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Attorneys for Plaintiff Anthony Davide

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

ANTHONY DAVIDE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SFFIT VENTURES LLC; ASPYR
HOLDINGS LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00036078-CU-OE-CTL

Assigned to the Hon. Eddie C. Sturgeon
Department: C-67

CLASS ACTION

**First Amended Class and Representative
Action Complaint**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Reimburse Business Expenses
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Pay PSL & Supp. PSL Wages
10. Unfair Competition
11. Civil Penalties under the Private Attorneys
General Act

1 Plaintiff ANTHONY DAVIDE (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, and the State of California under the Private Attorneys General Act brings this
3 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION against Defendants SFFIT
4 VENTURES LLC; ASPYR HOLDINGS LLC; and DOES 1 through 50 (collectively,
5 “Defendants”), and on information and belief alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action and representative brought under California Code of Civil
8 Procedure § 382 for Defendants’ violations of the California Labor Code and Business and
9 Professions Code.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
12 California Constitution.

13 3. Venue as to each defendant is proper in this judicial district under Code of Civil
14 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
15 Plaintiff in this county, and committed some of the alleged violations in this county.

16 **PARTIES**

17 **A. Plaintiff Anthony Davide**

18 4. Plaintiff ANTHONY DAVIDE is an individual over 18 years of age who worked for
19 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until JULY 2022.

20 5. The State of California, via the Labor and Workforce Development Agency
21 (“LWDA”), is the real party in interest in this action in this action. (*Kim v. Reins Int’l California,*
22 *Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is
23 always the real party in interest.”])

24 **B. Class Members**

25 6. Plaintiff brings this action as an individual and on behalf of the following class under
26 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
27 State of California as hourly non-exempt employees at any time during the four years and 178 days
28

1 preceding the filing of this action through the time of trial (the “Class” or “Class Members” and the
2 “Class Period”).

3 7. Further, Plaintiff proposes the following subclasses:

- 4 a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were
5 not paid all regular or minimum wages for all hours worked each pay period
6 (including for off-the-clock work).
- 7 b. Unpaid Overtime Subclass: All Class Members who [1] were not paid for all
8 overtime hours worked each pay period or [2] who were paid overtime wages
9 in the same pay period in which they were also paid non-excludable forms of
10 remuneration (including bonuses, commissions, or other forms of
11 remuneration).
- 12 c. Meal Period Subclass: All Class Members who [1] worked shifts of five
13 hours or more without a duty-free meal period of at least 30 minutes, or
14 worked shifts of 10 hours or more without a second duty-free meal period of
15 at least 30 minutes, and [2] who were not paid one hour of pay at the regular
16 rate of compensation for each of those days.
- 17 d. Rest Period Subclass: All Class Members who [1] worked shifts of four hours
18 or major fraction thereof without being authorized or permitted an
19 uninterrupted rest period of at least 10 minutes and who were not paid one
20 hour at the regular rate of compensation for each of those days or [2] who
21 were paid for a rest period at a rate less than what is required under Labor
22 Code section 226.2.
- 23 e. Reimbursement Subclass: All Class Members who incurred work-related
24 expenses, such as for mileage, work necessities, and for usage of their
25 personal cell phones, and were not fully reimbursed by Defendants for the
26 expenses incurred.
- 27 f. Untimely Payment of Wages Subclass: All individuals who are members of
28 the following classes: (i) Unpaid Minimum or Regular Wage Subclass,

1 (ii) Unpaid Overtime Subclass, and (iii) Meal Period Subclass, (iv) Rest
2 Period Subclass, and (v) Paid Sick Leave Subclass.

3 g. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave
4 wages in the same pay period in which they were also paid non-excludable
5 forms of remuneration (including bonuses, commissions, and other forms of
6 remuneration) and were paid sick leave at rate less than what is required by
7 California law.

8 h. Wage Statement Subclass: All individuals who are members of the following
9 classes who received a wage statement from Defendants at any time during
10 the one-year period preceding the filing of this action through the present:
11 (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime
12 Subclass, and (iii) Meal Period Subclass, (iv) Rest Period Subclass, and
13 (v) Paid Sick Leave Subclass.

14 i. Waiting Time Class: All individuals who are members of the following
15 classes at any time during the three-year and 178-day period preceding the
16 filing of this action through the present, excluding current employees who
17 have never previously separated from employment with Defendants:
18 (i) Unpaid Minimum or Regular Wage Subclass, (ii) Unpaid Overtime
19 Subclass, and (iii) Meal Period Subclass, (iv) Rest Period Subclass, and (v)
20 Paid Sick Leave Subclass.

