failure to Keep Records In Accordance With Labor Code § 1174**

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

#### **Waiting Time Penalties Pursuant to Labor Code § 203**

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198,



1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

**Unfair Competition Under Business and Professions Code § 17200, et seq.**

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

**Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:**

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802, including as follows:

(a) **Wage Claims:** For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) **Meal and Rest Period Claims:** For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) **Inaccurate Wage Statements and Failure to Maintain Records:** For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of



the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA

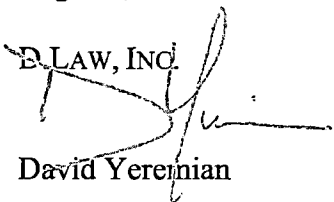


would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against 24 Hour Fitness USA, LLC, 24 Hour Fitness, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

  
D. LAW, INC.

David Yereimian

Cc: 24 Hour Fitness USA, LLC and 24 Hour Fitness

# EXHIBIT 3

**WILSHIRE LAW FIRM, PLC**

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November 6, 2024

LWDA  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
*(Via Online Submission)*

CSC – Lawyers Incorporating Service  
Agent for Service of Process for 24 Hour Fitness USA, LLC  
2710 Gateway Oaks Drive, Ste 150N  
Sacramento, CA 95833  
*(Via Certified Mail, Return Receipt Requested)*  
Certified# 9489009000276637709244

Re: ***Desiree Cumpian and Evelyn Pasquel-Herrera v. 24 Hour Fitness USA, LLC***  
**Notice of Labor Code Violations and PAGA Penalties**

To Whom It May Concern:

Please be advised that my office has been retained by Desiree Cumpian (“Ms. Cumpian”) and Evelyn Pasquel-Herrera (“Ms. Pasquel-Herrera”) (collectively, “Plaintiffs”) to pursue a Labor Code Private Attorneys General Act of 2004 (“PAGA”) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against 24 Hour Fitness USA, LLC (“24 Hour Fitness” or “Employer”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employer engaged in with respect to Plaintiffs and all Aggrieved Employees.

Plaintiffs wish to pursue this action on behalf of themselves, on behalf of the State of California, and on behalf of potentially all other persons who worked for 24 Hour Fitness in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, “Aggrieved Employees”).

Plaintiffs allege they and Aggrieved Employees suffered the Labor Code violations described below.

**Plaintiffs’ Employment with 24 Hour Fitness**

24 Hour Fitness owns and operates fitness clubs. Plaintiffs both worked as club attendants for 24 Hour Fitness. Plaintiffs’ primary job functions were to clean and maintain the fitness clubs. In performing Plaintiffs’ duties, Plaintiffs were regularly required to perform work (off-the-clock), without compensation. Due to understaffing and high workloads, Plaintiffs were also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Employer failed to provide Plaintiffs with meal and rest break premiums as required by the Labor Code. Additionally, Plaintiffs necessarily incurred business-related expenses, but Employer failed to reimburse such business-related expenses. Plaintiffs are both female employees who, on information and belief, were paid less than Defendant’s male employees for substantially similar work. These are just non-exhaustive examples of the facts and theories Plaintiffs assert, which are described in more detail

below.

Employer owns/owned and operates/operated an industry, business, and establishment within the State of California. As such and based upon all the facts and circumstances incident to Employer's business in California, Employer is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Ms. Cumpian is a resident of Santa Ana, California who worked for Employer in Orange County and Los Angeles County, California as an hourly-paid, non-exempt employee from approximately June 2022 to approximately February 2024. Ms. Pasquel-Herrera is a resident of Santa Ana, California who worked for Employer in Orange County as an hourly-paid, non-exempt employee from approximately August 2023 to approximately September 2024.

During Plaintiffs' employment for Employer, Employer paid Plaintiffs an hourly wage and classified Plaintiffs as non-exempt from overtime. Employer typically scheduled Plaintiffs to work at least five days in a workweek and at least eight hours per day, but Plaintiffs also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Plaintiffs' employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiffs with legally compliant meal periods, failed to authorize and permit Plaintiffs to take rest periods, failed to timely pay all final wages to Plaintiffs when Plaintiffs' employment terminated, failed to furnish accurate wage statements to Plaintiffs, failed to indemnify Plaintiffs for business expenditures, and failed to timely produce Plaintiffs' requested employment records. As discussed below, Plaintiffs' experience working for Employer was typical and illustrative.

