SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL PATRICK MCKENNA, Plaintiff, v. PELOTON INTERACTIVE, INC., and JENNIFER COTTER, Defendants.	**NYSCEF CASE** **Index No.: _____/2022** **SUMMONS** **Venue:** CPLR 509 **Residence of Plaintiff:** **Daniel Patrick McKenna** **New York County, NY 10012**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint and all other lawsuit initiating papers.

Plaintiff designates New York County as the place of trial. The basis of venue is that all defendants maintain a place of business and reside in New York County, and the tortious acts and/or omissions occurred in New York County.

Dated: New York, New York
October 11, 2022

KAKAR, P.C.

/s/Kalpana Nagampalli
Kalpana Nagampalli, Esq.
Sumeer Kakar, Esq.
525 Seventh Avenue Suite 1810
New York, New York 10018
(212) 704-2014
Kalpana@kakarlaw.net
sk@kakarlaw.net
Attorneys of Plaintiff

Kalpana Nagampalli, Esq.
Sumeer Kakar, Esq.
Kakar, P.C.
525 Seventh Avenue Suite 1810
New York, New York 10018
kalpana@kakarlaw.net
sk@kakarlaw.net

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL PATRICK MCKENNA,

Plaintiff,

v.

PELOTON INTERACTIVE, INC., and JENNIFER COTTER,

Defendants.

NYSCEF CASE

Index No.: _____/2022

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. This is an action for declaratory, injunctive, and equitable relief, as well as monetary damages to redress, *inter alia*, Defendants' wrongful termination, discrimination, harassment, and retaliation.

2. Daniel Patrick Mckenna ("Plaintiff" or "Mr. Mckenna"), through his counsel, files his Verified Complaint against his former employer Defendant Peloton Interactive, Inc ("Peloton"), and Defendant Jennifer Cotter, ("Defendant Cotter"), (collectively, "Defendants") asserting, *inter alia*, several claims: breach of the employment agreement, actual disability and perceived disability-based discrimination, failure to engage in good faith interactive process, hostile work environment and retaliation.

3. Plaintiff was subjected to harassment and a hostile work environment in violation of the New York State Human Rights Law, New York Executive Law § 290, et seq. ("NYSHRL"), the New York City Human Rights Law, N.Y. City Admin. Code § 8-107, et seq. ("NYCHRL") and other applicable rules, regulations, statutes, and/or ordinances.

4. Defendants' conduct was knowing, malicious, willful, and wanton and showed a reckless disregard for which Plaintiff which has caused and continues to cause Plaintiff to suffer substantial economic and non-economic damages, permanent harm to his professional and personal reputations, and severe mental anguish and emotional distress.

5. Plaintiff asserts that Defendants willfully and knowingly violated these anti-discrimination statutes when they learned that Plaintiff suffered an unexpected pectoral injury, failed to engage in good faith interactive process, and as soon as he returned to work from his disability, they retaliated against him, and wrongfully terminating Plaintiff because of his short-term disability and perceived disability.

6. Plaintiff further alleges that Defendants knowingly violated the Employment Agreement between Plaintiff and Peloton by, *inter alia*, failing to follow the explicit notice and cure provision(s). Among other breaches, Peloton has failed to articulate any legitimate basis for Mr. Mckenna's termination and has breached the employment agreement by failing to compensate Mr. Mckenna for the lost pay and broad globally restrictive covenants in the breached Employment Agreement that it seeks to enforce.

7. Commencing on or about 2021 and continuing to and including the 12th day of September 2022 (Mr. Mckenna's last day of actual employment at Peloton), Plaintiff and Defendants are parties to annual employment agreements which set forth the terms and conditions of the services to be provided to the Defendants, which incorporate, *inter alia*, the terms of

compensation to Plaintiff for said services, and the terms and conditions upon which termination of the employment relationship can take place.

8. On September 12, 2022, Peloton wrongfully terminated Plaintiff's employment, breaching the parties' employment agreement, failed to follow the contractual requirements before terminating Plaintiff without cause or legitimate reason.

9. Due to Peloton's unilateral breach and discriminatory actions, this is an action brought for, *inter alia*, monetary damages for pain, suffering, humiliation, lost wages, and other compensation. This is also an action brought for declaratory, injunctive, equitable, and affirmative relief. Exemplary damages, monetary damages, counsel fees, and the costs and expenses to redress the injuries caused by the acts of the Defendants, and each of them, are also sought.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter because Defendants conduct business and/or their professional obligations in the State of New York, and a substantial part of the events or omissions giving rise to the claims occurred in New York County.

11. Venue is proper in New York County and this Court under CPLR § 509, 503(a) and (c) because this is the County in which a substantial part of the events or omissions giving rise to the claim occurred and all named parties in this action reside in this county.

12. At the time of filing, Plaintiff serve[d] a copy of the Complaint upon the New York City Commission of Human Rights and the Corporation Counsel of the City of New York in accordance with New York City Administrative Code § 8-502(c).

13. Plaintiff demands a trial by jury.

THE PARTIES

14. Plaintiff was and is, at all relevant times, an adult individual residing in New York,

New York.

15. Defendant Peloton was and is, at all relevant times, a publicly traded corporation, organized and existing under the laws of the State of Delaware with its principal place of business at 441 9th Avenue, 6th Floor New York, New York, 10001.

