

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

UP FITNESS, INC., a California corporation; and DOES 1 through 50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DERIK SCOTT, GARRETT GASTON and TAYLOR SCOTT, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUL 01 2019

Sherri R. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy
Steven Drew

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER: **19STCV22823**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group-APLC - 5850 Oberlin Drive, Suite 230A, San Diego, CA 92121

DATE:
(Fecha)

JUL 01 2019

Sherri R. Carter, Clerk

Clerk, by
(Secretario)

STEVEN DREW

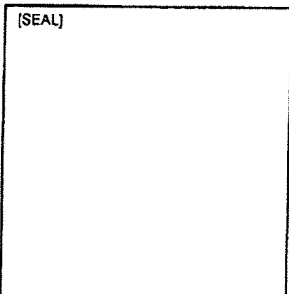
Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):



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15 ATTORNEYS FOR PLAINTIFFS GARRET GASTON, DERIK SCOTT AND TAYLOR SCOTT

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 DERIK SCOTT, GARRETT GASTON and
19 TAYLOR SCOTT, individuals, on behalf of
20 themselves, and on behalf of all persons
21 similarly situated,

22 Plaintiff,

23 vs.

24 UP FITNESS, INC., a California corporation;
25 and DOES 1 through 50, Inclusive,

26 Defendants.

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Superior Court of California
County of Los Angeles

JUL 01 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

19STCV22823

Case No. _____

COMPLAINT

CLASS ACTION:

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
2. FAILURE TO PROVIDE REQUIRED REST PERIODS
3. FAILURE TO PAY OVERTIME WAGES
4. FAILURE TO PAY MINIMUM WAGES
5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
6. FAILURE TO MAINTAIN REQUIRED RECORDS
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
8. FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES,
9. UNFAIR AND UNLAWFUL BUSINESS PRACTICE;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

By Fax

DEMAND FOR JURY TRIAL

1 Plaintiffs DERIK SCOTT, GARRET GASTON, and TAYLOR SCOTT (“PLAINTIFFS”),
2 individuals, demanding a jury trial, on behalf of themselves and other persons similarly situated,
3 hereby allege as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter because
6 PLAINTIFF is a resident of the State of California, and Defendants UP FITNESS, INC., a California
7 corporation, and DOES 1 through 50 inclusive (collectively “DEFENDANTS”), are qualified to do
8 business in California and regularly conduct business in California. Further, no federal question is at
9 issue because the claims are based solely on California law.

10 2. Venue is proper in this judicial district and the County of Los Angeles, California
11 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
12 the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in
13 the County of Los Angeles, and because DEFENDANTS’ illegal payroll policies and practices which
14 are the subject of this action were applied, at least in part, to PLAINTIFF, and other persons similarly
15 situated, in the County of Los Angeles.

16 **PLAINTIFF**

17 3. PLAINTIFFS are residents of the State of California and current employees of
18 DEFENDANTS.

19 4. Plaintiff Garret Gaston worked for Defendant UP Fitness, Inc. in California during April
20 2019 as a trainer. Plaintiff Derik Scott has worked for Defendant UP Fitness, Inc. in California since
21 June 2018 as a trainer. Plaintiff Taylor Scott has worked for Defendant UP Fitness, Inc. in California
22 since August 2018 as a trainer. PLAINTIFFS’ work required the performance of labor consisting of
23 instructing DEFENDANTS’ customers on physical training at DEFENDANTS’ facility. In
24 performing these duties, PLAINTIFFS did not utilize any independent discretion, judgment, or
25 management decisions with respect to matters of significance. As a result, PLAINTIFFS were
26 classified as a non-exempt employee and were entitled to be paid minimum wages, overtime wages,
27 accurate wage statements, and meal and rest periods as required by California law. PLAINTIFFS
28 were paid by piece-rate only while they were performing work for DEFENDANTS. Importantly,

1 they were not provided with minimum wages for their non-production work time. PLAINTIFFS also
2 did not receive paid rest breaks as required by California law. DEFENDANTS failed to pay
3 PLAINTIFFS the correct amount of compensation because DEFENDANTS established an illegal pay
4 practice of paying PLAINTIFFS on a piece rate basis when performing work assigned by
5 DEFENDANTS. DEFENDANTS however failed to pay minimum wages for compensable time
6 worked. DEFENDANTS also failed to pay PLAINTIFFS overtime wages for all overtime worked,
7 thereby uniformly resulting in PLAINTIFFS being underpaid for all time worked during their
8 employment, including overtime worked. To date, DEFENDANTS have not fully paid the
9 PLAINTIFFS for all their wages still owed to them or any penalty wages owed to them under
10 California Labor Code § 203.

11 5. PLAINTIFFS, on behalf of themselves and other similarly situated current and former
12 non-exempt employees of DEFENDANTS in the State of California at any time during the four years
13 preceding the filing of this action, and continuing while this action is pending, brings this class action
14 to recover, among other things, wages and penalties from unpaid wages earned and due, including
15 but not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation,
16 illegal meal and rest period policies, failure to pay all wages due to discharged and quitting
17 employees, failure to indemnify employees for necessary expenditures and/or losses incurred in
18 discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
19 required records, and interest, attorney's fees, costs, and expenses.

20 6. PLAINTIFFS bring this action on behalf of themselves and the following situated class
21 of individuals ("CLASS MEMBERS"): all current and former non-exempt employees of
22 DEFENDANTS in the State of California at any time within the period beginning four (4) years prior
23 to the filing of this action and ending at the time this action settles or proceeds to final judgement (the
24 "CLASS PERIOD"). PLAINTIFFS reserve the right to name additional class representatives.

25 **DEFENDANTS**

26 7. DEFENDANT UP FITNESS, INC. is an international gym that provides personal
27 training services, with its United States facility located in Los Angeles, California.

28 8. PLAINTIFFS are informed and believe, and thereon allege, that Defendant UP

1 FITNESS, INC., is, and at all times relevant hereto was, a California corporation organized and
2 existing under the laws of the State of California. PLAINTIFF is further informed and believes, and
3 thereon alleges, that Defendant UP FITNESS, INC., is authorized to conduct business in the State of
4 California, and does conduct business in the State of California. Specifically, Defendant UP
5 FITNESS, INC., maintains offices and facilities and conducts business in, and engages in illegal
6 wage and payroll practices and policies in, the County of Los Angeles, in the State of California.

7 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under fictitious
9 names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant designated
10 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
11 PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately
12 caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the court to amend
13 this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

14 10. At all relevant times herein, DEFENDANTS are the joint employers of PLAINTIFFS
15 and CLASS MEMEBERS. PLAINTIFFS are informed and believe, and thereon allege, that at all
16 times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated
17 enterprises, joint employers, subsidiaries, parents, principles, related entities, co-conspirators,
18 authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other.
19 Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter
20 ego of the other.

