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6
7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 Mark Cohen, as an individual and on
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 Peloton Interactive, Inc., a Delaware
14 corporation; and Does 1 through 50,
inclusive,

15 Defendants.
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CASE NO.: 2:22-CV-01425-MWF-E

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS, OR TIMELY MEAL PERIODS, IN VIOLATION OF CAL. Labor CODE §§ 226.7 AND 512;**
- (2) **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS, IN VIOLATION OF CAL. Labor CODE § 226.7;**
- (3) **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF CAL. Labor CODE § 226;**
- (4) **FAILURE TO PAY ALL OVERTIME AND MINIMUM WAGES IN VIOLATION OF CAL. Labor CODE §§ 510, 558, AND 1194;**
- (5) **FAILURE TO PAY ALL WAGES FOR ALL TIME WORKED, INCLUDING MINIMUM WAGE IN VIOLATION OF Labor CODE §§ 204, 218, 1194, 1197 AND 1198;**
- (6) **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF Labor CODE § 227.3;**
- (7) **FAILURE TO ADEQUATELY INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES/EXPENDITURES IN VIOLATION OF Labor CODE § 2802;**
- (8) **FAILURE TO TIMELY PAY ALL**

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**EARNED WAGES AND FINAL
PAYCHECKS DUE AT THE TIME OF
SEPARATION OF EMPLOYMENT IN
VIOLATION OF Labor CODE §§ 201, 202,
AND 203; AND**

**(9) UNFAIR BUSINESS PRACTICES, IN
VIOLATION OF VIOLATION OF CAL.
BUS. & PROF. CODE § 17200, *ET SEQ.***

**(10) VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT (Cal. Lab. Code § 2698, et
seq.)**

DEMAND FOR JURY TRIAL

DEMAND OVER \$25,000.00

1 Plaintiff Mark Cohen hereby submits this Class Action Complaint (Complaint) against
2 Defendant Peloton Interactive, Inc. (Peloton) and Does 1 through 50 (hereinafter collectively
3 referred to as Defendants) as an individual and on behalf of a class of all other similarly situated
4 current and former employees of Defendants for penalties and/or damages for violations of the
5 California Labor Code, including without limitation, failure to provide employees with accurate
6 itemized wage statements and premium pay for missed meal-and-rest periods, failure to pay
7 regular, overtime, and double-time wages, failure to pay minimum wages, failure to pay all
8 vested vacation, failure to include all remuneration when calculating the overtime rate of pay,
9 failure to reimburse employees for business expenses, failure to timely pay all earned wages and
10 final paychecks due at time of separation of employment, and for restitution as follows:

11 **INTRODUCTION**

12 1. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 against
13 Defendants for, among other things: (a) nonpayment of wages for all hours worked (including
14 minimum wages); (b) nonpayment of overtime wages; (c) nonprovision of meal-and-rest breaks;
15 (d) failure to provide accurate wage statements; (e) failure to pay all accrued and vested
16 vacation/PTO wages; (f) failure to include all remuneration when calculating the overtime rate of
17 pay; (g) failure to adequately indemnify employees for employment-related losses/expenditures,
18 and (g) for failure to pay all wages due upon termination of employment.

19 2. This class action is within the Court’s jurisdiction under California Labor Code
20 §§ 201-203, 204, 218, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2698, *et. seq.*,
21 2802, the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”),
22 California’s Unfair Competition Law (the “UCL”), and Business and Professions Code § 17200,
23 *et seq.*

24 3. This Complaint challenges systemic illegal employment practices resulting in
25 violations of the California Labor Code and the UCL against individuals who worked for
26 Defendants.

27 4. Plaintiff is informed and believe, and based thereon allege, that for the four years
28 prior to the filing of this Complaint to the present, Defendants, jointly and severally, have acted

1 intentionally and with deliberate indifference and conscious disregard to the rights of all
2 employees by Defendants’ failure to pay premium pay for missed meal and rest periods, failure
3 to pay minimum wages, regular wages, overtime and double-time wages, failure to pay all
4 accrued and vested vacation, failure to include all remuneration when calculating the overtime
5 rate of pay, failure to reimburse business expenses, failure to provide accurate itemized wage
6 statements, and failure to timely pay all earned wages and final paychecks due at the time of
7 separation of employment.

8 5. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 have engaged in, among other things a system of willful violations of the California Labor Code,
10 applicable IWC Wage Orders and the UCL by creating and maintaining policies, practices and
11 customs that knowingly deny employees the above-stated rights and benefits.

12 6. The policies, practices and customs of defendants described Above and below
13 have resulted in unjust enrichment of Defendants and an unfair business advantage over
14 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

15 7. In addition, pursuant to the Private Attorneys General Act (PAGA), Plaintiff has
16 given Notice to the California Labor and Workforce Development Agency (LWDA) of the
17 alleged Labor Code violations contained in the Complaint. At the appropriate time, absent action
18 by the LWDA or the California Division of Labor Standards Enforcement (DLSE), Plaintiff will
19 file an amended Complaint seeking all recoverable penalties for Labor Code violations as
20 permitted and proscribed by the PAGA. An amended Complaint will include allegations and
21 remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among others. *See* Cal.
22 Labor Code § 2933.3(a)(2)(C) (“Notwithstanding any other provisions of law, a Plaintiff may as
23 a matter of right amend an existing complaint to add a cause of action arising under this part
24 within 60 days of the time periods specified in this part.”). A true and correct copy of the PAGA
25 Notice and proof of mailing is attached hereto as **Exhibit A** and is incorporated herein by this
26 reference.

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1 **JURISDICTION AND VENUE**

2 8. The Court has jurisdiction over the violations of California Labor Code §§ 201-
3 203, 204, 218, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2698, *et. seq.*, 2802,
4 and the UCL.

5 9. Venue is proper in this Court because Plaintiff performed work for Defendants in
6 this County.

7 **PARTIES**

8 10. Plaintiff was employed by Defendants as an hourly non-exempt sales associate
9 from in or around November 25, 2016 through on or around December 14, 2021. Plaintiff was
10 subjected to illegal employment practices. Specifically, Plaintiff was not paid minimum and
11 overtime wages for all hours worked. Plaintiff and similarly situated employees were not paid for
12 this time. Therefore, Defendants suffered, permitted, and required its hourly employees to be
13 subject to Defendants' control without paying wages for that time, including overtime wages for
14 any hours worked in excess of 8 hours per day and/or 40 hours per workweek. This resulted in
15 Plaintiff and similarly situated employees working time for which they were not compensated
16 any wages, in violation of California Labor Code §§ 1194, 1197, 1198 and the Wage Orders.
17 Plaintiff and similarly situated employees were also not paid all of their minimum wages based
18 on working through their meal periods and not being counted as hours worked. Plaintiff and
19 similarly situated employees were also not paid overtime based on the correct regular rate of pay
20 because Defendants failed to include all non-discretionary remuneration into the regular rate. In
21 particular, Plaintiff and similarly situated employees received additional remuneration, including
22 non-discretionary commissions and bonuses during pay periods in which they had worked over
23 eight hours in a day or over forty hours in a week. Defendants failed to account for the additional
24 remuneration when calculating Plaintiff's and similarly situated employees' overtime rate of pay.
25 This policy, practice, and/or procedure resulted in Defendants paying its hourly non-exempt
26 employees less overtime than they should have received. Plaintiff and similarly situated
27 employees also were not receiving all of their overtime wages due to them when working
28 through their meal breaks and not being counted as hours worked. Defendants' policies and

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