16. Defendant Cotter is an individual who, upon information and belief, resides in New York, New York, and who is the Chief Content Officer at Peloton and oversaw Plaintiff in a supervisor capacity, operates and controls Peloton's day-to-day operations and management, establishes and enforces the terms and conditions of employment, including, hiring, firing, compensation, duties, and policies, and jointly employed Plaintiff at all relevant times.

17. During all relevant times, Defendant Cotter supervised Plaintiff at Peloton.

STATEMENT OF FACTS

18. Peloton is a widely known, global, and digitally omnipresent corporation specializing in fitness equipment and web-based training, located in New York City. Upon information and belief, Defendants have over four thousand employees, and at least over fourteen employees in this county.

19. Peloton describes its business as an exercise equipment and media company based in New York City. Peloton's main products are Internet-connected stationary bicycles and treadmills that enable monthly subscribers to remotely participate in classes via streaming media.

20. Peloton offers a variety of remote fitness classes that include but are not limited to stationary biking, treading, rowing, strength training, yoga, barre, meditation, boxing, cycling, boxing, and other fitness formats. Peloton fitness classes and programs can be accessed by customers through subscription or on-demand programs that are available to subscribers.

Moreover, Peloton's customers are free to visit and participate in Peloton's state-of-the-art flagship studio location at 370 10th Avenue in New York City.

21. Plaintiff is one of the popular personal instructors at Peloton and is well known in the fitness world for his technique, teaching style, persona, and/or engaging classes.

22. Plaintiff, in part, built his reputation and followers as a personal instructor and fitness professional through his personally curated social media pages and platforms, as well as his personal website. At the onset of the Covid-19 pandemic, Plaintiff offered several online physical training classes through his social media accounts and website, and his popularity surged through the early months of the global COVID-19 pandemic.

23. Due to his growing popularity for strength training and online fitness classes, Mr. Mckenna was invited by Peloton to submit an audition video for a position as an Instructor at Peloton.

24. After thoroughly examining and vetting Plaintiff as a potential Peloton instructor, Peloton hired Plaintiff on December 14, 2021, and the Parties entered into an employment agreement.

25. The Peloton Talent Employment Agreement dated December 14, 2020, and Amendment to Talent Agreement dated June 21, 2021 ("Peloton Employment Agreements"), set forth, *inter alia*, Plaintiff's job description, annual compensation, bonus, and equity structures, termination procedures (for with and without cause), and globally restrictive covenants.

26. After Plaintiff joined Peloton and his launch was announced in August 2021, Plaintiff's following on social media forums and his organic popularity translated to the excitement surrounding his status as a Peloton instructor on Peloton's own social media and marketing platforms. In less than a year, Plaintiff's class and coaching attendance at Peloton ranged from 400

to 1000 attendees for his popular classes—indicative of his success and admiration as a Peloton instructor.

27. From August 2021 through September 2022, Plaintiff had an 80% growth in followers and the highest percentage growth of any Peloton instructor.

28. Out of 20 new instructors Peloton hired, Plaintiff's following, fans pages, and classes achieved fast and high-paced growth.

29. Peloton subscribers attending Plaintiff's classes regularly posted how much they loved his classes; Plaintiff's direct and encouraging style, and teaching methodology led to many followers achieving their fitness goals.

30. Unlike other popular Peloton instructors that are known for teaching classes on Peloton stationary bike classes, Plaintiff's success relied on enthusiasm, energy, and instilling encouragement in members, mechanics of running, strength, and treadmill techniques.

31. Plaintiff is particularly known for his encouraging, humorous, and engaging class that encourages followers to dedicate themselves to his strength and tread classes to reach their fitness goals.

32. Peloton continuously remarked on Mr. Mckenna's growth and success, and Plaintiff received personal messages of congratulation for his contributions from the Chief Executive Officer of Peloton--John Foley.

33. While Plaintiff's success and performance numbers soared, Mr. Mckenna faced discriminatory treatment at Peloton from at least Defendant Cotter for his perceived disability. After unexpected surgery in October 2021, Plaintiff requested a legally available medical exemption for the Covid-19 vaccine mandate in effect at the relevant time. Remarkably, Defendant Cotter made disparaging and denigrating remarks directed to and about Plaintiff after Plaintiff

inquired about a medical exemption for the Covid-19 vaccine. Specifically, *inter alia*, Defendant Cotter categorically denied listening to or exploring the potential for a medical exemption for Plaintiff's vaccination given his individualized medical and health state.

34. Plaintiff expressed detailed concerns that the vaccination could impede his recovery from surgery or have an adverse effect on his health given Plaintiff's post-surgery state allowing for Plaintiff to qualify for the legitimate medical exception to the vaccine mandate.

35. It is around this time, Plaintiff observed that Defendant Cotter started to ridicule and make disparaging remarks directly and indirectly to and about Plaintiff.

36. After options with respect to lawful medical exemptions were conclusory dismissed by the Defendants, Mr. McKenna became distraught and fraught, causing him to succumb to taking the vaccine (despite the option for a valid medical exemption) in fear of disrupting his career and/or employment with Peloton.

37. As soon as Mr. Mckenna received his vaccination, Defendant Cotter perplexingly forced Plaintiff to observe a fourteen-day quarantine period while he repeatedly tested negative.

38. Due to the continuous nature of disparaging and derogatory comments from Defendant Cotter, Plaintiff hired a mental wellness professional to facilitate reducing his stress, humiliation, anxiety, and insomnia triggered by the hostility he faced from Defendant Cotter.

39. Plaintiff noticed on several occasions that Defendant Cotter would arbitrarily ask him to take down social media posts that had nothing to do with Peloton, or irrelevant to Peloton.