21 11. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS are employed by
22 DEFENDANTS under employment agreements that are partly written, partly oral, and partly
23 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
24 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
25 CLASS MEMBERS all wages earned and due, through methods and schemes which include, but are
26 not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing to
27 properly maintain records, failing to provide accurate itemized statements for each pay period, failing
28 to properly compensate PLAINTIFFS and CLASS MEMBERS for necessary expenditures, and

1 requiring, permitting or suffering the employee to work off the clock, in violation of the California
2 Labor Code and the applicable Welfare Commission (“IWC”) Order.

3 12. PLAINTIFFS are informed and believe, and thereon allege, that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
5 each acting as agents and/or employees, and/or under the direction and control of each of the other
6 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
9 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in
10 amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

11 **THE CONDUCT**

12 14. The work required to be performed by PLAINTIFFS and the other trainers is manual
13 labor consisting of personal training and instruction to DEFENDANTS’ customers in accordance
14 with DEFENDANTS’ policies and practices. As a result of this work, PLAINTIFFS and the other
15 CLASS Members were involved in providing personal training sessions as specified by
16 DEFENDANTS and this work was executed by the performance of manual labor within a defined
17 skill set. PLAINTIFFS and CLASS Members were not compensated through a monthly salary. As a
18 result, the trainer position was a non-exempt position and was in fact classified as non-exempt by the
19 DEFENDANTS. PLAINTIFFS and the other CLASS Members employed by DEFENDANTS
20 performed these manual tasks but were not paid the minimum wages and overtime wages to which
21 they were entitled because of DEFENDANTS’ systematic policies and practices of failing to
22 correctly record all time worked, including overtime worked. DEFENDANTS failed to correctly pay
23 minimum wages and overtime wages to PLAINTIFFS and the other CLASS Members in accordance
24 with California law, and thereby systematically underpaid minimum and overtime compensation to
25 PLAINTIFFS and the other CALIFORNIA CLASS Members for their documented time worked,
26 including overtime worked. As a result, PLAINTIFFS and the other CLASS Members worked more
27 than eight (8) hours in a workday and/or forty (40) hours in a workweek but were not fully
28 compensated for overtime worked as required by law.

1 15. Individuals in these trainer positions are and were employees who are entitled to
2 minimum wage and overtime compensation and prompt payment of amounts that the employer owes
3 an employee when the employee quits or is terminated, and other compensation and working
4 conditions that are prescribed by law. Although DEFENDANTS required their employees employed
5 as trainers to work more than eight (8) hours in a workday and/or forty (40) hours in a workweek
6 from time to time, as a matter of company policy and practice, DEFENDANTS consistently and
7 uniformly denied these employees the correct overtime compensation that the law requires.

8 16. Industrial Welfare Commission Wage Order 4-2001 provides: “Every employer shall
9 pay to each employee, on the established payday for the period involved, not less than the applicable
10 minimum wage for all hours worked in the payroll period, whether the remuneration is measured by
11 time, piece, commission, or otherwise.” “Hours worked” is defined in the Wage Order as “the time
12 during which an employee is subject to the control of an employer, and includes all the time the
13 employee is suffered or permitted to work, whether or not required to do so.” Here, PLAINTIFFS
14 and CLASS Members are entitled to separate hourly compensation for time spent performing other
15 non-training tasks directed by DEFENDANTS during their work shifts.

16 17. In addition, DEFENDANTS failed to provide all the legally required unpaid, off- duty
17 meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFFS and the other
18 CLASS Members as required by the applicable Wage Order and Labor Code. DEFENDANTS did
19 not have a policy or practice which provided or recorded all the legally required unpaid, off-duty
20 meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFFS and the other
21 CLASS Members. As a result, DEFENDANTS’ failure to provide the PLAINTIFFS and the CLASS
22 Members with all the legally required off-duty, unpaid meal periods and all the legally required off-
23 duty, paid rest periods is evidenced by DEFENDANTS’ business records.

24 18. From time to time, DEFENDANTS also failed to provide the PLAINTIFFS and the
25 other members of the CLASS with complete and accurate wage statements which failed to show,
26 among other things, the correct minimum and overtime wages for time worked, including, allocation
27 of lawfully required, paid, and off-duty rest periods. Cal. Lab. Code § 226 provides that every
28 employer shall furnish each of his or her employees with an accurate itemized wage statement in

1 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
2 during the pay period and the corresponding amount of time worked at each hourly rate. As a result,
3 DEFENDANTS provided the PLAINTIFFS and the other members of the CLASS with wage
4 statements which violated Cal. Lab. Code § 226.

5 19. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
6 knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS and the other
7 CLASS Members for required business expenses incurred by the PLAINTIFFS and other CLASS
8 Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under
9 California Labor Code Section 2802, employers are required to indemnify employees for all expenses
10 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that
11 "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred
12 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
13 to the directions of the employer, even though unlawful, unless the employee, at the time of obeying
14 the directions, believed them to be unlawful."

15 20. In this action, PLAINTIFFS, on behalf of themselves and the CLASS, seek to recover
16 all the compensation that DEFENDANTS are required by law to provide, but failed to provide, to
17 PLAINTIFFS and all other CLASS Members. PLAINTIFFS also seek penalties and all other relief
18 available to them and other CLASS Members under California law. Finally, PLAINTIFFS seek
19 declaratory relief finding that the employment practices and policies of the DEFENDANTS violated
20 California law and injunctive relief to enjoin the DEFENDANTS from continuing to engage in such
21 employment practices.

22 21. In performing the conduct herein alleged, the DEFENDANTS' wrongful conduct and
23 violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFFS and the other
24 members of the CLASS of money and career opportunities to which they were lawfully entitled.
25 DEFENDANTS engaged in such wrongful conduct by failing to have adequate employment policies
26 and maintaining adequate employment practices consistent with such policies and the applicable law.
27 DEFENDANTS' wrongful conduct as herein alleged caused the money belonging to the
28 PLAINTIFFS and the other members of the CLASS to be kept by DEFENDANTS and thereby

1 converted by DEFENDANTS for DEFENDANTS' own use.

