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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 IN RE 24 HOUR FITNESS PREPAID
MEMBERSHIPS LITIGATION

Case No.: 4:16-cv-01668-JSW

16 **CONSOLIDATED CLASS**
17 **ACTION COMPLAINT**

18 **DEMAND FOR JURY TRIAL**

19
20 Plaintiffs Kevin O’Shea, Mark Vitcov, Rod Morris, Michael Losquadro, and Russell
21 Marchewka bring this Class Action Complaint and Demand for Jury Trial against Defendant
22 24 Hour Fitness USA, Inc. for fraudulently inducing consumers into purchasing three year
23 memberships paid in advance that were represented as “lifetime memberships” to its gyms.
24 Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and
25 experiences, and as to all other matters, upon information and belief, including investigation
26 conducted by their attorneys.

27 **NATURE OF THE ACTION**

28 1. Defendant 24 Hour Fitness owns and operates the largest fitness center chain

1 in the United States.

2 2. For the last twenty years, 24 Hour Fitness’s sales representatives have used a
3 uniform set of marketing tactics and aggressive sales pitches to induce consumers into
4 purchasing “lifetime memberships” to its gyms, where they prepaid two to three years’ worth
5 of membership fees and, in exchange, only had to pay nominal annual renewal fees each year
6 thereafter (the “Annual Renewal Fee”). Under these purported “lifetime memberships,” the
7 Annual Renewal Fees were supposed to remain constant for the remainder of the member’s
8 life as long as he or she wished to remain a member (the “Lifetime Fee Guarantee”).
9 Without the promise of fixed annual renewal fees, consumers otherwise had no incentive to
10 pay for three years of membership in advance.

11 3. Unfortunately, now under new ownership, 24 Hour Fitness decided to stop
12 honoring the Lifetime Fee Guarantees it had promised lifetime members and began alerting
13 them—some of whom had paid the same Annual Renewal Fee for more than two decades—
14 that their Annual Renewal Fees would increase at some point between 2015 and 2016 (in
15 most cases, to either double or triple their previous rates).

16 4. Not surprisingly, thousands of outraged members across the United States
17 posted complaints on the Internet describing how they were promised lifetime memberships
18 by 24 Hour Fitness’s sales representatives, but that 24 Hour Fitness was going to start raising
19 their Annual Renewal Fees.¹ 24 Hour Fitness responded by pointing to certain fine print
20 located on the second page of standardized membership agreements and argued that it is
21 allowed to increase Annual Renewal Rates as much as it wishes—regardless of the uniform
22 promises that it trained its sales representatives to make to induce consumers into purchasing
23 the lifetime memberships.

24
25 ¹ In fact, there is a petition on Change.org with over 2,300 24 Hour Fitness lifetime
26 members complaining about these practices. See Change.org, *24 Hour Fitness Unfairly*
27 *Raising Fees for Guaranteed Lifetime Annual Memberships* (accessed Mar. 25, 2016),
28 <https://www.change.org/p/elizabeth-blair-ceo-24-hour-fitness-24-hour-fitness-unfairly-raising-fees-for-guaranteed-lifetime-annual-memberships>.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least one member of the Class is a citizen of a different state than the Defendant, (ii) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii) none of the exceptions under that subsection apply to this action.

14. This Court has personal jurisdiction over Defendant because it is a California corporation, its principal place of business is located in California, designed its advertising materials in California, and the events giving rise to this lawsuit occurred, in substantial part, in California.

15. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs’ claims occurred in, were directed to, and/or emanated from this District. Venue is additionally proper because Defendant is registered to, and regularly does, conduct business in this District, including by entering into consumer transactions in this District.

INTRADISTRICT ASSIGNMENT

16. Pursuant to Civil Local Rule 3-2(d), this case should be assigned to the San Francisco Division.

FACTUAL BACKGROUND

I. An Overview of 24 Hour Fitness.

17. 24 Hour Fitness operates the largest chain of fitness centers in the United States, with gyms in over 420 cities (including 139 locations in California alone).