40. Defendant Cotter did not raise or object to substantially similar social media posts by other Peloton instructors.

41. Plaintiff increasingly felt that Defendant Cotter particularly disliked him as Defendant Cotter made continuous references to Plaintiff's Irish ethnicity and stereotypes and, nonchalantly asked Plaintiff at the meeting whether he was drunk at work.

42. Plaintiff found the repeated unfounded and vexing references by Defendant Cotter troubling, humiliating, and embarrassing which resulted in elevated stress from the continuous hostile and devaluing nature of the remarks.

43. Defendant Cotter also singled out Plaintiff on staff zoom calls and company meetings and made derogatory remarks and unfounded statements to Plaintiff, *inter alia*, regarding fictitiously drinking while at work when there was no reason to believe that Plaintiff was drinking while at work.

44. On several occasions, Defendant Cotter would direct belittling remarks to Plaintiff as soon as he joined Peloton staff meetings saying, "I hope you are not drunk, Daniel." Bewilderingly, without cause or reason, Defendant Cotter would say to Plaintiff "behave yourself" or "don't be foolish."

45. As another example of targeted discriminatory acts of Defendants, Defendant Cotter stated to Plaintiff that "nobody understands what you are saying, Daniel," while referring to his Irish accent. Plaintiff felt ridiculed, devalued, and embarrassed by Defendant Cotter's negative statements that markedly drew negative attention to him at meetings.

46. In addition to Plaintiff taking note that Defendant Cotter singularly targeted him at meetings, other Peloton staff also observed that Defendant Cotter consistently made uncalled -or personal and unprofessional negative statements to Plaintiff at meetings, albeit at times in a passive-aggressive manner.

47. Defendant Cotter's illegal conduct was without limit or bounds, Defendant Cotter even humiliated Plaintiff in front of his colleagues and other Peloton employees at his first introductory meeting with Peloton's new Chief Executive Officer, Barry McCarthy, by audibly saying and stating, "I hope you're not drunk, Daniel." Defendant Cotter further boorishly announced at the said meeting with Mr. McCarthy, "that's Daniel our Irish instructor, he's rough round the edges and hard to understand but the members love him."

48. After the meeting, unsurprisingly, Plaintiff's extreme anxiety, humiliation, and embarrassment spiraled. His mental and emotional health was adversely affected due to the demeaning statements and passive-aggressive attitude directed towards him.

49. Adding to the mental and emotional anguish, Plaintiff realized others were observing and taking note of Defendant Cotter's patent and disparaging mistreatment of him when other employees encouraged Plaintiff to seek a discussion with Defendant Cotter to preclude further mistreatment.

50. Plaintiff could not fathom the reasons for Defendant Cotter's targeted behavior, hostility, and remarks surrounding his ethnicity, origin, or accent and decided to initiate a phone conversation with Defendant Cotter.

51. In a phone conversation, Plaintiff expressed to Defendant Cotter that the continuous disparaging and derogatory remarks about his ethnic background and alcohol-related related stereotypes embarrassed him, and she should stop.

52. Defendant Cotter unapologetically stated that she was mostly joking.

53. Many of the instructors were/are afraid of Defendant Cotter because she had/has the power to reduce their classes, played favorites, advertising spots and placements with reputed sports gear and apparel companies, and created a pervasive atmosphere of hostility.

54. On or about, Spring of 2022, Plaintiff was engaging in his regular gym routine and suddenly experienced a sharp and debilitating pain in his pectorals.

55. Plaintiff rushed to the doctor and learned that he had torn his pectorals and needed immediate surgery.

56. Plaintiff informed Ms. Kailin Vandevelde, Peloton's Global Instructor Talent Strategy, about his pectoral injury and requested leave and appropriate accommodation during his surgery.

57. After Plaintiff's surgery on April 25, 2022, for the distal pectoralis major tendon rupture, the doctor advised that the recovery period was over six months.

58. With extensive physical therapy and holistic treatments, Plaintiff notified Peloton in May 2022 that he had swiftly recovered and is ready to schedule his classes after July 1, 2022.