21 8. In May 2020, the California Judicial Council approved a revision to Emergency
22 Rule 9 regarding the statute of limitations for filing civil cases. The statute of limitations for causes
23 of action that exceed 180 days was tolled from April 6, 2020, to October 1, 2020 (or 178 days).

24 **C. Defendants**

25 9. Defendant SFFIT VENTURES LLC is a limited liability company registered to do
26 business in the State of California, doing business and employing labor throughout San Diego
27 County.

1 10. Defendant ASPYR HOLDINGS LLC is a limited liability company doing business
2 and employing labor throughout San Diego County.

3 11. The true names and capacities, whether individual, corporate, or otherwise, of the
4 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
5 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
6 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
7 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
8 capacities when they become known.

9 12. Plaintiff is informed, believes, and alleges that all defendants in this action are
10 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
11 defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other
12 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
13 creating a common law employment relationship.

14 13. Plaintiff is informed, believes, and alleges that at least some of the defendants have
15 common ownership, common management, interrelationship of operations, and centralized control
16 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
17 responsible for the acts and omissions alleged herein.

18 14. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
19 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
20 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
21 such that the acts and omissions of each defendant may be legally attributable to all others.

22 15. Plaintiff is informed, believes and alleges that the above-mentioned defendants
23 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
24 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
25 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
26 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

GENERAL ALLEGATIONS

1
2 16. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
3 permitted to work in violation of Labor Code section 1197 and the applicable IWC Wage Order.

4 17. Prior to their first scheduled shift, Plaintiff and the Class Members were required to
5 complete training and onboarding documentation, including various new hire forms, employee
6 handbook, agreements, and other company’s procedures documentation.

7 18. These documents were sent to Plaintiff and the Class Members via Docusign, and
8 Plaintiff and the Class Members were required to review and complete all the documents *prior to*
9 their first day of work at the studio.

10 19. Plaintiff and the Class Members completed their onboarding process documentation
11 electronically, including reviewing Defendants’ policies, but were not compensated for the time it
12 took them to perform such tasks. On information and belief, employees were also required to
13 complete training for Defendant without pay prior to the first day of work, resulting in unpaid
14 regular wages.

15 20. When Plaintiff and the Class Members worked overtime, Defendants failed to pay the
16 overtime at the “regular rate of pay” in violation of Labor Code section 510 and the IWC Wage
17 Orders.

18 21. Defendants paid Plaintiff and the Class Members sales commissions, non-
19 discretionary bonuses, and other forms of remuneration that Defendants failed to include in the
20 “regular rate of pay” when employees earned overtime.

21 22. Defendants paid overtime and doubletime to Plaintiff and the Class Members at 1.5x
22 and 2x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff
23 and the Class Members earned sales commissions and bonuses, Defendants should have (but failed
24 to) pay overtime “at the rate of no less than one and one-half times the regular rate of pay for an
25 employee” and “twice the regular rate of pay” for double time hours as required by the plain
26 language of Labor Code section 510(a) and the IWC Wage Orders.

27 23. An illustrative example of this can be found on Plaintiff’s wage statement with the
28 pay date of June 15, 2022, where it is shown that Plaintiff earned a bonus of \$1,365.00 during the

1 pay period but that amount was not factored into his overtime rate as he was instead paid at a rate of
2 1.5x the base rate rather than 1.5x the regular rate of pay.

3 24. Defendants committed this same “regular rate of pay” violation against the other
4 Class Members as well, when employees earned forms of pay like bonuses and commissions
5 required to be included in the regular rate but were not, as a matter of payroll administration and
6 company policy. This resulted in significant underpayments of wages to employees.

7 25. Additionally, Defendants failed to provide compliant first and second meal periods to
8 Plaintiff and the Class Members in violation of Labor Code sections 226.7, 512 and section 11 of the
9 applicable IWC Wage Orders.

10 26. Plaintiff’s and the Class Members’ time records establish meal period liability on
11 their face. Claimant’s time records show that he often experienced missed, short, and late meal
12 periods without a corresponding meal period premium for every non-compliant meal period.

13 27. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption
14 of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services,*
15 *LLC* (2021) 11 Cal. 5th 58, 61.

16 28. When Defendants did not provide fully compliant meal periods, Defendants failed to
17 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
18 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
19 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under
20 section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary
21 payments, not just hourly wages”).