18. In order to use its facilities, consumers must first purchase a “gym membership that fits [their] schedule and [their] health and fitness goals,”² which they can do by walking into a 24 Hour Fitness location and speaking with a sales representative (known as a “Membership Counselor”).

19. Unfortunately, while there are a number of membership options that

² Club Membership, 24 HOUR FITNESS, <http://www.24hourfitness.com/membership/> (last visited Apr. 1, 2016).

1 consumers can choose from, 24 Hour Fitness trains its Membership Counselors to use
2 deception and high-pressure sales tactics to sell—what it claims are—lifetime memberships
3 to its gyms.

4 **II. 24 Hour Fitness’s Membership Counselors Use Scripted Routines and Uniform**
5 **Sales Pitches to Induce Consumers into Purchasing Supposed Lifetime**
6 **Memberships.**

7 20. When 24 Hour Fitness was founded over 20 years ago, it started offering
8 lifetime memberships because it (i) needed to raise capital in order to expand and wanted to
9 use the prepaid membership dues required to be lifetime members to build new gyms, and (ii)
10 sought to differentiate itself from other gyms during a time-period when there was a lot of
11 competition in the fitness industry and fitness clubs were constantly going out of business.

12 21. Consumers could purchase these lifetime memberships by prepaying two to
13 three years’ worth of membership fees. After that, these members would only have to pay
14 nominal annual renewal fees each year thereafter, which were supposed to be fixed for the
15 remainder of the member’s life.

16 22. In order to sell these lifelong memberships, 24 Hour Fitness designed scripted
17 routines and aggressive sales pitches that it trained its Membership Counselors to use to
18 convince consumers into purchasing them.³

19 *A. 24 Hour Fitness Sold Lifetime Memberships to Consumers Even*
20 *Though Its Standard Membership Contracts Didn’t Contain Any*
21 *Guarantees.*

22 23. The problem is, after April 2006,⁴ the standard form membership agreements
23 that 24 Hour Fitness required lifetime members to sign did not actually guarantee that the
24 nominal annual renewal fees would be fixed. Instead, in fine print located on the second page
25 of these standard form membership agreements, 24 Hour Fitness actually said the opposite:

26 ³ See Consumer Complaints and Reviews for 24 Hour Fitness, CONSUMER AFFAIRS,
27 https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=6 (last visited
28 Apr. 1, 2016) (“I used to work in sales at 24 Hour Fitness . . . and we were trained to tell
people this is the price they would pay for the rest of their lives . . .”).

⁴ Prior to 2006, 24 Hour Fitness’s membership contracts actually stated it would not
increase lifetime members’ Guaranteed Annual Renewal Amounts as long as they remained
in good standing.

1 that is, that 24 Hour Fitness could increase all subsequent annual renewal amounts on prepaid
2 memberships.

3 24. Nonetheless, when consumers visited 24 Hour Fitness to purchase
4 memberships, 24 Hour Fitness displayed marketing materials around its facilities
5 encouraging prospective members to ask about its lifetime memberships.⁵

6 25. 24 Hour Fitness's Membership Counselors were then trained to push these
7 supposed lifelong memberships and hurry prospective members through the contract so they
8 would not discover what the contract actually said. Former 24 Hour Fitness managers even
9 admit that their Membership Counselors were trained to promise "lifetime memberships" to
10 potential lifetime members even though the written contracts did not reflect such a promise,⁶
11 and, likewise, Membership Counselors even admit being trained to tell potential lifetime
12 members that they would receive "lifetime memberships."⁷

13 26. Every sales pitch used by 24 Hour Fitness's Membership Counselors was
14 virtually the same:

- 15 • First, after convincing consumers to purchase a lifelong membership, 24
16 Hour Fitness's Membership Counselors were instructed to tell potential
17 members that they did not need to read the fine print on the written
18 membership contracts because they were for "lifetime memberships"—as
19 was verbally represented;⁸

20 ⁵ BBB Business Review, *24Hour Fitness USA Inc*, [http://www.bbb.org/sdoc/business-](http://www.bbb.org/sdoc/business-reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints)
21 [reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints](http://www.bbb.org/sdoc/business-reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints) (last visited
22 Mar. 6, 2016).