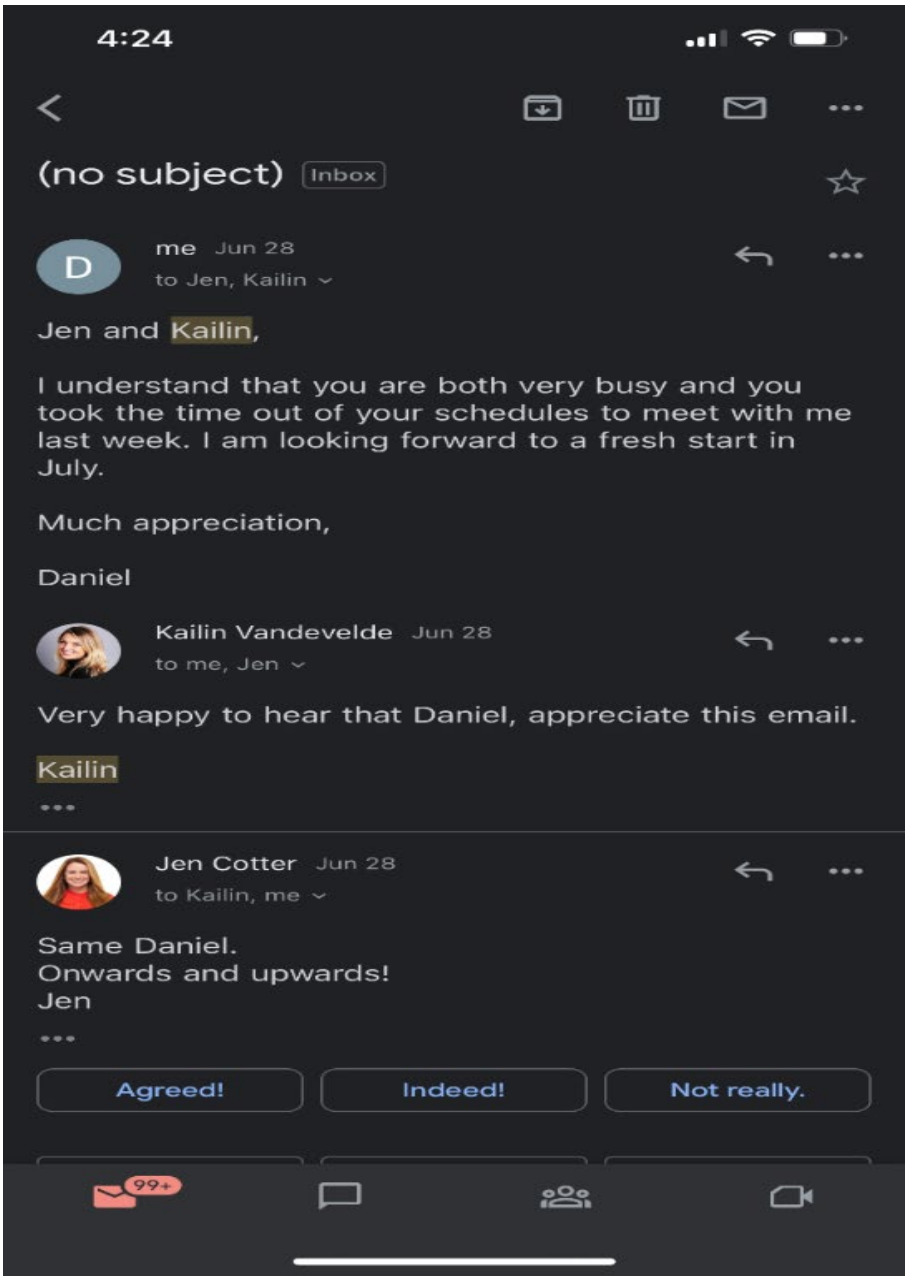
59. Before Plaintiff returned to full-time teaching at Peloton from his disability leave, Defendants Cotter and Ms. Vandevelde scheduled a meeting on June 23, 2022.

60. At the meeting, Defendant Cotter alarmingly and confusingly informed Plaintiff that Peloton could fire him for going on short-term disability but would allow him to resume employment. They said to Plaintiff that it was "not looking good" for Plaintiff and he should be fired because in "corporate America" it was not acceptable to take disability leave for injuries and surgeries.

61. Further, Defendant Cotter made it clear that Plaintiff was on thin ice for taking disability leave and they were going to allow Plaintiff to resume work because his classes are popular with Peloton members.

62. Subsequent to the said meeting on June 23, unsurprisingly, Plaintiff experienced elevated levels of anxiety, stress, sleeplessness, and pressure regarding his career and employment.

63. Despite the quixotic and illegal conduct of Defendants at the June 23, 2022 meeting, in light of Plaintiff's consideration for his treatment and medical recovery, workplace comfort, and stability of employment, on or about June 28, 2022, Plaintiff wrote an email to Defendants to express his general willingness to move forward and received a positive response from Defendants (a true and correct copy of this exchange is reproduced below).



64. After receiving the email stating "onwards and upwards" from Defendant Cotter, Plaintiff deemed he cured the phantom and baseless reasons for potential termination as stated to him on June 23, 2022.

65. Plaintiff did not (ever till the present) receive any written notices regarding any behavior or misconduct that violated Peloton Employment Agreements, whether during his employment or post-termination.

66. Upon returning from disability, Plaintiff continued to focus on his classes and continued to see growth in his followers and received a lot of adoration and praise from his followers for his coaching methods and the impact they had on the fitness goals of his followers.

67. On September 11, 2022, Plaintiff taught his last scheduled class at Peloton.

68. On September 12, 2022, Peloton scheduled a Zoom meeting with Plaintiff.

69. At the meeting, Peloton notified Plaintiff that effective immediately his employment with Peloton was terminated with cause (the "Termination Meeting").

70. Plaintiff was shocked that Defendants had abruptly terminated his employment and repeatedly asked for specific and detailed reasons for his termination.

71. Plaintiff was utterly at loss in trying to comprehend what basis Peloton had to fire him and requested that they provide him with a written basis.

72. At the Termination Meeting, Peloton Defendants failed to provide any written notice, factual description, or basis for any violations that indicated Plaintiff did not perform his duties ably and was subject to termination with cause under the Peloton Employment Agreements.

73. After Mr. Mckenna was woefully informed that he is being "Terminated for Cause," Peloton offered a severance of six-months upfront pay that amounts to $130,000.

74. The severance offered to Plaintiff was significantly lower and in breach of the Peloton Employment Agreements that provide for higher compensation for termination without cause and covered compensation for the applicable period of the restrictive covenants.

75. Mr. Mckenna repeatedly requested that Peloton provide a written basis for his termination and no detailed, descriptive, and/or factual explanation was provided.