22 29. Defendants failed to authorize or permit Plaintiff and the Class Members take ten-
23 minute rest periods for every four hours of work or major fraction thereof as required by Labor Code
24 section 226.7 and 516 and section 12 of the applicable IWC Wage Order.

25 30. Due to staffing issues, employees’ job responsibilities, and the steady flow of
26 business, Plaintiff and the Class Members were not always authorized and permitted to take all their
27 rest periods.

1 31. Moreover, Defendants had a policy and practice of not paying rest period premiums
2 to employees who were unable to take rest periods.

3 32. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
4 Code section 226.7 because such premiums were not paid at the regular rate of compensation to
5 Plaintiff and Class Members, which would have factored in employees' additional compensation that
6 they received each pay period.

7 33. Defendants also required Plaintiff and Class Members to incur costs for work-related
8 purposes without full reimbursement, including expenses associated with the use of their personal
9 cars and cell phones.

10 34. Defendants had a policy and practice of requiring that Plaintiff and the Class
11 Members use their personal cell phone for business purposes. Plaintiff and the Class Members were
12 required to download the Paycom app and to use it to clock in and out during their shifts.
13 Defendants did not provide Plaintiff and the Class Members with an alternative method to clock in
14 or out, but they were required to clock in and out on a daily basis.

15 35. Furthermore, Plaintiff and the Class Members were required to download the
16 Basecamp app. The Basecamp app was used by Defendants, Plaintiff, and the Class Members to
17 communicate/review company messages.

18 36. Plaintiff and other Class Members were expected to use their personal cell phone and
19 Spotify account to play music during classes. Defendants did not compensate Plaintiff and the
20 aggrieved employees for the use of their cell phones, Spotify accounts, and phone data.

21 37. As a coach to several of Defendants' studios, Plaintiff drove his personal car to and
22 from different coaching studios to provide coaching services. Defendants failed to reimburse
23 Plaintiff and, on information and belief, other Class Members, for their gas mileage.

24 38. In direct consequence of their job duties, Plaintiff and Class Members unavoidably
25 and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and
26 compliantly reimburse as a matter of policy and practice.

1 39. To the extent Defendants reimbursed Plaintiff and Class Members, those amounts
2 were underpaid. At all relevant times, Defendants were required to comply with the reimbursement
3 mandate of Labor Code sections 2800 and 2802.

4 40. With respect to the unpaid minimum and regular wages, overtime wages, sick leave,
5 and meal and rest period premiums owed to Plaintiff and Class Members, Defendants failed to pay
6 those wages on time each pay period or upon separation of employment. *See Naranjo v. Spectrum*
7 *Security Services, Inc.* (2022) 13 Cal. 5th 93.

8 41. Because Defendants did not pay Plaintiff and the Class for all wages/premiums and
9 sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
10 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
11 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

12 42. Defendants equally failed in their affirmative obligation to provide accurate itemized
13 wage statements each pay period to Plaintiff and Class Members.

14 43. Defendants issued wage statements to Plaintiff and, on information and belief, other
15 Class Members, which contain at least four distinct types of violations.

16 44. First, on each wage statement furnished, Defendants failed to accurately state the
17 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
18 Plaintiff and Class Members were underpaid for sick leave, overtime wages, and premiums, resulting
19 in an inaccurate and depreciated itemization of gross and net wages earned on those wage
20 statements.

21 45. Second, Defendants violated Labor Code section 226(a)(2) by failing to list
22 employees’ “total hours worked,” as aggrieved employees worked off-the-clock to perform
23 onboarding and training tasks, rendering the total hours listed as an inaccurate reflection of hours
24 worked.

25 46. Third, in violation of Labor Code section 226(a)(9), the hourly rates and
26 corresponding hours worked at those rates are incorrectly listed on Plaintiff’s and Class Members’
27 wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime
28 hours that were not paid at the “regular rate of pay” with respect to overtime, meal and rest period

1 premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and
2 reflected as such on the wage statements of the aggrieved employees.

3 47. Defendants' wage statement issues described above rendered the wage statements
4 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
5 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
6 Members as the sole documentary evidence of their respective earnings.

7 48. Plaintiff and Class Members suffered injury in the form of confusion regarding
8 amounts paid for hours worked, and in the form of concealment of the common payroll practices
9 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
10 this Complaint.

11 49. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
12 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
13 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe
14 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the
15 wages actually earned under California law.