2 22. Classified and treated by DEFENDANTS as non-exempt at the time of hire and
3 thereafter, PLAINTIFFS, and all other members of the CLASS, are in fact not exempt under
4 Industrial Welfare Commission Wage Order 4-2001 and Cal. Lab. Code § 515 and therefore are
5 entitled to minimum and overtime wages and the protection of all other labor laws. Despite the
6 undeniable fact that PLAINTIFFS, and all other members of the CLASS, were in fact not exempt,
7 DEFENDANTS failed to comply with the applicable requirements imposed by the California Labor
8 Code and the applicable Wage Order(s). DEFENDANTS' practices violated and continue to violate
9 the law, regardless of whether the employees' work is paid by commission, by salary, by piece rate,
10 or by part commission, part piece rate, and/or part salary. As a result of this policy and practice,
11 DEFENDANTS failed to pay minimum and overtime pay in accordance with applicable law. To the
12 extent that DEFENDANTS contend the CLASS is paid using a piece rate, DEFENDANTS' method
13 for calculating overtime fails to comply with 29 C.F.R. § 778.111 as well as the state regulations and
14 opinion letters issued by the California Division of Labor Standards Enforcement in their calculation
15 and payment of overtime compensation. To the extent that DEFENDANTS contend the CLASS is
16 paid on an hourly basis, DEFENDANTS' method for calculating overtime fails to comply with the
17 California Labor Code ("Labor Code") as well as the state regulations and opinion letters issued by
18 the California Division of Labor Standards Enforcement in their calculation and payment of overtime
19 compensation for hourly employees.

20 **CLASS ACTION DESIGNATION**

21 23. This action is appropriately suited for a Class Action because:

22 a. The potential class is a significant number. Joinder of all current and former
23 employees individually would be impractical.

24 b. This action involves common questions of law and fact to the potential class
25 because the action focuses on DEFENDANTS's systematic course of illegal payroll practices and
26 policies, which was applied to all non-exempt employees in violation of the Labor Code, the
27 applicable IWC wage order, and the Business and Professions Code which prohibits unfair business
28 practices arising from such violations.

1 c. The claims of PLAINTIFFS are typical of the class because DEFENDANTS
2 subjected all non-exempt employee to identical violations of the Labor Code, the applicable IWC
3 wage order, and the Business and Professions Code.

4 d. PLAINTIFFS are able to fairly and adequately protect the interest of all
5 members of the class because it is in their best interest to prosecute the claims alleged herein to
6 obtain full compensation due to them for all services rendered and hours worked.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Provide Required Meal Periods**

9 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**

10 **(Against all DEFENDANTS)**

11 24. Plaintiff incorporated herein by specific references, as though fully set forth, the
12 allegations in the preceding paragraphs.

13 25. During the CLASS PERIOD, as part of DEFENDANT's illegal payroll policies and
14 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS required,
15 permitted or otherwise suffered PLAINTIFFS and CLASS MEMBERS to take less than 30-minute
16 meal periods, or to work through them, and have failed to otherwise provide the required meal
17 periods to PLAINTIFFS and CLASS MEMBERS pursuant to California Labor Code § 226.7, 512
18 and IWC Order No. 5-2001, § 11.

19 26. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage Order
20 No. 5-2001, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were not
21 provided with a meal period, in accordance with the applicable wage order, one additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided.

24 27. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197, and
25 IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all
26 hours worked during their meal periods.

27 28. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
28 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned

1 and due, interest, penalties, expenses, and costs of suit.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Provide Required Rest Periods**

4 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]**

5 **(Against all DEFENDANTS)**

6 29. PLAINTIFFS incorporates herein by specific reference, as though fully set forth, the
7 allegations in the preceding paragraphs.

8 30. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
9 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to
10 provide rest periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor
11 Code §§ 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

12 31. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order
13 No. 5-2001, § 12 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided
14 with a rest period, in accordance with the applicable wage order

15 32. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
16 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
17 and due, interest, penalties, expenses, and costs of suit.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Pay Overtime Wages**

20 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

21 **(Against all DEFENDANTS)**

22 33. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
23 allegations in the preceding paragraphs.

24 34. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 5-2001, § 3,
25 DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS for all overtime,
26 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
27 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
28 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)

1 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
2 consecutive day of work in any workweek.

3 35. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
4 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001.
5 During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and CLASS
6 MEMBERS for all overtime hours worked as required under the forgoing provisions of the California
7 Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-
8 half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and
9 IWC Wage Order No. 5-2001, § 3; requiring, permitting or suffering PLAINTIFFS and CLASS
10 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and CLASS
11 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which
12 PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and
13 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS
14 for each pay period; and other methods to be discovered. During the CLASS PERIOD,
15 DEFENDANTS failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours
16 worked and to pay the amount of overtime wages due as required by the California Labor Code and
17 IWC Wage Order by failing and refusing to include all compensation, including commissions and
18 bonuses earned, due and owing and/or paid, in the regular rate of pay from which overtime wages
19 were calculated and paid. During the CLASS PERIOD, DEFENDANTS failed to compensate
20 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and to pay the amount of
21 overtime wages due as required by the California Labor Code and IWC Wage Order by incorrectly
22 calculating the regular rate of pay from which overtime wages were calculated and paid.

23 36. In violations of California Law, DEFENDANTS have knowingly and willfully refused
24 to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all wages
25 earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS MEMBERS have
26 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
27 lost interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to
28 fully perform their obligations under state law, all to their respective damages in amounts according

1 to proof at time of trial, and within the jurisdiction of this Court.

2 37. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
3 1194, 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§
4 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
5 and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid
6 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees,
7 expenses, and costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Pay Minimum Wages**

10 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

11 **(Against all DEFENDANTS)**

12 38. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
13 allegations in the preceding paragraphs.

14 39. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001, §
15 4, payment to an employee of less than the applicable minimum wage for all hours worked in a
16 payroll period is unlawful.

17 40. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and CLASS
18 MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting, or
19 suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or
20 suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest breaks; illegally and
21 inaccurately recording time in which PLAINTIFFS and CLASS MEMBERS worked; failing to
22 properly maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate
23 itemized wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

24 41. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
25 1197, and IWC Wage Order No. 5-2001, § 4. As a proximate result of the aforementioned violations,
26 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial.
27 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
28 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and

1 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to the them by
2 DEFENDANTS, plus interest, penalties, attorney’s fees, expenses, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Labor Code §§ 201, 202, 203]**

6 **(Against all DEFENDANTS)**

7 42. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
8 allegations in the preceding paragraphs.

9 43. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee’s wages accrued and unpaid at
12 the time of discharge are due and payable immediately.

13 44. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to
14 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
15 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
16 which case the employee is entitled to his or her wages at the time of quitting.

17 45. California Labor Code § 203 provides that if an employer willfully fails to pay, in
18 accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged
19 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
20 to the employee at the same rate for up to 30 workdays.

21 46. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
22 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
23 California Labor Code §§ 201 and 202.

24 47. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory
25 penalties, including the waiting time penalties provided in California Labor Code § 203, together
26 with interest thereon, as well as other available remedies.

27 48. As a proximate result of DEFENDANTS’ unlawful actions and omissions,
28 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount according

1 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
2 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
3 Code §§ 1194 and 2699.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001, § 7]**

7 **(Against all DEFENDANTS)**

8 49. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
9 allegations in the preceding paragraphs.