23 ⁶ Change.org, *24 Hour Fitness Unfairly Raising Fees for Guaranteed Lifetime Annual*
24 *Memberships*, [https://www.change.org/p/elizabeth-blair-ceo-24-hour-fitness-24-hour-fitness-](https://www.change.org/p/elizabeth-blair-ceo-24-hour-fitness-24-hour-fitness-unfairly-raising-fees-for-guaranteed-lifetime-annual-memberships/c)
25 [unfairly-raising-fees-for-guaranteed-lifetime-annual-memberships/c](https://www.change.org/p/elizabeth-blair-ceo-24-hour-fitness-24-hour-fitness-unfairly-raising-fees-for-guaranteed-lifetime-annual-memberships/c) (last visited Mar. 6,
26 2016).

27 ⁷ Consumers Affairs, *24 Hour Fitness*,
28 https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=5 (last visited
Mar. 8, 2016).

⁸ See, e.g., Reddit, *24 Hour Fitness Increasing "Lifetime" membership rate - is this*
legal? (California),
[https://www.reddit.com/r/legaladvice/comments/3ayunb/24_hour_fitness_increasing](https://www.reddit.com/r/legaladvice/comments/3ayunb/24_hour_fitness_increasing_lifetime_membership/)
[_lifetime_membership/](https://www.reddit.com/r/legaladvice/comments/3ayunb/24_hour_fitness_increasing_lifetime_membership/) (last visited Mar. 6, 2016) (emphasis added) ("I have bought 3

- Then, 24 Hour Fitness’s Membership Counselors would tell the potential customer what a “great deal” they could get by purchasing a lifetime membership, at the same time they were being asked to sign the written agreement that contained no such guarantee.⁹

27. If a consumer was hesitant or insisted on reading the membership contracts before signing them, 24 Hour Fitness’s Membership Counselors were trained to get even more aggressive and insist that the potential member needed to sign immediately or risk losing a “great deal.”¹⁰

different “lifetime” memberships [from 24 Hour Fitness]. I was told verbally that the rate was “for life” when purchasing each membership. This is why I bought them and paid a large “up front” amount of money. . . . My husband just got his notice and his rate has been increased from \$29 to \$79. . . . The sales rep at the 24 Hour Concord, CA did deceive me. I recall being told that the contracts are “all the same” and *no need to spend the time to read all the fine print.*)

⁹ See, e.g., Consumer Affairs, *24 Hour Fitness*, https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=8 (accessed Mar. 10, 2016) (“24 Hour Fitness had a promotion back in 2006 of [\$]700.00 upfront . . . and after the third year a charge of 29.00 a year for life was going to apply. A sales associate gave me the contract to sign after he explained this “great deal” and I signed and I paid the 700 hundred dollars there. After the third year I began to pay 29.00 every year. I continued for all this time without a problem until now that I received the annual bill charging me 104.00!!!”).

¹⁰ See, e.g., BBB Business Review, *24Hour Fitness USA Inc.*, <http://www.bbb.org/sdoc/business-reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints> (accessed Mar. 10, 2016) (“I was conned by a 24 Hour Fitness salesperson. I was told that for a prepaid membership of \$700 there were no monthly fees for three years and then it would only be \$29 per year thereafter. I specifically asked if that annual fee was subject to change, and I was told, “No, after three years, just \$29 a year for as long as you stay a member.” This was a lie. My annual renewal fee for the upcoming year was increased 272% to \$79. *He also told me that the promotional offer was expiring that day so I had to act that day or miss the offer.* This was a lie. . . . It is a brilliant con i[n] that they cheated many people out of a relatively small amount of money with false claims that required years to discover, so that no one will have recourse . . . *BTW, the contract was two legal-sized pages of multiple columns of fine print. I told the salesperson I didn’t have my reading glasses with me. That’s when he told me the offer ended that day.* And that is why I specifically asked if the dues would ever be raised beyond the \$29 per year, and was told “no.” . . . I am a senior living on a limited fixed income, and I would not have agreed to a financial stipulation that contained unlimited fee increases with no cap.”).