16 50. Defendants' wage statement violations were knowing and intentional as a matter of
17 law with respect to Plaintiff and California Class Members given that the legal obligation was not
18 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
19 Defendants nevertheless failed to comply despite the means and ability to do so.

20 51. In pay periods where Defendants provided Plaintiff and other Class Members with
21 remuneration in addition to their respective base hourly rate for hours worked—excluding any forms
22 of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants failed to
23 properly calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of Labor
24 Code § 246. Defendants paid sick leave at employees' base hourly rate instead of one of the
25 methods authorized by statute, which required Defendants to factor in employees' additional
26 remuneration, such as bonuses, commissions, and/or other forms of remuneration.

27 52. Furthermore, on information and belief, Defendants also failed to pay Covid-19
28 Supplemental Sick Leave at a rate authorized by statute because when paying such leave,

1 Defendants failed to factor in employees' bonuses, commissions, and other compensation. On
2 information and belief, Defendants instead paid Supplemental Sick Leave at employees' straight
3 time hourly rate rather than by one of the methods authorized by Labor Code sections 248.1, 248.2,
4 and 248.6.

5 53. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
6 and Class Members.

7 54. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
8 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
9 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
10 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
11 under California law.

12 **CLASS ALLEGATIONS**

13 55. *Numerosity*. The members of the Class are so numerous that joinder of all
14 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
15 inspection of employment and payroll records Defendants maintain and are required to maintain by
16 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed,
17 believes, and alleges there are more than 40 Class Members.

18 56. *Adequacy of Representation*. Plaintiff is an adequate class representative. Plaintiff
19 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
20 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
21 resolving and litigating wage and hour class actions in California state and federal courts.

22 57. *Superiority*. A class action is superior to other means for adjudication of the claims
23 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
24 for the common issues to be resolved in a single forum, simultaneously and without duplication of
25 effort and expense.

26 58. *Commonality*. Common questions of law and fact and a community of interest exists
27 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
28 Defendants and predominate over any individual issues.

1 59. *Typicality*. Plaintiff's claims are typical of the claims of the other Class Members.
2 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
3 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
4 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
5 on the causes of action alleged herein.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL MINIMUM WAGES**

8 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

9 60. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 61. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass.

11 62. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
12 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
13 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of
14 Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful
15 local and county minimum wage ordinances in effect.

16 63. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
17 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
18 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
19 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees,
20 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 65. This cause of action is brought by the Overtime Subclass pursuant to the IWC Wage
25 Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be
26 timely paid overtime wages all overtime hours worked, and which further provide a private right of
27 action for an employer's failure to pay all overtime compensation for overtime hours worked.

1 66. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
2 no less than one and one-half times their respective “regular rate of pay” for all hours worked in
3 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
4 seventh day of work in any one workweek, and no less than twice their respective “regular rate of
5 pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
6 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
7 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

8 67. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
9 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
10 extent permitted by law.

11 **THIRD CAUSE OF ACTION**

12 **MEAL PERIOD VIOLATIONS**

13 68. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 69. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
15 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
16 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
17 provide a private right of action for an employer’s failure to lawfully provide all meal periods and/or
18 pay meal period premiums at the lawful regular rate of compensation.

19 70. Defendants willfully failed in their affirmative obligation to consistently provide
20 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
21 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
22 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
23 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal
24 Periods” sections of the applicable orders).

25 71. Further, Defendants willfully failed in their affirmative obligation to consistently pay
26 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
27 each workday that a fully compliant meal period was not provided, in violation of Labor Code
28

1 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
2 applicable orders).

3 72. Plaintiff and the Class are entitled to recover to the full amount of the meal period
4 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
5 the extent permitted by law.

6 **FOURTH CAUSE OF ACTION**

7 **REST PERIOD VIOLATIONS**

8 73. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 74. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
10 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized
11 to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a
12 private right of action for an employer’s failure to lawfully provide all rest periods and/or pay rest
13 period premiums at the lawful regular rate of compensation.

14 75. Defendants willfully failed in their affirmative obligation to consistently authorize
15 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
16 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
17 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
18 applicable orders).

19 76. Further, Defendants willfully failed in their affirmative obligation to consistently pay
20 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
21 each workday that a fully compliant rest period was not provided, in violation of Labor Code
22 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

23 77. Plaintiff and the Class are entitled to recover to the full amount of the rest period
24 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
25 the extent permitted by law.

26 **FIFTH CAUSE OF ACTION**

27 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

28 78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 79. Plaintiff brings this cause of action on behalf of the Reimbursement Subclass.