10 50. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
11 practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
12 DEFENDANTS knowingly and intentionally failed to maintain records as required under California
13 Labor Code §§ 226, 1174, and IWC Wage Order No. 5-2001, § 7, including but not limited to, the
14 following records: total daily hours worked by each employee; applicable rates of pay; all
15 deductions; meal periods; time records showing when each employee begins and ends each work
16 period; and accurate itemized statements.

17 51. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,
19 and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
20 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil
21 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
22 expenses, and reasonable attorney's fees, including but not limited to those provided in California
23 Labor Code § 226(e), as well as other available remedies.

24 **SEVENTH CAUSE OF ACTION**

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

26 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

27 **(Against all DEFENDANTS)**

28 52. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the

1 allegations in the preceding paragraphs.

2 53. During the CLASS PERIOD, DEFENDANTS routinely failed to provide PLAINTIFFS
3 and CLASS MEMBERS with timely, accurate and itemized wage statements in writing showing each
4 employee's gross wages and earned, total hours worked, all deductions made, net wages earned, the
5 name and address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS,
6 and all applicable hourly rates in effect during each pay period and the corresponding number of
7 hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order
8 No. 5-2001, § 7.

9 54. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
10 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements
11 in accordance with California Labor Code § 226(a).

12 55. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS
13 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
14 wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and CLASS MEMBERS are
15 entitled to all available statutory penalties, including, but not limited to civil penalties pursuant to
16 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
17 attorney's fees, including but not limited to those provided in California Labor Code § 226(e), as well
18 as other available remedies.

19 **EIGHTH CAUSE OF ACTION**

20 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

21 **[Cal. Labor Code § 2802]**

22 **(Against all DEFENDANTS)**

23 56. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
24 allegations in the preceding paragraphs.

25 57. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
26 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
27 his or her duties, or of his or her obedience to the directions of the employer.

28 58. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to

1 indemnify PLAINTIFFS and CLASS MEMBERS for all business expenses and/or losses incurred in
2 direct consequence of the discharge of their duties while working under the direction of
3 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other
4 employment-related expenses, in violation of California Labor Code § 2802.

5 59. As a proximate result of DEFENDANT's unlawful actions and omissions,
6 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,
7 and seek reimbursement of all necessary expenditures, plus interest thereon, pursuant to California
8 Labor Code § 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are entitled to all
9 available statutory penalties and an award of costs, expenses, and reasonable attorney's fees,
10 including those provided in California Labor Code § 2802(c), as well as other available remedies.

11 **NINTH CAUSE OF ACTION**

12 **Unfair and Unlawful Business Practices**

13 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

14 **(Against all DEFENDANTS)**

15 60. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
16 allegations in the preceding paragraphs.

17 61. Each and every one of DEFENDANT's acts and omissions in violation of the California
18 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
19 DEFENDANT's failure and refusal to provide required meal periods, DEFENDANT's failure and
20 refusal to provide required rest breaks, DEFENDANT's failure and refusal to pay overtime
21 compensation, including all compensation earned in the regular rate of pay from which overtime
22 wages were calculated and paid, DEFENDANTS' failure and refusal to pay minimum wages,
23 DEFENDANT's failure and refusal to pay all wages due to discharged or quitting employees,
24 DEFENDANTS's failure and refusal to furnish accurate itemized wage statements; DEFENDANT's
25 failure and refusal to maintain required records, DEFENDANT's failure and refusal to indemnify
26 PLAINTIFFS and CLASS MEMBERS for necessary expenditures and/or losses incurring in
27 discharging their duties, constitutes an unfair and unlawful business practice under California
28 Business and Professions Code § 17200 et seq.

1 62. DEFENDANTS' violations of California wage and hour laws constitute a business
2 practice because DEFENDANT's aforementioned acts and omissions were done repeatedly over a
3 significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and CLASS
4 MEMBERS.

5 63. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest
6 periods, and other benefits as required by the California Labor Code, the California Code of
7 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
8 report, and pay the correct sums of assessment to the state authorities under the California Labor
9 Code and other applicable regulations.

10 64. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS
11 have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS,
12 CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their
13 ill-gotten gains and to restore them to PLAINTIFFS and the CLASS MEMBERS.

14 65. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and
15 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to
16 orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS
17 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and
18 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in
19 an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

20 **TENTH CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

22 **[Cal. Lab. Code §§ 2698 et seq.]**

23 **(Against all Defendants)**

24 1. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein,
25 the prior paragraphs of this Complaint.

26 2. PAGA is a mechanism by which the State of California itself can enforce state labor
27 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor
28 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law

1 enforcement action designed to protect the public and not to benefit private parties. The purpose of
2 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
3 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
4 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
5 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
6 PAGA claims cannot be subject to arbitration.

7 3. PLAINTIFFS, and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
9 this Representative Action on behalf of the State of California with respect to themselves and all
10 individuals who are or previously were employed by DEFENDANTS and classified as non-exempt
11 employees in California during the time period of April 24, 2018 until the present (the "AGGRIEVED
12 EMPLOYEES").

13 4. On April 24, 2019, PLAINTIFFS gave written notice by certified mail to the Labor and
14 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
15 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
16 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFFS to add
17 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS
18 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
19 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

20 5. The policies, acts and practices heretofore described were and are an unlawful business
21 act or practice because Defendant (a) failed to pay PLAINTIFFS and other GGRIEVED EMPLOYEES
22 minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other GGRIEVED
23 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
24 statements, (d) failed to reimburse PLAINTIFFS and other GGRIEVED EMPLOYEES for necessary
25 expenses, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections
26 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210,
27 218.5, 218.6, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199,
28 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as

1 a result of such conduct. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the
3 illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
7 severally, as follows:

8 (a) individually and on behalf of all other persons similarly situated, respectfully pray for relief
9 against DEFENDANTS and DOES 1 through 50, inclusive, and each of them, as follows:

- 10 1. For compensatory damages in an amount to be ascertained at trial;
- 11 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
12 disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 13 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
14 IWC Wage Order No. 5-2001;
- 15 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 16 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
17 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
18 engaging in the unlawful business practices complained herein;
- 19 6. For waiting time penalties pursuant to California Labor Code § 203;
- 20 7. For statutory and civil penalties according to proof, including but not limited to all
21 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;
- 22 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
23 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
24 providing for pre-judgment interest;
- 25 9. For reasonable attorney's fees and costs pursuant to California Labor Code §§ 1194,
26 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
27 attorneys' fees and costs;
- 28 10. For declaratory relief;

1 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
2 Seventh, Eighth and Ninth Causes of Action as a class action;

3 12. For an order appointing PLAINTIFFS as class representatives, and PLAINTIFFS'
4 counsel as class counsel; and

5 13. For such further relief that the Court may deem just and proper.

6 (b) On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
7 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act
8 of 2004.