B. *Thousands of “Lifetime Members” are Outraged After 24 Hour Fitness Decides to No Longer Honor Its Lifetime Guarantees.*

28. Unfortunately, now under new ownership, 24 Hour Fitness decided to stop honoring the Lifetime Fee Guarantees it had promised and began alerting its lifetime members—some of whom had paid the same Annual Renewal Fee for more than two decades—that their Annual Renewal Fees would increase at some point between 2015 and 2016 (in most cases, to either double or triple their previous rates).

29. Not surprisingly, thousands of consumers immediately began posting complaints on the Internet, including the following examples:

- I have this same contract. When it began, it was verbally expressed to me that my rate could stay fixed at \$29 for life. All that was required was to pay it when it was due and not cancel my membership and it would be guaranteed to stay at that price for life. That is clearly not the case if I am now being told that my rate is going up.¹¹
- Clear bait and switch.... Sales guy lied that \$30/month life time membership due will never increase and had me sign on a contract that clearly says in 3(c) that dues can be increased at any time. BAD FAITH. willfully mis-lead me into signing a contract based on mis-information. This happened across the nation over and over.¹²
- I was told when I paid for three years that after the three years were up, the payment would be “49 for the rest of my life”.¹³
- False advertising and selling practice. The sales person specifically told me that the \$29 would be for life – he said “we do this because you’ll be a customer for life.” This is corporate greed and false advertising.¹⁴
- I was also told my rate was locked in “for life”. My rate increased from 29.99 annually to 79.99[.] They’re training their staff to lie to potential members. This is fraud!¹⁵

¹¹ Change.org, *24 Hour Fitness Unfairly Raising Fees for Guaranteed Lifetime Annual Memberships*, <https://www.change.org/p/elizabeth-blair-ceo-24-hour-fitness-24-hour-fitness-unfairly-raising-fees-for-guaranteed-lifetime-annual-memberships/c> (last visited Mar. 6, 2016).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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- I was verbally promised no increase in rates after paying a significant amount up front and now they are talking about raising the rates. As it turns out the verbal contract and the written contract were not the same. This was a bait and switch and is disgusting behavior by 24 HR Fitness.¹⁶
 - I was told face to face that my rate would be 100 [p]er year as long as I stayed current at the end of my three year contract. Blatantly lied to by in gym personnel.¹⁷
 - On June 4, 2007 a 24 Hour[] Fitness [salesperson] sold me a 3 year plan for \$750 with the promise of \$29 a year after that. I bought into the plan on the value of the indefinite \$29-a-[year] payments [the salesperson] promised . . . only to be surprised [in 2015] by a \$79/year increase . . . an almost 300% increase . . . I call[ed] 24 Hour Fitness Customer Service and was told there was a “clause 3c” that allowed 24 Hour Fitness to raise rates . . . This came as a surprise to me because [the salesperson] had not brought this up during her pitch which now comes across as having been misleading at best and deceptive at worst. Price was a major selling point of the [prepaid] plan and for [the salesperson] to sell the \$29/year aspect without mentioning the said “clause 3c” **hidden in mounds of small print** at the back of the 5th page of the documentation she gave, smacks of shady practice that I would never have associated with an international corporate brand like 24 Hour Fitness. \$750 is a lot of money [to me] and plunking it down for [a] gym membership in one sitting is something I would never have done had I not believed 24 [Hour] Fitness could be trusted¹⁸
 - Purchased [a] 3 year Prepa[id] [Plan] for \$800 around June 19, 2006. (Reason I remember, it was a Birthday Gift . . . I paid half, mother paid half.) Was verbally promised a 3-year membership with a \$29.00 annual renewal membership . . . This price hike irritates, frustrates, and infuriates me as a 9-year customer of 24 Hour Fitness. In my honest opinion, **Bamboozled, Bait and Switched, Hoodwinked** all describes what 24 Hour Fitness is pulling here. I'm not exactly sure how legal this is but just because it is legal does not make it right. For years I have been of the belief that 24 Hour Fitness has been constantly trying to weed out the loyal long term annual buyers. (Especially since the new acquisition/buy out)¹⁹