2 80. Defendants willfully failed in its affirmative obligation to reimburse Plaintiff and
3 Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in direct
4 discharge of the duties of their employment, in violation of Labor Code section 2802.

5 81. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
6 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the
7 Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class Members
8 in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
9 Labor Code section 2802.

10 **SIXTH CAUSE OF ACTION**

11 **UNTIMELY PAYMENT OF WAGES**

12 82. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 83. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant
14 to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt
15 employees be timely paid all wages owed each pay period, and which further provide a private right
16 of action for an employer's failure to comply with this obligation.

17 84. Defendants willfully failed in their affirmative obligation to timely pay all wages,
18 including paid sick leave and meal and rest premiums, earned by Plaintiff and Class Members twice
19 during each calendar month on days designated in advance by the employer as regular paydays (for
20 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
21 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
22 "Minimum Wages" sections of the applicable orders).

23 85. Plaintiff and the Class are entitled to recover the full amount of the unpaid wages, in
24 addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
25 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
26 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under
27 provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent
28 permitted by law.

1 **SEVENTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 86. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 87. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
5 Code § 226(a) which requires non-exempt employees be provided accurate itemized wage
6 statements each pay period, and which further provide a private right of action for an employer's
7 failure to comply with this obligation.

8 88. Defendants knowingly and intentionally failed in their affirmative obligation provide
9 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
10 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
11 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

12 89. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
13 itemized wage statements, causing confusion and concealing wage and premium underpayments.

14 90. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50
15 per employee for the initial pay period in which a violation occurred and \$100 per employee for each
16 violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition
17 to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code
18 section 226(e).

19 **EIGHTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 91. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 92. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
23 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
24 termination of employment, and which further provide a private right of action to recover statutory
25 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
26 of 30 days wages.

27 93. Defendants willfully failed and continue to fail in their affirmative obligation to pay
28 all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon

1 termination of employment or within 72 hours thereafter for employees who did not provide at least
2 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
3 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

4 94. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
5 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
6 by law.

7 **NINTH CAUSE OF ACTION**

8 **FAILURE TO PAY PAID SICK LEAVE & SUPP. PAID SICK LEAVE WAGES**

9 95. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 96. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

11 97. Defendants knowingly and intentionally failed in their affirmative obligation to pay
12 sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et*
13 *seq.*

14 98. Labor Code section 246(1) governs how Defendants were required to calculate paid
15 sick leave:

16 [A]n employer shall calculate paid sick leave using any of the following
17 calculations:

18 (1) Paid sick time for nonexempt employees shall be calculated in the same
19 manner as the regular rate of pay for the workweek in which the employee
20 uses paid sick time, whether or not the employee actually works overtime
21 in that workweek.

22 (2) Paid sick time for nonexempt employees shall be calculated by dividing
23 the employee's total wages, not including overtime premium pay, by the
24 employee's total hours worked in the full pay periods of the prior 90 days
25 of employment.

26 (3) Paid sick time for exempt employees shall be calculated in the same
27 manner as the employer calculates wages for other forms of paid leave
28 time.

1 99. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
2 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
3 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
4 Class.

5 100. Furthermore, Defendants knowingly and intentionally failed in their affirmative
6 obligation to pay Covid-19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the
7 correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

8 101. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
9 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
10 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
11 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
12 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
13 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
14 January 1, 2022 to September 30, 2022, and may be extended thereafter.

15 102. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
16 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
17 (2) state minimum wage, (3) local minimum wage.

18 103. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
19 paid sick leave according to the highest of the following four methods:

20 (I) Calculated in the same manner as the regular rate of pay for the workweek in
21 which the covered employee uses COVID-19 supplemental paid sick leave,
22 whether or not the employee actually works overtime in that workweek.

23 (II) Calculated by dividing the covered employee's total wages, not including
24 overtime premium pay, by the employee's total hours worked in the full pay
25 periods of the prior 90 days of employment.

26 (III) The state minimum wage.

27 (IV) The local minimum wage to which the covered employee is entitled.
28

1 104. Labor Code section 248.6 requires employers to pay supplemental sick leave using
2 either method (I) or (II), as identified above.

3 105. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
4 Leave in the manner described above because Defendants failed to include in their sick leave
5 calculation the additional remuneration received by the Paid Sick Leave Class.

6 106. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
7 Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and
8 costs.

9 **TENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 107. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 108. Plaintiff brings this cause of action on behalf of all Classes.