9 (c) On all claims:

- 10 a. An award of interest, including prejudgment interest at the legal rate;
11 b. Such other and further relief as the Court deems just and equitable; and
12 c. An award of penalties, attorneys' fees and costs of suit, as allowable under
13 the law.

14 Dated: July 1, 2019

Respectfully Submitted,

15 ZAKAY LAW GROUP, APLC

16
17 By: 
18 Shani O. Zakay
19 Attorneys for Plaintiff


20 **DEMAND FOR JURY TRIAL**

21 PLAINTIFFS demand jury trial on all issues triable to a jury.

22
23 Dated: July 1, 2019

Respectfully Submitted,

24 ZAKAY LAW GROUP, APLC

25
26 By: 
27 Shani O. Zakay
28 Attorneys for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

Client #19901

April 24, 2019

Labor & Workforce Development Agency

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, CA 94612

PAGA@dir.ca.gov

Via Online Submission

UP FITNESS, INC.

c/o Steve Brice and/or Nick Mitchell

11925 Wilshire Blvd.

Santa Monica, CA 90401

Via Certified Mail No. 7018 3090 0000 5110 2106

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents DERIK SCOTT, TAYLOR SCOTT and GARRETT GASTON (“Clients”) and other aggrieved employees in a class action against UP FITNESS, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Clients and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Clients are employed by Defendant as Personal Trainers in California. Clients are paid on an hourly basis and entitled to legally required meal and rest periods. At all times during their employment, Defendant failed to, among other things, provide Clients, and all those similarly situated, with all legally mandated off-duty meal and rest periods and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Clients contend that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Clients contend that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendant. Clients therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,



Shani O. Zakay
Attorney for Clients

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11 3990 OLD TOWN AVENUE, SUITE C204
12 SAN DIEGO, CA 92110
13 TELEPHONE: (619) 599-8292
14 FAX: (619) 599-8291

15 ATTORNEYS FOR PLAINTIFFS GARRET GASTON, DERIK SCOTT AND TAYLOR SCOTT

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 GARRETT GASTON, DERIK SCOTT and
19 TAYLOR SCOTT, individuals, on behalf of
20 themselves, and on behalf of all persons
21 similarly situated,

22 Plaintiff,

23 vs.

24 UP FITNESS, INC., a California corporation;
25 and DOES 1 through 50, Inclusive,

26 Defendants.

Case No. _____

COMPLAINT

CLASS ACTION:

1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS
2. FAILURE TO PROVIDE REQUIRED REST PERIODS
3. FAILURE TO PAY OVERTIME WAGES
4. FAILURE TO PAY MINIMUM WAGES
5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
6. FAILURE TO MAINTAIN REQUIRED RECORDS
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
8. FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES, AND
9. UNFAIR AND UNLAWFUL BUSINESS PRACTICE

DEMAND FOR JURY TRIAL

1 Plaintiffs GARRET GASTON, DERIK SCOTT and TAYLOR SCOTT (“PLAINTIFFS”),
2 individuals, demanding a jury trial, on behalf of themselves and other persons similarly situated,
3 hereby allege as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter because
6 PLAINTIFF is a resident of the State of California, and Defendants UP FITNESS, INC., a California
7 corporation, and DOES 1 through 50 inclusive (collectively “DEFENDANTS”), are qualified to do
8 business in California and regularly conduct business in California. Further, no federal question is at
9 issue because the claims are based solely on California law.

10 2. Venue is proper in this judicial district and the County of Los Angeles, California
11 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
12 the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in
13 the County of Los Angeles, and because DEFENDANTS’ illegal payroll policies and practices which
14 are the subject of this action were applied, at least in part, to PLAINTIFF, and other persons similarly
15 situated, in the County of Los Angeles.

16 **PLAINTIFF**

17 3. PLAINTIFFS are residents of the State of California and current employees of
18 DEFENDANTS.

19 4. Plaintiff Garret Gaston worked for Defendant UP Fitness, Inc. in California during April
20 2019 as a trainer. Plaintiff Derik Scott has worked for Defendant UP Fitness, Inc. in California since
21 June 2018 as a trainer. Plaintiff Taylor Scott has worked for Defendant UP Fitness, Inc. in California
22 since August 2018 as a trainer. PLAINTIFFS’ work required the performance of labor consisting of
23 instructing DEFENDANTS’ customers on physical training at DEFENDANTS’ facility. In
24 performing these duties, PLAINTIFFS did not utilize any independent discretion, judgment, or
25 management decisions with respect to matters of significance. As a result, PLAINTIFFS were
26 classified as a non-exempt employee and were entitled to be paid minimum wages, overtime wages,
27 accurate wage statements, and meal and rest periods as required by California law. PLAINTIFFS
28 were paid by piece-rate only while they were performing work for DEFENDANTS. Importantly,

1 they were not provided with minimum wages for their non-production work time. PLAINTIFFS also
2 did not receive paid rest breaks as required by California law. DEFENDANTS failed to pay
3 PLAINTIFFS the correct amount of compensation because DEFENDANTS established an illegal pay
4 practice of paying PLAINTIFFS on a piece rate basis when performing work assigned by
5 DEFENDANTS. DEFENDANTS however failed to pay minimum wages for compensable time
6 worked. DEFENDANTS also failed to pay PLAINTIFFS overtime wages for all overtime worked,
7 thereby uniformly resulting in PLAINTIFFS being underpaid for all time worked during their
8 employment, including overtime worked. To date, DEFENDANTS have not fully paid the
9 PLAINTIFFS for all their wages still owed to them or any penalty wages owed to them under
10 California Labor Code § 203.

11 5. PLAINTIFFS, on behalf of themselves and other similarly situated current and former
12 non-exempt employees of DEFENDANTS in the State of California at any time during the four years
13 preceding the filing of this action, and continuing while this action is pending, brings this class action
14 to recover, among other things, wages and penalties from unpaid wages earned and due, including
15 but not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation,
16 illegal meal and rest period policies, failure to pay all wages due to discharged and quitting
17 employees, failure to indemnify employees for necessary expenditures and/or losses incurred in
18 discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
19 required records, and interest, attorney's fees, costs, and expenses.

20 6. PLAINTIFFS bring this action on behalf of themselves and the following situated class
21 of individuals ("CLASS MEMBERS"): all current and former non-exempt employees of
22 DEFENDANTS in the State of California at any time within the period beginning four (4) years prior
23 to the filing of this action and ending at the time this action settles or proceeds to final judgement (the
24 "CLASS PERIOD"). PLAINTIFFS reserve the right to name additional class representatives.

25 **DEFENDANTS**

26 7. DEFENDANT UP FITNESS, INC. is an international gym that provides personal
27 training services, with its United States facility located in Los Angeles, California.