76. Prior to Plaintiff's termination, Defendants did not impress or claim that Plaintiff (when healthy) could not perform his job responsibilities ably.

77. Peloton pressured Plaintiff, using their, *inter alia*, monetary influence on his livelihood, to sign the Severance Agreement executed by Peloton within five days of receiving it, so as to eliminate Plaintiff's rights under the Peloton Employment Agreements.

78. Plaintiff could not accept the Severance Agreement because Peloton held the misguided, unsubstantiated, and contractually illegal position that the termination was for cause.

79. Thereafter, Plaintiff requested Peloton to supply the requisite phantom documentation that established that Plaintiff is "Terminated for Cause" under the protocols of the Peloton Employment Agreements.

80. Peloton stated that it has no interest in substantively responding to Plaintiff (or his attorneys) because they had several instances of Plaintiff's violations, but tellingly Peloton would not (and has not) provide the documentation related to the said supposed basis for termination for cause.

81. Peloton is in egregious breach of Peloton's Employment Agreements and has failed to comply with requirements for the alleged termination for cause under the said Agreement. In relevant part, the Peloton Employment Agreement and Addendum define Termination for Cause as follows:

> **Termination for Cause.** Section 4.5 of the Agreement is hereby amended by inserting the following language immediately after the final sentence of that Section:
> "Notwithstanding the foregoing, no Cause shall exist unless the Company has provided written notice to you describing in detail such Cause conduct and, to the extent an act or omission giving rise to Cause is reasonably susceptible to cure, you shall be given ten (10) business days, after written notice by the Company to cure such act or omission to the Company's reasonable satisfaction."

82. Plaintiff did not receive any written notices (nor details or description) of the perceived "with cause termination" by Peloton and certainly was not advised in writing of the acts that can be qualified as a Cause(s) under Section 4.5 of the operating Peloton Employment Agreements.

83. Mr. Mckenna's disability leave was triggered by the demands of the job.

84. Despite his stellar performance and outstanding metrics, Mr. Mckenna at all times faced singled-out criticism and hostile statements by his supervisor. Mr. Mckenna endeavored to cooperate with Peloton and responded immediately to any requirements imposed on him by Peloton, Defendant Cotter, and others like Ms. Vandevelde.

85. The Peloton Employment Agreements provides a suffocating global restrictive covenant that prevents Plaintiff from engaging or teaching fitness classes in the United States or worldwide with any business that competes with Peloton.

86. Peloton's non-compete restricts Plaintiff from any gainful employment in any industry that competes with Peloton's businesses without compensation or salary.

87. The Pelotons Employment Agreements impose a non-compete clause that is overbroad, does not protect any legitimate business interest, and its geographic scope that encompasses the United States and beyond is fantastically unreasonable.

88. Peloton's non-complete clause is contrary to the State of New York's strong public policy, *inter alia*, in favor of allowing employees to apply to their own best advantage the skills and knowledge acquired by the overall experience of their previous employment.

89. The Peloton Employment Agreements illegally require Plaintiff to arbitrate employment disputes when claims for retaliation, wrongful termination, and/or discrimination under the NYSHRL and NYCHRL are asserted. Moreover, breaches of Peloton's employment contracts that arise from wrongful termination are not subject to arbitration.

90. Mr. Mckenna is placed under undue hardship from the concerned non-complete clause as it would force him to abandon his chosen profession if enforced and illegally mandates that he is unemployed and uncompensated for eighteen months under Peloton's oppressive restrictive covenants.

91. There is a justiciable controversy between Plaintiff and Peloton with respect to the validity of the restrictive covenants in Peloton's Employment Agreement.

92. Defendants' ongoing harassment, disparaging treatment, and boorish disregard of Plaintiff commenced mental and emotional anguish for Plaintiff to the extent that Plaintiff sought professional assistance in managing and addressing the stress, distress, sleeplessness, and harm caused by Defendants.

93. Plaintiff's abrupt and baseless termination from a hostile and abusive environment has continued to severely impact his mental health.

94. As a result of Defendants' discriminatory and retaliatory treatment of Plaintiff, Mr. Mckenna has suffered and will continue to suffer the loss of income, the loss of salary, bonuses, benefits, and other compensation related to his employment.

95. Plaintiff has also suffered and continues to suffer future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

96. Defendants' discriminatory actions and inactions caused Plaintiff severe emotional distress, mental anguish, including deteriorating, debilitating, and devaluating anxiety and depression as well as social isolation, loneliness, sadness, fear for his livelihood, and emotional pain.

97. As a direct and proximate result of Plaintiff's short-term disability leave, Peloton terminated his employment without any justifiable bases.

98. Defendants unlawfully discriminated against Plaintiff and treated him differently because of his, *inter alia*, ethnicity, injury, and requirement for accommodations for his short-term disability under NYCHRL and NYSHRL.

99. Defendant Cotter is personally and jointly liable for the discriminatory conduct alleged herein and perpetrated by Defendants.

FIRST CAUSE OF ACTION
ACTUAL OR PERCEIVED DISABILITY DISCRIMINATION
UNDER THE NEW YORK STATE HUMAN RIGHTS LAW

100. Plaintiff repeats and realleges each and every preceding allegation as if fully set forth hereunder.

101. At all relevant times, Plaintiff was an "employee" and "person" under the NYSHRL.

102. At all relevant times, Defendants were "employer[s]" under the NYSHRL.

103. Plaintiff's distal pectoralis major tendon rupture (requiring corrective surgery) is recognized as a disability under the NYSHRL, N.Y. Exec. Law §§ 292(21)(a)-(c).