#### **Failure to Pay for All Hours Worked, Including Minimum, Straight, and Overtime Wages**

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

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Plaintiffs and other Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Employer required Plaintiffs and other Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring Plaintiffs and other Aggrieved Employees to perform work during uncompensated meal periods and requiring Plaintiffs and other Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that employers compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Plaintiffs' and other Aggrieved Employees' regular rate of pay when

paying overtime, by failing to include all compensation in overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Plaintiffs and other Aggrieved Employees worked.

Throughout the statutory period, Employer also engaged in a practice of improper rounding. Under *Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022), because Employer could and did track the exact time in minutes that Plaintiffs and other Aggrieved Employees worked, it must pay for all time worked. When an employer uses an electronic timekeeping system to record time worked, this ability to “precisely capture time worked” means that “the employer must pay the employee for that worktime when due.” *Id.* at 671. As a result of Employer’s rounding policy, Plaintiffs and other Aggrieved Employees were not compensated for all hours that Plaintiffs and other Aggrieved Employees worked.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

#### **Failure to Provide Meal Periods**

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Despite these legal requirements, Employer wrongfully failed to provide Plaintiffs and other Aggrieved Employees with legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including but not limited to failing to provide Plaintiffs and other Aggrieved Employees the opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Plaintiffs and other Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs and other Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Plaintiffs and other Aggrieved Employees for meal periods that were not provided as required by law. Employer also did not inform Plaintiffs and other Aggrieved Employees of their right to, nor permitted Plaintiffs and other Aggrieved Employees to take, all of Plaintiffs and other Aggrieved Employees’ second meal periods when Plaintiffs and other Aggrieved Employees worked at least ten hours of work in a workday and otherwise unlawfully pressured Plaintiffs and other Aggrieved Employees to waive such breaks. Accordingly, Employer failed to provide meal periods to Plaintiffs and other Aggrieved Employees in compliance with California law.

Plaintiffs and other Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employer, however, failed to pay Plaintiffs and other Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

#### **Failure to Authorize and Permit Rest Periods**

Employer is required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than three and a half hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer has wrongfully failed to authorize and permit Plaintiffs and other Aggrieved Employees to take legally compliant rest periods in a manner required by law (and also including but not limited to failing to authorize and permit Plaintiffs and other Aggrieved Employees the opportunity to leave the work premises to take rest periods). Employer required Plaintiffs and other Aggrieved Employees to work in excess of three and a half consecutive hours a day without authorizing and permitting Plaintiffs and other Aggrieved Employees to take a 10-minute, uninterrupted, duty-free rest period, or without compensating Plaintiffs and other Aggrieved Employees for rest periods that were not authorized or permitted.

Instead, Employer continued to assert control over Plaintiffs and other Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiffs and other Aggrieved Employees permission to take a rest period. Accordingly, Employer failed to authorize and permit Plaintiffs and other Aggrieved Employees to take rest periods in compliance with California law. Plaintiffs and other Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not authorized and permitted to take all required rest period(s). Employer, however, failed to pay Plaintiffs and other Aggrieved Employees all of the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

#### **Failure to Pay All Earned Wages Twice Per Month**

Based on Employer's failure to pay Plaintiffs and other Aggrieved Employees for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, Employer failed and refused to pay Plaintiffs and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that Plaintiff and other Aggrieved Employees were not paid all wages for all meal periods not provided by Employer, all wages for all rest periods not authorized and permitted by Employer, and all wages for all hours worked. As a result, Employer owes Plaintiffs and other Aggrieved Employees the legally required wages for unpaid wages, and Plaintiffs and other Aggrieved Employees suffered damages in those amounts.

Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

#### **Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when employees begin and end each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and other Aggrieved Employees.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiffs and other Aggrieved Employees the ability to know, understand, and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Plaintiffs and other Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Plaintiffs and other Aggrieved Employees have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and other Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

#### **Failure to Timely Pay All Wages at Termination**

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Plaintiffs and other Aggrieved Employees was terminated. However, during the relevant time period, Employer failed to pay Plaintiffs and other Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight, and overtime wages), missed meal period premium wages, and missed rest period premium wages. Employer also violated Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without Plaintiffs' and other Aggrieved Employees' voluntary authorization.

Employer's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the

wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and other Aggrieved Employees are entitled to recover from Employer their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination, and for unlawfully making any such payment (if any) via direct deposit without Plaintiffs' and other Aggrieved Employees' voluntary authorization.

### **Failure to Furnish Accurate Itemized Wage Statements**

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

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

Throughout the statutory period, Employer failed to timely furnish Plaintiffs and other Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employer violated Labor Code § 226, Plaintiffs and other Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs and other Aggrieved Employees are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee. Moreover, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

### **Failure to Indemnify for Necessary Expenditures**

Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employer wrongfully required Plaintiffs and other Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Employer, including but not limited to expenses for cell phone, vehicle, internet, and work tools. Plaintiffs and other Aggrieved Employees paid out-of-pocket for necessary employment-related expenses. Plaintiffs and other Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Plaintiffs and other Aggrieved Employees for these employment-related expenses.

As a result, Employer is liable to Plaintiffs and other Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiffs and other Aggrieved Employees for necessary business expenditures.

### **Recordkeeping Requirement Violations**

California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by employees. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employer failed to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when Plaintiffs and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employer failed to keep accurate and complete records showing total hours worked by Plaintiffs and other Aggrieved Employees, or some of them, by virtue of Employer’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices. Employer failed to keep accurate and complete records showing total hours worked by virtue of Employer’s failure to relieve Plaintiffs and other Aggrieved Employees of all duties and Employer’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employer further failed to record the true start and end times of Plaintiffs’ and other Aggrieved Employees’ meal periods.

Based on further information and belief, Employer further failed to record the true start and end times of Plaintiffs’ and other Aggrieved Employees’ work shifts, or some of them.

Additionally, Employer failed to keep accurate records and issue accurate wage statements by not documenting accrued sick time for Plaintiffs and other Aggrieved Employees. Employer’s failure to keep “accurate and complete” payroll records for Plaintiffs and other Aggrieved Employees, violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each

Aggrieved Employee, results in a separate civil penalty.<sup>1</sup>

**Violation of California Equal Pay Act**

Labor Code § 1197.5 provides that “[a]n employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions . . . “[a]ny employer who violates [this section] is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and an additional equal amount as liquidated damages.”

Plaintiffs and other Aggrieved Employees are female employees of Defendant. On information and belief, throughout the relevant time period, Defendant maintained a pattern and practice of paying female employees at a lower wage rate than male employees who perform or performed substantially similar work.

**Failure to Provide the Amount of Available Paid Sick Leave**

Labor Code § 246(i) requires that an employer include on the wage statement or separate written document provided to the employee each pay period, the amount of available paid sick leave (or paid time off an employee provides in lieu of sick leave).

Plaintiffs and other aggrieved employees were not provided wage statements or separate written documents each pay period stating the amount of available paid sick leave or paid time off provided in lieu of sick leave.

**Action for Civil Penalties Under PAGA**

In light of the above, Plaintiffs allege that Employer violated the following provisions of the Labor Code with respect to Aggrieved Employees:

1. Labor Code §§ 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 2802 by failing to indemnify for necessary expenditures;
9. Labor Code § 1197.5 by paying female employees at a wage rate less than the rates paid to

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<sup>1</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved Plaintiff per pay period”).

LWDA

*Notice of Labor Code Violations and PAGA*

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male employees for substantially similar work

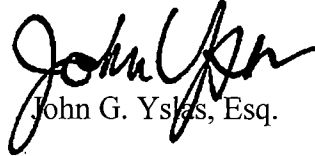
10. Labor Code § 246 by failing to provide the amount of available paid sick leave on wage statements or on a separate written document each pay period; and
11. Labor Code § 1174 by failing to keep accurate and complete payroll records.

Therefore, on behalf of Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Plaintiffs have placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM



John G. Yslas, Esq.

# **EXHIBIT C**