28 8. PLAINTIFFS are informed and believe, and thereon allege, that Defendant UP

1 FITNESS, INC., is, and at all times relevant hereto was, a California corporation organized and
2 existing under the laws of the State of California. PLAINTIFF is further informed and believes, and
3 thereon alleges, that Defendant UP FITNESS, INC., is authorized to conduct business in the State of
4 California, and does conduct business in the State of California. Specifically, Defendant UP
5 FITNESS, INC., maintains offices and facilities and conducts business in, and engages in illegal
6 wage and payroll practices and policies in, the County of Los Angeles, in the State of California.

7 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 PLAINTIFFS at this time, and PLAINTIFFS therefore sue such DOE Defendants under fictitious
9 names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant designated
10 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
11 PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately
12 caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the court to amend
13 this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

14 10. At all relevant times herein, DEFENDANTS are the joint employers of PLAINTIFFS
15 and CLASS MEMEBERS. PLAINTIFFS are informed and believe, and thereon allege, that at all
16 times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated
17 enterprises, joint employers, subsidiaries, parents, principles, related entities, co-conspirators,
18 authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other.
19 Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter
20 ego of the other.

21 11. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS are employed by
22 DEFENDANTS under employment agreements that are partly written, partly oral, and partly
23 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
24 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
25 CLASS MEMBERS all wages earned and due, through methods and schemes which include, but are
26 not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing to
27 properly maintain records, failing to provide accurate itemized statements for each pay period, failing
28 to properly compensate PLAINTIFFS and CLASS MEMBERS for necessary expenditures, and

1 requiring, permitting or suffering the employee to work off the clock, in violation of the California
2 Labor Code and the applicable Welfare Commission (“IWC”) Order.

3 12. PLAINTIFFS are informed and believe, and thereon allege, that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
5 each acting as agents and/or employees, and/or under the direction and control of each of the other
6 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
9 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in
10 amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

11 **THE CONDUCT**

12 14. The work required to be performed by PLAINTIFFS and the other trainers is manual
13 labor consisting of personal training and instruction to DEFENDANTS’ customers in accordance
14 with DEFENDANTS’ policies and practices. As a result of this work, PLAINTIFFS and the other
15 CLASS Members were involved in providing personal training sessions as specified by
16 DEFENDANTS and this work was executed by the performance of manual labor within a defined
17 skill set. PLAINTIFFS and CLASS Members were not compensated through a monthly salary. As a
18 result, the trainer position was a non-exempt position and was in fact classified as non-exempt by the
19 DEFENDANTS. PLAINTIFFS and the other CLASS Members employed by DEFENDANTS
20 performed these manual tasks but were not paid the minimum wages and overtime wages to which
21 they were entitled because of DEFENDANTS’ systematic policies and practices of failing to
22 correctly record all time worked, including overtime worked. DEFENDANTS failed to correctly pay
23 minimum wages and overtime wages to PLAINTIFFS and the other CLASS Members in accordance
24 with California law, and thereby systematically underpaid minimum and overtime compensation to
25 PLAINTIFFS and the other CALIFORNIA CLASS Members for their documented time worked,
26 including overtime worked. As a result, PLAINTIFFS and the other CLASS Members worked more
27 than eight (8) hours in a workday and/or forty (40) hours in a workweek but were not fully
28 compensated for overtime worked as required by law.

1 15. Individuals in these trainer positions are and were employees who are entitled to
2 minimum wage and overtime compensation and prompt payment of amounts that the employer owes
3 an employee when the employee quits or is terminated, and other compensation and working
4 conditions that are prescribed by law. Although DEFENDANTS required their employees employed
5 as trainers to work more than eight (8) hours in a workday and/or forty (40) hours in a workweek
6 from time to time, as a matter of company policy and practice, DEFENDANTS consistently and
7 uniformly denied these employees the correct overtime compensation that the law requires.

8 16. Industrial Welfare Commission Wage Order 4-2001 provides: “Every employer shall
9 pay to each employee, on the established payday for the period involved, not less than the applicable
10 minimum wage for all hours worked in the payroll period, whether the remuneration is measured by
11 time, piece, commission, or otherwise.” “Hours worked” is defined in the Wage Order as “the time
12 during which an employee is subject to the control of an employer, and includes all the time the
13 employee is suffered or permitted to work, whether or not required to do so.” Here, PLAINTIFFS
14 and CLASS Members are entitled to separate hourly compensation for time spent performing other
15 non-training tasks directed by DEFENDANTS during their work shifts.

16 17. In addition, DEFENDANTS failed to provide all the legally required unpaid, off- duty
17 meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFFS and the other
18 CLASS Members as required by the applicable Wage Order and Labor Code. DEFENDANTS did
19 not have a policy or practice which provided or recorded all the legally required unpaid, off-duty
20 meal periods and all the legally required paid, off-duty rest periods to the PLAINTIFFS and the other
21 CLASS Members. As a result, DEFENDANTS’ failure to provide the PLAINTIFFS and the CLASS
22 Members with all the legally required off-duty, unpaid meal periods and all the legally required off-
23 duty, paid rest periods is evidenced by DEFENDANTS’ business records.

24 18. From time to time, DEFENDANTS also failed to provide the PLAINTIFFS and the
25 other members of the CLASS with complete and accurate wage statements which failed to show,
26 among other things, the correct minimum and overtime wages for time worked, including, allocation
27 of lawfully required, paid, and off-duty rest periods. Cal. Lab. Code § 226 provides that every
28 employer shall furnish each of his or her employees with an accurate itemized wage statement in

1 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
2 during the pay period and the corresponding amount of time worked at each hourly rate. As a result,
3 DEFENDANTS provided the PLAINTIFFS and the other members of the CLASS with wage
4 statements which violated Cal. Lab. Code § 226.

5 19. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
6 knowingly and systematically failed to reimburse and indemnify the PLAINTIFFS and the other
7 CLASS Members for required business expenses incurred by the PLAINTIFFS and other CLASS
8 Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under
9 California Labor Code Section 2802, employers are required to indemnify employees for all expenses
10 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that
11 "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred
12 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
13 to the directions of the employer, even though unlawful, unless the employee, at the time of obeying
14 the directions, believed them to be unlawful."

15 20. In this action, PLAINTIFFS, on behalf of themselves and the CLASS, seek to recover
16 all the compensation that DEFENDANTS are required by law to provide, but failed to provide, to
17 PLAINTIFFS and all other CLASS Members. PLAINTIFFS also seek penalties and all other relief
18 available to them and other CLASS Members under California law. Finally, PLAINTIFFS seek
19 declaratory relief finding that the employment practices and policies of the DEFENDANTS violated
20 California law and injunctive relief to enjoin the DEFENDANTS from continuing to engage in such
21 employment practices.