23 ¹⁶ *Id.*

24 ¹⁷ *Id.*

25 ¹⁸ BBB Business Review, *24 Hour Fitness*, <http://www.bbb.org/sdoc/business-reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints> (last visited Mar. 10, 2016). (Emphasis added.)

26 ¹⁹ Consumer Affairs, *24 Hour Fitness*, https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=12 (last visited Mar. 10, 2016).

1 30. In addition to illustrating the outrage expressed by an overwhelming portion
2 of 24 Hour Fitness’s members, these complaints also confirm that “lifetime members” were
3 all subjected to the virtually identical sales pitches described in Section II.A above. A local
4 news station, CBS Sacramento, even did a story about 24 Hour Fitness raising the rates of its
5 “lifetime” members and recognized that “there is power in a pattern of people [all] telling the
6 same story.”²⁰

7 31. To make matters worse, 24 Hour Fitness responded to member inquiries about
8 why their “lifetime” rates were going up by claiming that they never had lifetime
9 memberships in the first place and that 24 Hour Fitness is allowed to change the membership
10 rates at anytime according to the standard form written membership contracts.²¹ In certain
11 circumstances, 24 Hour Fitness even responded that it did not care what its Membership
12 Counselors had promised them.²²

13 32. The common theme among all of the complaints described above—a theme
14 reinforced by Plaintiffs’ experiences in this case—is that 24 Hour Fitness designed its sales
15 tactics to misrepresent that its lifetime memberships came with Lifetime Fee Guarantees
16 specifically to lure consumers into purchasing lifetime memberships to its gyms.

17 **III. Plaintiffs’ Experiences.**

18 *A. Plaintiff O’Shea’s Experience.*

19 33. Plaintiff O’Shea purchased—what a 24 Hour Fitness representative promised
20 was—a lifetime membership to 24 Hour Fitness for \$700 on January 28, 2008. It was
21 important to his purchasing decision that this was a “lifetime” membership. He would not
22 have prepaid such a substantial sum if not for the representations that his rate would stay

23 ²⁰ Kurtis Ming, *Call Kurtis: 24 Hour Fitness Members Say Company Lied About*
24 *Lifetime Pricing*, CBS SACRAMENTO, <http://sacramento.cbslocal.com/2016/01/11/24-hour-fitness-members-deal-out-more-cash-than-they-expected/> (last visited Mar. 11, 2016).

25 ²¹ See, e.g., Facebook, *Ries Michael* (Feb. 17, 2016),
26 <https://www.facebook.com/search/top/?q=ries%20michael%2024%20hour%20fitness> (last
visited Apr. 1, 2016).

27 ²² Consumer Affairs, *24 Hour Fitness*,
28 https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=2 (last visited
Mar. 8, 2016).

1 capped for life. His Annual Renewal Fee stayed at a locked-in rate of \$49 until January 2016,
2 when it was raised to \$124.

3 *B. Plaintiff Vitcov's Experience.*

4 34. Plaintiff Vitcov purchased—what a 24 Hour Fitness representative promised
5 was—a lifetime membership to 24 Hour Fitness for \$545 on February 25, 2007. He
6 considered the promise of a lifetime rate to be very important to his purchasing decision. He
7 would not have prepaid such a substantial sum if not for the representations that his rate
8 would stay capped for life. His Annual Renewal Fee stayed at his starting-rate of \$69 until
9 recently, when it was increased to \$119.

