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7 Attorneys for Representative Plaintiff  
8 and the Aggrieved Employees

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11  
12 LISA BIRMAN, individually, and on ) **Case No. 37-2015-00015855-CU-OE-CTL**  
behalf of all other similarly situated )  
13 aggrieved employees, )  
14 Plaintiff, ) **PRIVATE ATTORNEYS GENERAL ACT**  
 ) **COMPLAINT FOR CIVIL PENALTIES**  
15 vs. ) **[CAL. LAB. CODE § 2699]**  
 )  
16 FITNESS INTERNATIONAL, LLC, ) **[DEMAND FOR JURY TRIAL]**  
and DOES 1 through 100, inclusive, )  
17 Defendant. )  
18 )  
19 )

20 Representative Plaintiff alleges as follows:

21  
22 **PRELIMINARY STATEMENT**

23 1. This is a representative action seeking unpaid civil penalties under the Labor  
24 Code Private Attorneys General Act of 2004, codified as California Labor Code section 2698, *et*  
25 *seq.* (“PAGA”). Plaintiff Lisa Birman (“Plaintiff”) brings this action on behalf of herself as an  
26 aggrieved employee and on behalf of all other persons similarly situated (“Aggrieved  
27 Employees”) who are or have been employed by Fitness International, LLC and/or Does 1  
28 through 100, inclusive (collectively “Defendant” and/or “L.A. Fitness”) as non-exempt Group

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/12/2015** at 04:20:36 PM

Clerk of the Superior Court  
By Linda Spence, Deputy Clerk

1 Exercise Instructors and Personal Trainers (collectively “Fitness Instructors”) within the State of  
2 California at any time after May 12, 2014.

3 2. The “Relevant Time Period” is designated as the time from May 12, 2014 through  
4 the date of trial and is based upon the allegation that Defendant’s violations of California’s wage  
5 and hour laws, as described more fully below, have been ongoing during that time.

6 3. During the Relevant Time Period, Defendant has had a consistent policy of, *inter*  
7 *alia*: (1) permitting, encouraging, and/or requiring its Fitness Instructors to work “off-the-clock,”  
8 without compensation therefor, (2) permitting, encouraging, and/or requiring its Fitness  
9 Instructors to perform reported hours of work without compensation therefor, thereby failing to  
10 properly compensate Fitness Instructors at a level sufficient to satisfy California’s minimum and  
11 overtime wage provisions, (3) failing to reimburse its Fitness Instructors for business expenses  
12 related to the operations of Defendant, (4) willfully failing to pay compensation (including  
13 unpaid overtime and minimum wages) in a prompt and timely manner to Plaintiff and/or those  
14 Aggrieved Employees whose employment with Defendant terminated, (5) willfully failing to  
15 provide Plaintiff and Aggrieved Employees with accurate semi-monthly itemized wage  
16 statements of the total number of hours each of them worked and the applicable deductions  
17 during each pay period, and (6) willfully failing to provide meal periods and/or rest periods to  
18 Plaintiff and Aggrieved Employees.

19 **INTRODUCTION**

20 4. Plaintiff is informed and believes and, based thereon, alleges that, within the  
21 Relevant Time Period, Defendant maintained and operated numerous health and fitness facilities  
22 throughout California and makes the strength-building and cardiovascular fitness equipment and  
23 services (e.g., group fitness classes and personal training sessions) at these facilities available to  
24 the public on a membership basis. In so doing, Defendant has employed hundreds, if not  
25 thousands, of individuals during the Relevant Time Period as Fitness Instructors, non-overtime-  
26 exempt employees who are entitled to, *inter alia*, be paid for all hours worked, at their regular  
27 rate of pay, to be reimbursed for all business expenses related to Defendant’s operations, and to  
28 be paid said wages and reimbursed for said business-related expenses in a timely manner.

1           5. Defendant's Fitness Instructors are responsible for facilitating L.A. Fitness'  
2 members' health and fitness goals through the instruction of various class formats and personal  
3 training sessions.

4           6. Class instructors often teach several classes a day, and are responsible for  
5 performing additional pre- and post-session duties required for the performance of their positions  
6 with and for the benefit of Defendant.

7           7. Personal trainers often hold several sessions a day, and are responsible for  
8 performing additional pre- and post-session duties required for the performance of their positions  
9 with and for the benefit of Defendant.

10          8. Notwithstanding the foregoing, no matter how many hours are spent by Fitness  
11 Instructors performing tasks for the benefit of Defendant, they are paid only for the length of  
12 time of the exercise instruction.

13          9. Defendant establishes and publishes, for its members' benefit, class descriptions  
14 as well as class durations of each of the class formats it offers. As such, Defendant advertises the  
15 class length as being the actual duration of instruction. Similarly, Defendant markets and sells  
16 personal training sessions lasting for predetermined durations of time. Despite this, Plaintiff is  
17 informed and believes and, based thereon, alleges that Fitness Instructors generally work far  
18 more hours than their particular instruction schedules would reflect.