13 109. Defendants have engaged and continue to engage in unfair and/or unlawful business
14 practices in the State of California in violation of California Business and Professions Code § 17200
15 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

16 110. Defendants' dependance on these unfair and/or unlawful business practices deprived
17 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
18 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
19 Defendants over competitors who have been and/or are currently employing workers in compliance
20 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
21 business acts and practices in violation of Business and Professions Code section 17200, et seq.

22 111. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
23 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
24 restitution of the moneys as necessary and according to proof to restore all monies withheld,
25 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
26 17208.

27 112. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
28 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership

1 interest and to prevent future damage and the public interest under Business and Professions Code
2 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys’ fees, and
3 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

4 **ELEVENTH CAUSE OF ACTION**

5 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

6 **Violation of Labor Code §§ 2698 *et seq.***

7 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

8 113. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 114. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
10 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
11 codified as Labor Code section 2698 *et seq.*:

- 12 a. All current and former non-exempt employees who worked for Defendants in
13 California at any time from one year prior to the postmark date of the initial
14 PAGA notice through date of trial.

15 115. Plaintiff reserves the right to amend, supplement, or add to this description of the
16 aggrieved employees according to proof.

17 116. The State of California, via the Labor and Workforce Development Agency
18 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v.*
19 *Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the
20 plaintiff files suit is always the real party in interest.”])

21 117. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
22 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
23 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
24 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
25 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
26 former employees pursuant to the procedures specified in Section 2699.3.”

27 118. Labor Code section 2699(f) provides: “For all provisions of this code except those
28 for which a civil penalty is specifically provided, there is established a civil penalty for a violation of

1 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
2 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
3 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
4 pay period for each subsequent violation.”

5 119. Any allegations regarding violations of the IWC Wage Orders are enforceable as
6 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
7 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

8 120. Labor Code section 2699.3 sets forth the procedure for commencing an action for
9 civil penalties under the PAGA.

10 121. On or about **August 31, 2022**, Plaintiff paid the requisite PAGA filing fee and
11 provided written notice (by online electronic filing with the LWDA and by certified mail to
12 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to
13 support the alleged violations.

14 122. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
15 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
16 forth herein (the “PAGA notice”).

17 123. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
18 written PAGA notice from the LWDA.

19 124. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
20 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
21 providing a description of any actions taken to cure the alleged violations.

22 125. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
23 violations, without notice of cure from Defendants or notice from the LWDA of its intent to
24 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff
25 exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

26 126. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
27 Complaint, Defendants committed the following violations and are liable for all corresponding civil
28 penalties:

- 1 a. **Overtime and Minimum Wage.** Violation of Labor Code §§ 200, 201-204, 210,
2 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders.
3 b. **Meal Period Violations.** Violation of Labor Code §§ 226.7, 512, 1198; IWC
4 Wage Orders
5 c. **Rest Period Violations.** Violation of Labor Code §§ 226.7, 516, 1198; IWC
6 Wage Orders.
7 d. **Failure to Reimburse Necessary Expenses.** Violation of Labor Code §§ 2800,
8 2802.
9 e. **Underpaid Paid Sick Leave.** Violation of Labor Code §§ 246 through 248.5.
10 f. **Underpaid Covid Supplemental Paid Sick Leave.** Violation of Labor Code §§
11 246 through 248.6.
12 g. **Untimely Payment of Wages During Employment.** Violation of Labor Code §§
13 204, 204b, 210.
14 h. **Untimely Payment of Wages Upon Separation of Employment.** Violation of
15 Labor Code §§ 201, 202, 203.
16 i. **Non-Compliant Wage Statements.** Violation of Labor Code §§ 226, 226.3.
17 j. **Failure to Maintain Accurate Records.** Violation of Labor Code §§ 1174,
18 1174.5, 1198; IWC Wage Orders.

19 127. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
20 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
21 pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to
22 the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

23 Plaintiff prays for judgment as follows:

- 24 a. For certification of this action as a class action;
25 b. For appointment of Plaintiff as the representative of the Class;
26 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
27 d. For recovery of damages in amount according to proof;
28 e. For all recoverable pre- and post-judgment interest;

- 1 f. For recovery of all civil and statutory penalties and liquidated damages;
2 g. For disgorgement of all amounts wrongfully obtained;
3 h. For this action to be maintained as a representative action under the PAGA;
4 i. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as
5 if the action were brought by the State of California or the California Division of
6 Labor Enforcement;
7 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
8 k. For restitution and injunctive relief;
9 l. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
10 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
11 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
12 m. For such other relief the Court deems just and proper.