104. Plaintiff's request to take time off for surgery and recovery is a request for reasonable accommodation under the NYSHRL.

105. Without the requested reasonable accommodation, Plaintiff could not have performed the essential functions of his job.

106. Defendants were on notice that Plaintiff's requested accommodation was necessary to recover and subsequently discriminated and retaliated against him by terminating his employment.

107. Defendant Cotter threatened Plaintiff that Peloton could terminate him for taking disability leave for his injury and recovery from surgery.

108. For failing to reasonably provide for Plaintiff's known and apparent disabilities, for failing to engage in a good faith interactive process, for creating an uncomfortable and hostile work environment, and for terminating his employment in retaliation, Defendants violated the NYSHRL. N.Y. Exec. Law §§ 296(1)(a) and 296(3)(a).

109. By terminating Plaintiff, Defendants violated the NYSHRL.

110. Defendants are liable for the damages that they have caused to Plaintiff due to their unlawful and discriminatory employment practices and retaliation against him.

111. As a result of Defendants' failures and illegal conduct concerning Plaintiff's disability, Plaintiff has suffered and continues to suffer, *inter alia*, loss of wages, loss of insurance, inability to pay rent and living expenses, medical expenses, lost interest, emotional distress, mental anguish, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

SECOND CAUSE OF ACTION
ACTUAL OR PERCEIVED DISABILITY DISCRIMINATION
UNDER THE NEW YORK CITY HUMAN RIGHTS LAW

112. Plaintiff repeats and realleges each and every preceding allegation as if fully set forth hereunder.

113. At all relevant times, Plaintiff was an "employee" and "person" under the NYCHRL.

114. At all relevant times, Defendants were "employer[s]" under the NYCHRL.

115. Plaintiff's distal pectoralis major tendon rupture caused is recognized as a disability under the NYSHRL, N.Y. Exec. Law §§ 292(21)(a)-(c).

116. Defendants violated Executive Law § 296, et seq. by engaging in, perpetuating and permitting supervisory and decision-making employees to engage in retaliatory actions against Plaintiff for engaging in protected activities, when complaining of the discriminatory, harassing and disparate treatment she was subjected to by Defendants.

117. Defendant Cotter threatened Plaintiff that Peloton could terminate him for taking disability leave for his injury and recovery from surgery.

118. Plaintiff's request to take time off for surgery and recovery is a request for reasonable accommodation under the NYSHRL.

119. Without the requested reasonable accommodation, Plaintiff could not have performed the essential functions of his job.

120. Defendants were on notice that Plaintiff's requested accommodation was necessary to recover and subsequently discriminated and retaliated against him by terminating his employment.

121. Defendants retaliated against Plaintiff leading him to suffer emotional distress, and ultimately terminated his employment, further violating the NYCHRL.

122. In failing to engage in a good faith interactive process, Defendants violated the NYCHRL. N.Y.C. Admin. Code §§ 8-107(1)(a), 8-107(15)(a).

123. By terminating Plaintiff, Defendants violated the NYCHRL.

124. As a result of Defendants' failure to engage in a good faith interactive process and to accommodate his disabilities, Plaintiff has suffered and continues to suffer, inter alia, loss of wages, lost pension monies and contributions, medical expenses, lost interest, emotional distress, mental anguish, emotional pain and suffering, inconvenience, loss of enjoyment of life and medical expenses.

THIRD CAUSE OF ACTION

UNLAWFUL RETALIATION UNDER NEW YORK CITY HUMAN RIGHTS LAW

125. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs as if fully set forth hereunder.

126. The NYCHRL prohibits employers from retaliating or discriminating in any manner against any person because such person has opposed any practice the NYCHRL forbids. N.Y.C. Admin. Code § 8-107(7).

127. Defendants violated the Administrative Code § 8-107, et seq., by engaging in, perpetuating and permitting supervisory and decision-making employees to engage in discriminatory practices in which Plaintiff's disability was the motivating, if not the only factor.

128. Under the NYCHRL, the retaliation or discrimination complained of need not result in an "ultimate action" with respect to the employee, or even in a materially adverse change in the employee's terms and conditions, provided that the retaliatory or discriminatory act(s) complained of would be reasonably likely to deter a person from engaging in protected activity. Restoration Act § 3 (amending N.Y.C. Admin. Code § 8-107(7)).

129. Plaintiff took action by objecting to Defendants' unlawful conduct and in exercising his rights under the disability laws to request accommodation without the consequences of retaliation or having to bear a hostile and offensive work environment.

130. Defendant engaged in conduct that was reasonably likely to deter a person from engaging in such conduct, violating the NYCHRL's anti-retaliation provision. N.Y.C. Admin. Code § 8-107(7).

131. A causal connection exists between Plaintiff's objection to Defendant Cottell's hostile and discriminatory statements and Defendants' decision to terminate his employment.

132. As a result of Defendants' unlawful retaliation under NYCHRL, Plaintiff has suffered and continues to suffer, inter alia, loss of wages, lost pension monies and contributions, medical expenses, lost interest, emotional distress, mental anguish, emotional pain and suffering, inconvenience, loss of enjoyment of life and medical expenses.

FOURTH CAUSE OF ACTION
RETALIATION UNDER THE NEW YORK STATE HUMAN RIGHTS LAW

133. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs as if fully set forth hereunder.