19          10. Moreover, Plaintiff is informed and believes and, based thereon, alleges that  
20 Defendant knew and/or should have known that its Fitness Instructors are and, at all times during  
21 the Relevant Time Period, were performing work for which Aggrieved Employees are/were not  
22 being compensated and are/were incurring business-related expenses for which they are/were not  
23 being reimbursed by Defendant.

24          11. Despite actual knowledge of these facts and legal mandates, Defendant has  
25 enjoyed an advantage over its competition and has disadvantaged its workers by electing not to  
26 pay all wages due and/or provide reimbursement of business-related expenses to its instructors.

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1 12. Plaintiff is informed and believes and, based thereon, alleges that officers and  
2 directors of L.A. Fitness knew of these facts and legal mandates yet, nonetheless, repeatedly  
3 authorized and/or ratified the violation of the laws cited herein.

4 13. Despite Defendant's knowledge of the Aggrieved Employees' entitlement to  
5 wages for all hours worked and expense reimbursements for all applicable work periods,  
6 Defendant failed and continues to fail to provide the same for all applicable work periods in  
7 willful violation of California state statutes, Industrial Welfare Commission Orders and Title 8 of  
8 the California Code of Regulations. This action is brought to redress and end this ongoing pattern  
9 of unlawful conduct once and for all.

10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction over the Representative Plaintiff's and Aggrieved  
12 Employees' claims for civil penalties sought herein under the California Labor Code.

13 15. Venue as to Defendant is proper in this judicial district pursuant to California  
14 Code of Civil Procedure § 395(a). Defendant maintains locations within San Diego County,  
15 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of  
16 service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and those  
17 similarly situated within the State of California and County of San Diego. Defendant operates  
18 facilities and has employed numerous Aggrieved Employees in the County of San Diego, as well  
19 as within other counties across the State of California.

20 **PLAINTIFF**

21 16. Plaintiff Lisa Birman is a natural person and was, during the relevant time period  
22 identified herein, employed by Defendant as a non-exempt Fitness Instructor at one or more of  
23 Defendant's California fitness clubs.

24 17. At all times herein relevant, Plaintiff was and is now an individual within the  
25 category of Aggrieved Employees further described and defined herein.

26 18. As used throughout this Complaint, the term "Aggrieved Employees" refers to the  
27 named Plaintiff herein as well as each and every person employed by Defendant in California as  
28 a non-exempt Fitness Instructor during the Relevant Time Period.

1 19. Plaintiff brings this action on behalf of herself and as a representative action,  
2 pursuant to California Labor Code section 2699, on behalf of all Aggrieved Employees similarly  
3 situated and proximately damaged by the unlawful conduct described herein.

4 **DEFENDANTS**

5 20. At all times herein relevant, defendant Fitness International, LLC was/is a  
6 corporation and/or other form of business entity, duly licensed, located and doing business in,  
7 but not limited to, the County of San Diego, in the State of California.

8 21. Plaintiff is informed and believes and, based thereon, alleges that Defendant  
9 directly or indirectly employs and has employed and/or exercised control over the wages, hours  
10 and working conditions of Plaintiff and Aggrieved Employees within various California  
11 counties, including, but not limited to, the County of San Diego.

12 22. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all  
13 relevant times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,  
14 officers, directors, partners, and/or managing agents of some or each of the remaining  
15 defendants. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times  
16 herein-mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed,  
17 and/or exercised control over the wages, hours, and/or working conditions of Plaintiff and  
18 Aggrieved Employees at various California locations, as identified in the preceding paragraph.

19 23. Plaintiff is unaware of the true names and capacities of those defendants sued  
20 herein as Does 1 through 100, inclusive and, therefore, sues these Defendants by such fictitious  
21 names. Plaintiff will seek leave of court to amend this Complaint when such names are  
22 ascertained. Plaintiff is informed and believes and, on that basis, alleges that each of the  
23 fictitiously-named defendants is/was responsible in some manner for, gave consent to, ratified,  
24 and/or authorized the conduct herein-alleged and that liability for civil penalties as to Plaintiff  
25 and Aggrieved Employees, as herein-alleged, was proximately caused thereby.

26 24. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant  
27 times herein-mentioned, each of the Defendants was the agent and/or employee of each of the  
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1 remaining Defendants and, in doing the acts herein alleged, was acting within the course and  
2 scope of such agency and/or employment.

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 25. Plaintiff brings this action on behalf of herself and as a representative action on  
5 behalf of the following categories of Aggrieved Employees:

6 *All persons who are and/or were employed as non-exempt group exercise*  
7 *instructors and/or personal trainers at Fitness International, LLC, in one or*  
8 *more of its California fitness locations between May 12, 2014 and the present.*

9 26. Defendants and their officers and directors are excluded from the categories of  
10 Aggrieved Employees defined in the preceding paragraph.

11 **COMMON FACTUAL ALLEGATIONS**

12 27. L.A. Fitness has, for years, knowingly failed to properly compensate Plaintiff and  
13 the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to,  
14 minimum and overtime wages and/or compensation for missed meal and/or rest periods).  
15 Defendant has declined to pay these wages, even upon an Aggrieved Employee's termination or  
16 resignation from employment, in blatant violation of California Labor Code sections 201-204,  
17 inclusive. More than 30 days have passed since certain Aggrieved Employees have left  
18 Defendant's employ.