13
14 Dated: November 7, 2022

Ferraro Vega Employment Lawyers, Inc.

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Nicholas J. Ferraro

Attorney for Plaintiff Anthony Davide

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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August 31, 2022

**NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.***

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

SFFIT Ventures LLC
270 E Baker Street, Suite 300
Costa Mesa, CA 92626

Aspyr Holdings LLC
108 Lakeland Avenue
Dover, DE 19901

- PAGA Notice & Filing Fee -

Submitted electronically to the California
Labor and Workforce Development
Agency on **08/31/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of ANTHONY DAVIDE (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against SFFIT VENTURES LLC and ASPYR HOLDINGS LLC, along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants Aspyr Holdings LLC and SFFIT Ventures LLC do business as Orangetheory Fitness. Defendants employ aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant Anthony Davide worked for Defendants from February 18, 2020 to July 5, 2022. Claimant worked in the positions of Sales associate and Coach for Defendants’ Encinitas, Carmel Valley, La Costa, and Solana Beach locations. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations

Violation of Labor Code §§ 200, 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum

wage *for all hours* worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Defendants failed to pay Claimant and the aggrieved employees for all hours suffered or permitted to work. Prior to their first scheduled shift, Claimant and the aggrieved employees were required to complete training and onboarding documentation, including various new hire forms, employee handbook, agreements, and other company’s procedures documentation.

These documents were sent to Claimant and the aggrieved employees via Docusign, and Claimant and the aggrieved employees were required to review and complete all the documents *prior to* their first day of work at the studio. Claimant and the aggrieved employees completed their onboarding process documentation electronically, including reviewing Defendants’ policies, but were not compensated for the time it took them to perform such tasks. On information and belief, employees were also required to complete training for Defendant without pay prior to the first day of work, resulting in unpaid regular wages.

When Claimant and the aggrieved employees worked overtime, Defendants failed to pay the overtime at the “regular rate of pay.” Defendants paid Claimant and the aggrieved employees sales commissions, non-discretionary bonuses, and other forms of remuneration that Defendants also failed to include in the “regular rate of pay” when employees earned overtime. Defendants paid overtime and doubletime to Claimant and the aggrieved employees at 1.5x and 2x their straight hourly rate. For each overtime hour worked during the period in which Claimant and the aggrieved employees earned sales commissions and bonuses, Defendants should have (but failed to) pay overtime “at the rate of no less than **one and one-half times the regular rate of pay** for an employee” and “**twice** the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example of the regular rate of pay violation is found on Claimant’s wage statement with the pay date of June 15, 2022:

Pay Date:	06/24/2022	Company:	0JL86 - SFFIT VENTURES LLC	Emp #:	A092
Period Start:	06/01/2022		270 E. BAKER STREET, STE. 300	Dept:	0091 - Encinitas
Period End:	06/15/2022		COSTA MESA CA 92626 (760) 799-8188	Pay Basis:	Hourly

	Rate	Hours/Units	Current Period	Year To Date
Earnings				
Regular	20.00	65.14	1302.80	14460.00
Overtime	30.00	1.03	30.90	151.50
Bonus			1365.00	13297.00
CA Lunch Penalty	20.00	0.00	0.00	120.00
Gross		66.17	2698.70	28028.50
W/H Taxes				
Federal W/H(S)			260.97	2446.52
Medicare			37.06	383.64
Social Security			158.47	1640.39
California State W/H(S/O)			106.39	384.20
CaliforniaSDI Tax			28.12	291.04

Extract from Claimant's Wage Statement With the Pay Date of 06/15/2022

Claimant earned a bonus of \$1,365.00 during the pay period of June 1, 2022 to June 15, 2022, but that amount was not factored into his overtime rate. He was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay. Defendants committed this same “regular rate of pay” violation against the other aggrieved employees as well, when employees earned forms of pay like bonuses and commissions required to be included in the regular rate but were not, as a matter of payroll administration and company policy. This resulted in significant underpayments of wages to employees.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

Defendants failed to provide compliant first and second meal periods to Claimant and the aggrieved employees. The aggrieved employees' time records establish meal period liability on their face. Claimant's time records show that he often experienced missed, short, and late meal periods without a corresponding meal period premium for every non-compliant meal period.