134. Under the NYSHRL, "[i]t shall be an unlawful discriminatory practice . . . [f]or any employer . . . to . . . discriminate against any person because [s]he has opposed any practices forbidden under this article or because [s]he has filed a complaint, testified or assisted in any proceeding under this article." N.Y. Exec. Law § 296(1)(e).

135. Defendants have retaliated against Plaintiffs by, *inter alia*, harassing them, threatening them, humiliating them, undermining their ability to effectively perform their jobs, and

in the case of Plaintiff unlawfully terminating him in violation of the New York State Human Rights Law

136. No legitimate, non-retaliatory reasons exist for the adverse action Defendants took against Plaintiff.

137. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which they are entitled to an award of monetary damages and other relief.

138. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which they are entitled to an award of monetary damages and other relief.

FIFTH CAUSE OF ACTION
(NATIONAL ORIGIN DISCRIMINATION UNDER THE NYCHRL-DISPARATE TREATMENT AGAINST ALL DEFENDANTS)

139. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

140. Defendants have discriminated against Plaintiff on the basis of their Irish national origin in violation of the NYCHRL by subjecting Plaintiffs to disparate treatment in the form of disparate work rules, and disparate workload in part because of their national origin.

141. At all times relevant all Defendants were aware of Plaintiff's national origin.

142. All Defendants by their actions, including individual defendants, have directly created, ratified, enforced and/or implemented the policies of disparate treatment because of national origin.

143. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continue to suffer, monetary and/or economic harm for which they are entitled to an award of monetary damages and other relief.

144. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering. For this they are entitled to an award of monetary damages and other relief.

145. Defendants' unlawful and discriminatory actions were intentional, done with malice and/or showed deliberate, willful, wanton, and reckless indifference to Discrimination Plaintiffs' rights under the NYCHRL for which Discrimination Plaintiffs are entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF THE
NEW YORK STATE HUMAN RIGHTS LAW AGAINST ALL DEFENDANTS

146. Plaintiff repeats and realleges each and every allegation herein above as if fully set forth herein.

147. The Plaintiff is of Irish descent and is thus a member of a protected class under the Executive Law based on his national origin.

148. Defendant Cottell was aware of Plaintiff's protected class; Plaintiff was subjected to offensive and derogatory comments on the basis of his nationality and Defendants condoned

Defendant Cottell's action for creating workplace hostility to make those comments which is a continuing violation of discrimination law.

149. By the actions described supra, among others, Defendants discriminated against Plaintiff, in violation of the Executive Law, by taking adverse action against Plaintiff directly because of his national origin.

150. In addition to continuously making demeaning statements related to Plaintiff's national origin, Defendants fabricated a false basis for termination within a month of Plaintiff's return from disability leave for unavoidable physical injury.

151. As a proximate result of Defendants' unlawful acts and practices in violation of the NYSHRL, Plaintiff has suffered and continues to suffer irreparable injury and substantial losses, including lost earnings and other employment benefits, and is entitled to monetary and compensatory damages for, inter alia, mental anguish, emotional distress and humiliation, emotional pain and suffering, severe and lasting embarrassment, loss of reputation, and other compensable damage, and will continue to do so unless and until this Court grants relief.

SEVENTH CAUSE OF ACTION
NATIONAL ORIGIN DISCRIMINATION UNDER THE NYCHRL-HOSTILE WORK ENVIRONMENT AGAINST ALL DEFENDANTS

152. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

153. Defendant Cottell was aware of Plaintiff's protected class; Plaintiff was subjected to offensive and derogatory comments on the basis of his nationality and Defendants condoned Defendant Cottell's action for creating workplace hostility to make those comments which is a continuing violation of discrimination law.

154. The New York City Administrative Code is explicit that the City Human Rights Law "be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof" and that exceptions and exemptions "be construed narrowly in order to maximize the deterrence of discriminatory conduct." N.Y.C. Admin. Code § 8-130(a)-(b).

155. Defendants have discriminated against Plaintiff on the basis of his ethnicity and Irish national origin in violation of the NYCHRL by subjecting Plaintiff to a hostile work environment in the form of a pervasive and continuous hostile treatment including but not limited to subjecting them to slurs and epithets based on national origin, derogatory and humiliating directed to Plaintiff, and indifference to their injuries in part because of their national origin.

156. All Defendants by their actions, including individual defendants, have directly participated in, ratified, and implemented the policies that gave rise to the hostile work environment.

157. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer, monetary and/or economic harm for which they are entitled to an award of monetary damages and other relief.

158. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, and anxiety, loss of self-esteem and self-confidence, as well as emotional pain and suffering. For this they are entitled to an award of monetary damages and other relief.

159. Defendants' unlawful and discriminatory actions were intentional, done with malice and/or showed deliberate, willful, wanton, and reckless indifference to Plaintiff's rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages,

EIGHTH CAUSE OF ACTION

DECLARATORY JUDGMENT THAT THE NON-COMPETE PROVISION OF THE EMPLOYMENT AGREEMENT IS UNENFORCEABLE UNDER NEW YORK LAW

160. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs as if fully set forth hereunder.

161. The duration and geographic scope of the non-compete provisions in the employment contract are broader than necessary to protect any legitimate business interests of Peloton.

162. The duration and geographic scope of the non-compete provisions in the employment contract are not necessary to prevent possible solicitation or disclosure of trade secrets.

163. The duration and geographic scope of the non-compete provisions in the employment contract impose unreasonable burdens on and barriers to Plaintiff's ability to practice his profession and earn an income.