10 *C. Plaintiff Morris's Experience.*

11 35. Plaintiff Morris purchased—what a 24 Hour Fitness representative promised
12 was—a lifetime membership to 24 Hour Fitness for \$700 on December 16, 2006. It was
13 important to his purchasing decision that this was a “lifetime” membership with a fixed
14 Annual Renewal Fee. He would not have prepaid such a substantial sum if not for the
15 representations that his rate would stay capped for life. His Annual Renewal Fee stayed at a
16 locked-in rate of \$49 until January 2016, when it was increased to \$161.29.

17 *D. Plaintiff Losquadro's Experience.*

18 36. Plaintiff Losquadro purchased—what a 24 Hour Fitness representative
19 promised was—two lifetime memberships to 24 Hour Fitness for a combined amount of
20 \$625 on March 18, 1997.

21 37. He would not have prepaid such a substantial sum if not for the
22 representations that his rate would stay capped for life. His Annual Renewal Fee stayed at a
23 locked-in rate of \$168 per year until November 2015, when it was increased to \$317 per year.

24 *E. Plaintiff Marchewka's Experience.*

25 38. Plaintiff Marchewka purchased—what a 24 Hour Fitness representative
26 promised—a lifetime membership to 24 Hour Fitness for approximately \$675 in 2007. It was
27 important to his purchasing decision that this was a “lifetime” membership with a fixed
28

1 Annual Renewal Fee. He would not have prepaid such a substantial sum if not for the
2 representations that his rate would stay capped for life. His Annual Renewal Fee stayed at a
3 locked-in rate of \$69 until January 2016, when it was raised to \$119.

4 **CLASS ALLEGATIONS**

5 39. **Class Allegations:** Plaintiffs bring this action pursuant to Federal Rule of
6 Civil Procedure 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of themselves and a nationwide
7 class of similarly situated individuals, defined as follows:

8 **Class:** All individuals in the United States who purchased a prepaid
9 membership from 24 Hour Fitness and who maintained their membership with
24 Hour Fitness in or after April 2015.

10 In the alternative, Plaintiffs O’Shea and Losquadro bring this action pursuant to
11 Federal Rule of Civil Procedure 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of themselves and
12 classes of similarly situated individuals, defined as follows:

13 **California Class:** All Class members residing in the State of California who
14 purchased a prepaid membership from 24 Hour Fitness and who maintained
their membership with 24 Hour Fitness in or after April 2015.

15 In the alternative, Plaintiff Vitcov brings this action pursuant to Federal Rule of
16 Civil Procedure 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of himself and a class of
17 similarly situated individuals, defined as follows:

18 **Oregon Class:** All Class members residing in the State of Oregon who
19 purchased a prepaid membership from 24 Hour Fitness and who maintained
their membership with 24 Hour Fitness in or after April 2015.

20 In the alternative, Plaintiff Morris brings this action pursuant to Federal Rule of
21 Civil Procedure 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of himself and a class of
22 similarly situated individuals, defined as follows:

23 **Texas Class:** All Class members residing in the State of Texas who purchased
24 a prepaid membership from 24 Hour Fitness and who maintained their
membership with 24 Hour Fitness in or after April 2015.

25 In the alternative, Plaintiff Marchewka brings this action pursuant to Federal Rule
26 of Civil Procedure 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of himself and a class of
27 similarly situated individuals, defined as follows:
28

1 **Washington Class:** All Class members residing in the State of Washington
2 who purchased a prepaid membership from 24 Hour Fitness and who
3 maintained their membership with 24 Hour Fitness in or after April 2015.