When Defendants did not provide compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. On occasions when Defendants did pay a meal period premium, the premiums were not paid at the "regular rate of compensation" because the premium did not factor in sales commissions, bonuses, and other forms of remuneration. Instead, Defendants paid such premiums at employees' base hourly rate, in violation of California law.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

///

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

On information and belief, Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law. Due to staffing issues, employees' job responsibilities, and the steady flow of business, Claimant and the aggrieved employees were not always authorized and permitted to take all their rest periods.

Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7 because such premiums were not paid at the regular rate of compensation to aggrieved employees, which would have factored in bonuses, commissions, and other compensation.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Reimburse Necessary Expenses
Violation of Labor Code §§ 2800, 2802

Defendants failed in their affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required Claimant and the aggrieved employees to incur costs for work-related purposes, including expenses associated with the use of their personal cars and cell phones.

Defendants had a policy and practice of requiring that Claimant and the aggrieved employees use their personal cellphone for business purposes. Per Defendants' practice, Claimant and the aggrieved employees were forced to download the Paycom app and to use it to clock in and out. Defendants did not provide Claimant and the aggrieved employees with an alternative method to clock in or out, but they were required to clock in and out on a daily basis. Likewise, Claimant and the aggrieved employees were required to download the Basecamp app. The Basecamp app was used by Defendants, Claimant, and the aggrieved employees to communicate/review company messages. As a coach, Claimant was also expected to use his personal cell phone and Spotify account to play music during his classes. Defendants did not compensate Claimant and the aggrieved employees for the use of their cell phones, Spotify accounts, and phone data.

As a coach to several of Defendants' studios, Claimant drove his personal car to and from different coaching studios to provide coaching services. Defendants failed to reimburse Claimant and, on information and belief, other aggrieved employees, for their gas mileage.

Thus, in direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and compliantly reimburse as a matter of policy and practice. To the extent Defendants reimbursed aggrieved employees, those amounts were underpaid. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code sections 2800 and 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." In other words, if—as here—employees incur "necessary expenses" or "losses" for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses. Labor Code § 2804 prohibits waiver of these rights.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor

Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney's fees and costs of suit.

Underpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3). Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code § 246(l)(1)-(3):

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

The third option is not applicable because this case involves non-exempt employees. Defendants were required to pay paid sick time under the method set forth in options one or two.

As an initial matter, prior to April 2022, Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period. Moreover, Defendants failed to maintain the records required by Labor Code § 246 *et seq.* with respect to the paid sick leave.

However, to the extent paid, Defendants failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions and/or other forms of remuneration, as required by section 246. Instead, Defendants paid sick leave to Claimant and the aggrieved employees at their base hourly rate, resulting in an underpayment of sick leave wages.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned additional payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Underpaid Covid Supplemental Paid Sick Leave
Violation of Labor Code §§ 246 through 248.6

Defendants violated Labor Code section 248.2 and 248.6 because they failed to provide Claimant and the aggrieved employees paid sick leave at the lawful hourly rate. Labor Code 248.2 required employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

Under Labor Code sections 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

- (I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.
- (II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
- (III) The state minimum wage.
- (IV) The local minimum wage to which the covered employee is entitled.

Labor Code section 248.6 requires employers to pay supplemental sick leave using either method I or II identified above.

On information and belief, Defendants violated California law by failing to pay Covid Supplemental Paid Sick Leave at a rate authorized by statute. The failure to calculate and pay

paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.2 and 248.6 was applied as a matter of common policy and practice to Claimant and the aggrieved employees. Defendants further failed to maintain the proper records required by the paid sick leave statutes.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for minimum, regular, overtime, meal/rest premiums, and paid sick leave, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees’ minimum, regular, overtime wages, paid sick leave, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages, paid sick leave, and premiums owed to the aggrieved employees during their employment, and failed to properly pay wages, sick leave and premiums at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 ("Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG ("Injuries from a failure to provide an accurate pay statement include 'possibility of not being paid overtime, employee confusion over whether they

subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—underpaid paid sick leave, overtime wages, and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned overtime, premiums, and sick leave but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(2) by failing to list employees’ “total hours worked,” as aggrieved employees worked off-the-clock to perform onboarding and training tasks, rendering the total hours listed as an inaccurate reflection of hours worked.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime, premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate instead of at Claimant’s and the aggrieved employees’ regular rate of pay and/or compensation.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked”) (rejecting *Maldonado* defense for class claims).

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect his interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and his counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil

penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Claimant
Lauren N. Vega, Esq.