164. The geographic scope of the non-compete provisions of the employment contract is unreasonably ambiguous and indefinite.

165. The duration and geographic scope of the non-compete provisions in the employment contract are contrary to the State of New York's strong public policy in favor of competition engendered by the uninhibited flow of services, talent, and ideas.

166. The duration and scope of the non-compete provisions in the employment contract are contrary to the State of New York's strong public policy in favor of allowing employees to apply to their own best advantage the skills and knowledge acquired by the overall experience of their previous employment.

167. The duration and scope of the non-compete provisions in the employment contract are unsupported by continued consideration for Plaintiff's loyalty and goodwill.

168. Plaintiff has a definite and concrete dispute with Peloton concerning the enforceability of the non-compete provisions in the employment contract.

169. The dispute touches the legal relations of parties having adverse legal interests; the dispute is real and substantial; the dispute admits of specific relief through a decree of a conclusive character, and the dispute involves a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

170. Defendants' egregious breach of the Peloton Employment Agreements, including its professed intention to enforce the non-compete, is causing imminent irreparable injury to Plaintiff that cannot be redressed by monetary damages.

171. The nature of that threat is magnified because Plaintiff was wrongfully terminated and cannot under the threat of the non-compete seek gainful employment, which is causing damages to his professional career.

172. Thus, Plaintiff has no adequate remedy at law.

173. Plaintiff is likely to succeed on the merits of his breach of contract claim because Defendant has, *inter-alia*, failed to pay severance, and his claims for declaratory relief because the noncompete clause is overbroad on its face and he was terminated without cause in violation of the agreement.

174. The equities favor Plaintiff because he only seeks to pursue his chosen career in New York (where he has performed service for the past year) and the scope of the non-compete is preventing Plaintiff from pursuing his career in the fitness industry throughout the United States

and anywhere in the world where Peloton offers services. The non-compete is so broad, it is globally restricted and is overbroad in all the areas where Plaintiff is prohibited from working.

NINTH CAUSE OF ACTION
BREACH OF CONTRACT AGAINST PELOTON

175. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs as if fully set forth hereunder.

176. The Employment Agreements between Plaintiff and Peloton contractually govern the requirements of with and without cause termination of Plaintiff's employment.

177. Plaintiff has performed all of his material obligations under the Employment Agreements as a successful and popular Peloton instructor.

178. The requirements of termination with or without cause is a material term of the Peloton Employment Agreements as, *inter alia,* the said term directly affects Plaintiff's livelihood and resources.

179. Peloton patently breached the Employment Agreements by woefully attempting to terminate Plaintiff's employment with cause and without meeting the contractual requirements of termination as set forth in the Peloton Employment Agreements.

180. Peloton substantially, materially, and continuously breached the terms of the Peloton Employment Agreements by illegally seeking to, inter alia, not pay Plaintiff the contractually agreed to severance. By reason of the foregoing, arising from Peloton's disregard for the Peloton Employment Agreements terms and obligations meant to be upheld by Peloton, Plaintiff has been damaged, and continues to be damaged, in the sum to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

a. Accepts jurisdiction over this matter;

b. Impanels and charges a jury with respect to the causes of action;

c. award Plaintiff full compensation damages under the Executive Law of the State of New York, New York State Human Rights Law ("Executive Law"), § 296, *et seq*., and the Administrative Code of the City of New York, New York City Human Rights Law ("Administrative Code"), § 8-101, *et seq*.;

d. award full liquidated and punitive damages as allowed under the Administrative Code of the City of New York, New York City Human Rights Law ("Administrative Code"), § 8-101, *et seq*.;

e. award pre-judgment and post-judgment interests;

f. issue a declaratory judgment declaring that the acts and practices complained of herein are in violation of the Executive Law and the Administrative Code;

g. issue a declaratory judgment declaring the non-compete clause of Peloton's Employment Agreement as unenforceable;

h. Defendants breached the Peloton Employment Agreements and failed to compensate Plaintiff for severance, lost wages, front pay, and compensation for enforcing restrictive covenants;

i. Back pay, front pay, and all benefits along with pre and post-judgment interest in the amount to be determined at trial but no less than **$500,000.**

j. Compensatory damages including, but not limited to, damages for pain and suffering, anxiety, humiliation, loss of enjoyment of life, and emotional distress in the amount of

at least **$300,000**.

k. Punitive Damages in order to compensate him for the injuries he has suffered and to signal to other employers that discrimination is repulsive to legislative enactments in the amount to be determined at trial but for no less than **$1,000,000**.

l. An award of pre-judgment and post-judgment interest;

m. An award of costs and expenses of this action, together with reasonable attorneys' and expert fees; and

n. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 11, 2022

KAKAR, P.C.
/s/Kalpana Nagampalli

Kalpana Nagampalli
Sumeer Kakar
525 Seventh Avenue Suite 1810
New York, New York 10018
(212) 704-2014
Kalpana@kakarlaw.net
sk@kakarlaw.net
Attorneys of Plaintiff Daniel Patrick McKenna

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

DANIEL MCKENNA,

Plaintiff,

v.

PELOTON INTERACTIVE, INC., and JENNIFER COTTER,

Defendants.

NYSCEF CASE

Index No.: _____

VERIFICATION

I am the Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

I affirm the foregoing statements are true under the penalties of perjury.

Date: October 11, 2022
New York, New York

Daniel Mckenna

Sworn to before me this 11th day of October 2022.

Notary Public