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County of Alameda

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on behalf of himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

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

WAHID QADIR, on behalf of himself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

FITNESS INTERNATIONAL, LLC, a
California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: **24CV103014**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, 1174, 1174.5, 1175, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

1 Plaintiff WAHID QADIR (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of FITNESS
3 INTERNATIONAL, LLC, a California limited liability company, and any subsidiaries or affiliated
4 companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay all minimum and overtime wages earned during the course of
15 employment, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Aggrieved
16 Employees are required to work off-the-clock and without compensation because Defendants
17 do not compensate them for all hours worked—they are expected to answer messages and
18 calls at all times, even when off-the-clock (such as in the middle of the night). However, none
19 of this time is compensated even though Defendants are required to pay them since an
20 employer is obligated to pay the wages of an hourly employee for all time that the employee
21 is under the control of the employer, and this includes all the time the employee is suffered or
22 permitted to work, whether or not required to do so. When Plaintiff and Aggrieved Employees
23 work off-the-clock after hours, they are under the control of Defendants and required to be
24 compensated for all hours worked. Defendants also fail to maintain accurate records showing
25 the start and stop time for every shift since they maintain a practice requiring Plaintiff and
26 other Aggrieved Employees to only record their scheduled shift, and not the actual time
27 worked, resulting in unpaid wages. These instances deprived Plaintiff and other Aggrieved
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1 Employees of significant hours worked and wages due, and constitute violations of Labor
2 Code §§ 510, 558, and 1194 and IWC Wage Order 4-2001;

3 b. Failing to properly blend bonuses and other non-base hourly wages, earned by
4 Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes of paying
5 them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at
6 the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.
7 Defendants pay Plaintiff and other Aggrieved Employees bonuses and other non-base hourly
8 wages; however, Defendants fail to properly blend these wages, and instead pay Plaintiff and
9 other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages,
10 and sick pay wages based only on the base hourly rate of pay, thus depriving Plaintiff and
11 other Aggrieved Employees of all meal and rest period premiums, overtime wages, and sick
12 pay wages earned. Defendants also underpay overtime for certain pay periods. Moreover, if a
13 customer changes their credit card on file, Plaintiff's and other Aggrieved Employees'
14 commission is forfeited even though it was earned. Plaintiff and other Aggrieved Employees
15 are also required to answer messages and phone calls during their meal breaks, which also
16 results in unpaid wages and uncompensated time. This violates Labor Code §§ 226.7, 246,
17 510, 512, 558, and 1194;

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19 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
20 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
21 and 558, and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees are routinely
22 denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every
23 shift worked that exceeds five hours, or a second timely, uninterrupted, 30-minute meal period
24 for every shift worked that exceeds ten hours, but are not paid premium wages of one hour's
25 pay at the proper rate of pay for each missed first or second meal period. When they do receive
26 a meal period, it would routinely be late (after the fifth hour). Defendants also fail to maintain
27 accurate records showing the start and stop time of meal periods since, as discussed above,
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1 they maintain a practice requiring Plaintiff and other Aggrieved Employees to only record
2 their scheduled shift, and not the actual time worked, resulting in unpaid wages and
3 uncompensated time. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, and
4 1194 and IWC Wage Order 4-2001;

5 d. Failing to pay correct premium wages to Plaintiff and other Aggrieved
6 Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
7 Order No. 4-2001. Plaintiff and other Aggrieved Employees are routinely unable to take a 10-
8 minute rest period for every four (4) hours of work or major fraction thereof, but are not paid
9 premium wages of one hour's pay for each missed rest period. Plaintiff was simply denied
10 and not authorized to take his legally entitled rest periods and is never paid premium wages
11 for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001;
12 and
13

14 e. Failing to provide him and other Aggrieved Employees with wage statements
15 that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
16 226.3. Plaintiff and other Aggrieved Employees are not paid all wages due, as stated above.
17 As such, the wage statements provided by Defendants fail to accurately state all gross wages
18 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
19 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
20 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3. Furthermore,
22 and independent of the above allegations, the wage statements issued to Plaintiff and
23 Aggrieved Employees fail to set forth all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and
25 226.3. Specifically, the wage statements set forth a multitude of rates in effect during the pay
26 period, but it is impossible to determine which rates are applicable.
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3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Alameda County.

III.

PARTIES

A. Plaintiff

5. Plaintiff WAHID QADIR has been employed by Defendants since March 2021 as a non-exempt employee in Alameda County, California.

B. Defendant

6. Defendant FITNESS INTERNATIONAL, LLC, is a California limited liability company that employed Plaintiff and Aggrieved Employees throughout California, including Alameda County.

7. 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 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, 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. Plaintiff 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.

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

9. The Defendants named herein as DOE 1 through DOE 10 are and are 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.

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, AND 1194
AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On October 8, 2024, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of October 8, 2024. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: December 12, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By:

EVAN S. GAINES
Attorneys for Plaintiff