19 28. Moreover, Defendant has failed to provide Plaintiff and the Aggrieved Employees  
20 with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof,  
21 and has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work  
22 shifts exceeding five hours.

23 29. Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate  
24 semimonthly itemized statements of the total number of hours worked by each, and all applicable  
25 hourly rates in effect during each pay period, in violation of California Labor Code section 226.  
26 In doing so, Defendant has not only failed to pay its workers the full amount of compensation  
27 due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful  
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1 conduct by concealing the magnitude (e.g., the full number of hours worked) and financial  
2 impact of its wrongdoing.

3 30. Moreover, according to Defendant's policies, Aggrieved Employees were  
4 required to incur business expenses related to the operations of Defendant. Defendant failed to  
5 reimburse Plaintiff and Aggrieved Employees for these expenses.

6 31. As a direct and proximate result of Defendant's Labor Code violations, as set  
7 forth herein, Plaintiff and Aggrieved Employees are entitled to recover civil penalties (pursuant  
8 to California Labor Code section 2699(a)) in an amount to be established at trial. Twenty-five  
9 percent of such penalties recovered shall be paid to Plaintiff and the Aggrieved Employees and  
10 the remaining seventy-five percent shall be paid to the California Labor and Workforce  
11 Development Agency ("LWDA"), pursuant to Labor Code section 2699(i). As a further direct  
12 and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and  
13 Aggrieved Employees are also entitled to recover attorneys' fees and litigation costs pursuant to  
14 California Labor Code section 2699(g) and/or California Code of Civil Procedure § 1021.5.

15 32. Plaintiff complied and/or will comply with the procedures for bringing suit  
16 specified in California Labor Code § 2699.3. By letter dated May 12, 2015, Plaintiff gave written  
17 notice, by certified mail, to the LWDA and Defendant of the specific provisions of the California  
18 Labor Code alleged to have been violated, including the facts and theories to support those  
19 violations.

20 **FIRST CAUSE OF ACTION**  
21 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**  
22 **(California Labor Code §§ 2699)**

23 70. Plaintiff incorporates in this cause of action each and every allegation of the  
24 preceding paragraphs, with the same force and effect as though fully set forth herein.

25 71. California Labor Code § 2699(a) states:

26 Notwithstanding any other provision of the law, any provision of this  
27 code that provides for a civil penalty to be assessed and collected by the  
28 Labor and Workforce Development Agency or any of its departments,  
divisions, commissions, boards, agencies, or employees, for a violation  
of this code, may, as an alternative, be recovered through a civil action  
brought by an aggrieved employee on behalf of herself or herself and  
other current or former employees...

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1 72. Plaintiff (and each and every other Aggrieved Employee defined herein) are  
2 “aggrieved employees,” as defined by California Labor Code § 2699(c), because they were  
3 employed by Defendant and were among the many employees against whom violations of law  
4 were committed.

5 73. Plaintiff has met and/or will meet all of the requirements set forth in California  
6 Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of  
7 (and/or recovery under) California Labor Code sections 200-204, inclusive, 226, 226.7, 400-410,  
8 inclusive, 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 2802.

9 74. Plaintiff brings this action on behalf of herself and all Aggrieved Employees  
10 alleging violations of the California Labor Code sections cited in the preceding paragraph.

11 75. As a direct and proximate result of Defendant’s unlawful conduct, as set forth  
12 herein, Plaintiff and Aggrieved Employees are entitled to recover various penalties as provided  
13 by California Labor Code section 2699, in an amount to be established at trial, as well as costs  
14 and attorneys’ fees, pursuant to statute.

15 **RELIEF SOUGHT**

16 **WHEREFORE**, the Representative Plaintiff, on behalf of herself and the Aggrieved  
17 Employees, prays for judgment and the following specific relief against Defendants, and each of  
18 them, jointly and separately, as follows:

19 1. That the Court declare, adjudge, and decree that this action is a proper  
20 representative action pursuant to California Labor Code section 2699;

21 2. That the Court make an award to Plaintiff and Aggrieved Employees of civil  
22 penalties for violations of the Labor Code, pursuant to Labor Code section 2699;

23 3. For reasonable attorneys’ fees, pursuant to California Labor Code section 2699(g)  
24 and/or California Code of Civil Procedure § 1021.5; and,

25 4. For costs of suit and any and all other such relief as the Court deems just and  
26 proper.

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Dated: May 12, 2015

**SCOTT COLE & ASSOCIATES, APC**

By: *Molly A. DeSario*  
Molly A. DeSario, Esq.  
Attorneys for Representative Plaintiff and  
the Aggrieved Employees

**JURY DEMAND**

Plaintiff and the Aggrieved Employees hereby demand trial by jury of all issues triable as  
of right by jury.

Dated: May 12, 2015

**SCOTT COLE & ASSOCIATES, APC**

By: *Molly A. DeSario*  
Molly A. DeSario, Esq.  
Attorneys for Representative Plaintiff and  
the Aggrieved Employees