22 21. In performing the conduct herein alleged, the DEFENDANTS' wrongful conduct and
23 violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFFS and the other
24 members of the CLASS of money and career opportunities to which they were lawfully entitled.
25 DEFENDANTS engaged in such wrongful conduct by failing to have adequate employment policies
26 and maintaining adequate employment practices consistent with such policies and the applicable law.
27 DEFENDANTS' wrongful conduct as herein alleged caused the money belonging to the
28 PLAINTIFFS and the other members of the CLASS to be kept by DEFENDANTS and thereby

1 converted by DEFENDANTS for DEFENDANTS' own use.

2 22. Classified and treated by DEFENDANTS as non-exempt at the time of hire and
3 thereafter, PLAINTIFFS, and all other members of the CLASS, are in fact not exempt under
4 Industrial Welfare Commission Wage Order 4-2001 and Cal. Lab. Code § 515 and therefore are
5 entitled to minimum and overtime wages and the protection of all other labor laws. Despite the
6 undeniable fact that PLAINTIFFS, and all other members of the CLASS, were in fact not exempt,
7 DEFENDANTS failed to comply with the applicable requirements imposed by the California Labor
8 Code and the applicable Wage Order(s). DEFENDANTS' practices violated and continue to violate
9 the law, regardless of whether the employees' work is paid by commission, by salary, by piece rate,
10 or by part commission, part piece rate, and/or part salary. As a result of this policy and practice,
11 DEFENDANTS failed to pay minimum and overtime pay in accordance with applicable law. To the
12 extent that DEFENDANTS contend the CLASS is paid using a piece rate, DEFENDANTS' method
13 for calculating overtime fails to comply with 29 C.F.R. § 778.111 as well as the state regulations and
14 opinion letters issued by the California Division of Labor Standards Enforcement in their calculation
15 and payment of overtime compensation. To the extent that DEFENDANTS contend the CLASS is
16 paid on an hourly basis, DEFENDANTS' method for calculating overtime fails to comply with the
17 California Labor Code ("Labor Code") as well as the state regulations and opinion letters issued by
18 the California Division of Labor Standards Enforcement in their calculation and payment of overtime
19 compensation for hourly employees.

20 **CLASS ACTION DESIGNATION**

21 23. This action is appropriately suited for a Class Action because:

22 a. The potential class is a significant number. Joinder of all current and former
23 employees individually would be impractical.

24 b. This action involves common questions of law and fact to the potential class
25 because the action focuses on DEFENDANTS's systematic course of illegal payroll practices and
26 policies, which was applied to all non-exempt employees in violation of the Labor Code, the
27 applicable IWC wage order, and the Business and Professions Code which prohibits unfair business
28 practices arising from such violations.

1 c. The claims of PLAINTIFFS are typical of the class because DEFENDANTS
2 subjected all non-exempt employee to identical violations of the Labor Code, the applicable IWC
3 wage order, and the Business and Professions Code.

4 d. PLAINTIFFS are able to fairly and adequately protect the interest of all
5 members of the class because it is in their best interest to prosecute the claims alleged herein to
6 obtain full compensation due to them for all services rendered and hours worked.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Provide Required Meal Periods**

9 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**

10 **(Against all DEFENDANTS)**

11 24. Plaintiff incorporated herein by specific references, as though fully set forth, the
12 allegations in the preceding paragraphs.

13 25. During the CLASS PERIOD, as part of DEFENDANT's illegal payroll policies and
14 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS required,
15 permitted or otherwise suffered PLAINTIFFS and CLASS MEMBERS to take less than 30-minute
16 meal periods, or to work through them, and have failed to otherwise provide the required meal
17 periods to PLAINTIFFS and CLASS MEMBERS pursuant to California Labor Code § 226.7, 512
18 and IWC Order No. 5-2001, § 11.

19 26. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage Order
20 No. 5-2001, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were not
21 provided with a meal period, in accordance with the applicable wage order, one additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided.

24 27. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197, and
25 IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all
26 hours worked during their meal periods.

27 28. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
28 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned

1 and due, interest, penalties, expenses, and costs of suit.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Provide Required Rest Periods**

4 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]**

5 **(Against all DEFENDANTS)**

6 29. PLAINTIFFS incorporates herein by specific reference, as though fully set forth, the
7 allegations in the preceding paragraphs.

8 30. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
9 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to
10 provide rest periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor
11 Code §§ 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

12 31. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order
13 No. 5-2001, § 12 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided
14 with a rest period, in accordance with the applicable wage order

15 32. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
16 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
17 and due, interest, penalties, expenses, and costs of suit.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Pay Overtime Wages**

20 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

21 **(Against all DEFENDANTS)**

22 33. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
23 allegations in the preceding paragraphs.

24 34. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 5-2001, § 3,
25 DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS for all overtime,
26 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
27 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
28 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)

1 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
2 consecutive day of work in any workweek.

3 35. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees
4 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001.
5 During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and CLASS
6 MEMBERS for all overtime hours worked as required under the forgoing provisions of the California
7 Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-
8 half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and
9 IWC Wage Order No. 5-2001, § 3; requiring, permitting or suffering PLAINTIFFS and CLASS
10 MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and CLASS
11 MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which
12 PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and
13 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS
14 for each pay period; and other methods to be discovered. During the CLASS PERIOD,
15 DEFENDANTS failed to compensate PLAINTIFFS and CLASS MEMBERS for all overtime hours
16 worked and to pay the amount of overtime wages due as required by the California Labor Code and
17 IWC Wage Order by failing and refusing to include all compensation, including commissions and
18 bonuses earned, due and owing and/or paid, in the regular rate of pay from which overtime wages
19 were calculated and paid. During the CLASS PERIOD, DEFENDANTS failed to compensate
20 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked and to pay the amount of
21 overtime wages due as required by the California Labor Code and IWC Wage Order by incorrectly
22 calculating the regular rate of pay from which overtime wages were calculated and paid.

23 36. In violations of California Law, DEFENDANTS have knowingly and willfully refused
24 to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all wages
25 earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS MEMBERS have
26 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
27 lost interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to
28 fully perform their obligations under state law, all to their respective damages in amounts according

1 to proof at time of trial, and within the jurisdiction of this Court.

2 37. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
3 1194, 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§
4 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
5 and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid
6 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees,
7 expenses, and costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Pay Minimum Wages**

10 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

11 **(Against all DEFENDANTS)**

12 38. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
13 allegations in the preceding paragraphs.

14 39. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001, §
15 4, payment to an employee of less than the applicable minimum wage for all hours worked in a
16 payroll period is unlawful.

17 40. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and CLASS
18 MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting, or
19 suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or
20 suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest breaks; illegally and
21 inaccurately recording time in which PLAINTIFFS and CLASS MEMBERS worked; failing to
22 properly maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate
23 itemized wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

24 41. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
25 1197, and IWC Wage Order No. 5-2001, § 4. As a proximate result of the aforementioned violations,
26 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial.
27 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
28 applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and

1 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to the them by
2 DEFENDANTS, plus interest, penalties, attorney’s fees, expenses, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Labor Code §§ 201, 202, 203]**

6 **(Against all DEFENDANTS)**

7 42. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
8 allegations in the preceding paragraphs.

9 43. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee’s wages accrued and unpaid at
12 the time of discharge are due and payable immediately.

13 44. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to
14 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
15 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
16 which case the employee is entitled to his or her wages at the time of quitting.

17 45. California Labor Code § 203 provides that if an employer willfully fails to pay, in
18 accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged
19 or who quits, the employer is liable for waiting time penalties in the form of continued compensation
20 to the employee at the same rate for up to 30 workdays.

21 46. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
22 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
23 California Labor Code §§ 201 and 202.

24 47. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory
25 penalties, including the waiting time penalties provided in California Labor Code § 203, together
26 with interest thereon, as well as other available remedies.

27 48. As a proximate result of DEFENDANTS’ unlawful actions and omissions,
28 PLAINTIFFS and CLASS MEMBERS have been deprived of compensation in an amount according

1 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery
2 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor
3 Code §§ 1194 and 2699.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001, § 7]**

7 **(Against all DEFENDANTS)**

8 49. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
9 allegations in the preceding paragraphs.

10 50. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
11 practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
12 DEFENDANTS knowingly and intentionally failed to maintain records as required under California
13 Labor Code §§ 226, 1174, and IWC Wage Order No. 5-2001, § 7, including but not limited to, the
14 following records: total daily hours worked by each employee; applicable rates of pay; all
15 deductions; meal periods; time records showing when each employee begins and ends each work
16 period; and accurate itemized statements.

17 51. As a proximate result of DEFENDANTS' unlawful actions and omissions,
18 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,
19 and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
20 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil
21 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
22 expenses, and reasonable attorney's fees, including but not limited to those provided in California
23 Labor Code § 226(e), as well as other available remedies.

24 **SEVENTH CAUSE OF ACTION**

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

26 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7]**

27 **(Against all DEFENDANTS)**

28 52. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the

1 allegations in the preceding paragraphs.

2 53. During the CLASS PERIOD, DEFENDANTS routinely failed to provide PLAINTIFFS
3 and CLASS MEMBERS with timely, accurate and itemized wage statements in writing showing each
4 employee's gross wages and earned, total hours worked, all deductions made, net wages earned, the
5 name and address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS,
6 and all applicable hourly rates in effect during each pay period and the corresponding number of
7 hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order
8 No. 5-2001, § 7.

9 54. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
10 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements
11 in accordance with California Labor Code § 226(a).

12 55. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS
13 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
14 wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and CLASS MEMBERS are
15 entitled to all available statutory penalties, including, but not limited to civil penalties pursuant to
16 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
17 attorney's fees, including but not limited to those provided in California Labor Code § 226(e), as well
18 as other available remedies.

19 **EIGHTH CAUSE OF ACTION**

20 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

21 **[Cal. Labor Code § 2802]**

22 **(Against all DEFENDANTS)**

23 56. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
24 allegations in the preceding paragraphs.

25 57. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
26 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
27 his or her duties, or of his or her obedience to the directions of the employer.

28 58. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to

1 indemnify PLAINTIFFS and CLASS MEMBERS for all business expenses and/or losses incurred in
2 direct consequence of the discharge of their duties while working under the direction of
3 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other
4 employment-related expenses, in violation of California Labor Code § 2802.

5 59. As a proximate result of DEFENDANT's unlawful actions and omissions,
6 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,
7 and seek reimbursement of all necessary expenditures, plus interest thereon, pursuant to California
8 Labor Code § 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are entitled to all
9 available statutory penalties and an award of costs, expenses, and reasonable attorney's fees,
10 including those provided in California Labor Code § 2802(c), as well as other available remedies.

11 **NINTH CAUSE OF ACTION**

12 **Unfair and Unlawful Business Practices**

13 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

14 **(Against all DEFENDANTS)**

15 60. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
16 allegations in the preceding paragraphs.

17 61. Each and every one of DEFENDANT's acts and omissions in violation of the California
18 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
19 DEFENDANT's failure and refusal to provide required meal periods, DEFENDANT's failure and
20 refusal to provide required rest breaks, DEFENDANT's failure and refusal to pay overtime
21 compensation, including all compensation earned in the regular rate of pay from which overtime
22 wages were calculated and paid, DEFENDANTS' failure and refusal to pay minimum wages,
23 DEFENDANT's failure and refusal to pay all wages due to discharged or quitting employees,
24 DEFENDANTS's failure and refusal to furnish accurate itemized wage statements; DEFENDANT's
25 failure and refusal to maintain required records, DEFENDANT's failure and refusal to indemnify
26 PLAINTIFFS and CLASS MEMBERS for necessary expenditures and/or losses incurring in
27 discharging their duties, constitutes an unfair and unlawful business practice under California
28 Business and Professions Code § 17200 et seq.

1 62. DEFENDANTS' violations of California wage and hour laws constitute a business
2 practice because DEFENDANT's aforementioned acts and omissions were done repeatedly over a
3 significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and CLASS
4 MEMBERS.

5 63. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest
6 periods, and other benefits as required by the California Labor Code, the California Code of
7 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,
8 report, and pay the correct sums of assessment to the state authorities under the California Labor
9 Code and other applicable regulations.

10 64. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS
11 have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS,
12 CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their
13 ill-gotten gains and to restore them to PLAINTIFFS and the CLASS MEMBERS.

14 65. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and
15 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to
16 orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS
17 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFFS and
18 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in
19 an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly
22 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and
23 each of them, as follows:

- 24 1. For compensatory damages in an amount to be ascertained at trial;
- 25 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
26 disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 27 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
28 IWC Wage Order No. 5-2001;

- 1 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 2 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
- 3 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
- 4 engaging in the unlawful business practices complained herein;
- 5 6. For waiting time penalties pursuant to California Labor Code § 203;
- 6 7. For statutory and civil penalties according to proof, including but not limited to all
- 7 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;
- 8 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
- 9 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
- 10 providing for pre-judgment interest;
- 11 9. For reasonable attorney’s fees and costs pursuant to California Labor Code §§ 1194,
- 12 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
- 13 attorneys’ fees and costs;
- 14 10. For declaratory relief;
- 15 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
- 16 Seventh, Eighth and Ninth Causes of Action as a class action;
- 17 12. For an order appointing PLAINTIFFS as class representatives, and PLAINTIFFS’
- 18 counsel as class counsel; and
- 19 13. For such further relief that the Court may deem just and proper.

21 Dated: April 24, 2019

Respectfully Submitted,

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFFs demand jury trial on all issues triable to a jury.

Dated: April 24, 2019

Respectfully Submitted,

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorneys for Plaintiff

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