4 The following people are excluded from the Class, California Class, Oregon Class, Texas
5 Class, and Washington Class (collectively the “Class,” unless otherwise indicated): (1) any
6 Judge or Magistrate presiding over this action and members of their families; (2) Defendant,
7 Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which the
8 Defendant or its parents have a controlling interest and its current or former employees,
9 officers and directors; (3) persons who properly execute and file a timely request
10 for exclusion from the Class; (4) persons whose claims in this matter have been finally
11 adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s
12 counsel; and (6) the legal representatives, successors, and assigns of any such excluded
13 persons.

14 40. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** The exact number of Class members is
15 unknown and not available to Plaintiff at this time, but individual joinder in this case is
16 impracticable. The Class likely consists of thousands of individuals. Members of the Class
17 can be easily identified through Defendant’s records.

18 41. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2); 23(b)(3)):** There
19 are many questions of law and fact common to the claims of Plaintiffs and the other members
20 of the Class, and those questions predominate over any questions that may affect individual
21 members of the Class. Common questions for the Class include:

- 22 a) whether 24 Hour Fitness designed and trained its Membership
23 Counselors to use scripted routines and aggressive sales pitches to
24 induce consumers into purchasing lifetime memberships;
- 25 b) whether 24 Hour Fitness used scripted routines and aggressive sales
26 pitches to induce consumers into purchasing lifetime memberships;
- 27 c) whether 24 Hour Fitness had a uniform policy and/or practice of
28 representing fixed Annual Renewal Fees to purchasers of prepaid
 memberships;

- 1 d) whether 24 Hour Fitness's conduct constitutes fraud;
- 2 e) whether 24 Hour Fitness's conduct violated Cal. Civ. Code §§ 1750, *et*
- 3 *seq.*;
- 4 f) whether 24 Hour Fitness's conduct violated Cal. Bus. & Prof. Code §§
- 5 17200, *et seq.*;
- 6 g) whether 24 Hour Fitness's conduct violated Cal. Civ. Code §§ 1812.80
- 7 *et seq.*;
- 8 h) whether 24 Hour Fitness's conduct violated Cal. Bus. & Prof. Code §§
- 9 17500, *et seq.*;
- 10 i) whether 24 Hour Fitness's conduct violated Or. Rev. Stat. §§ 646.638,
- 11 *et seq.*;
- 12 j) whether 24 Hour Fitness's conduct violated Tex. Bus. & Com. Code
- 13 §§ 17.50, *et seq.*;
- 14 k) whether 24 Hour Fitness's conduct violated Tex. Occ. Code §
- 15 702.003(4);
- 16 l) whether 24 Hour Fitness's conduct violated the Washington Consumer
- 17 Protection Act, RCW 19.86, *et seq.*;
- 18 m) whether 24 Hour Fitness's conduct constitutes breach of contract;
- 19 n) whether Plaintiffs are entitled to contract reformation;
- 20 o) whether Plaintiffs and Class members are entitled to restitution and/or
- 21 damages, and if so, the proper measure of restitution and/or damages;
- 22 and
- 23 p) whether Plaintiffs and Class members are entitled to equitable and/or
- 24 injunctive relief.

25 42. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiffs' claims are typical of the
26 claims of the other Class members. Plaintiffs and the Class members sustained damages as a
27 result of Defendant's uniform wrongful conduct during transactions with Plaintiffs and the
28

1 Class.

2 43. **Adequate Representation (Fed. R. Civ. P. 23(a)(4)):** Plaintiffs have and will
3 continue to fairly and adequately represent and protect the interests of the Class, and they
4 have retained counsel competent and experienced in complex litigation and class actions.
5 Plaintiffs have no interests antagonistic to those of the Class, and Defendant has no defenses
6 unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this
7 action on behalf of the members of the Class, and they have the resources to do so. Neither
8 Plaintiffs nor their counsel have any interest adverse to those of the other members of the
9 Class.

10 44. **Policies Generally Applicable to the Class:** This class action is appropriate
11 for certification because Defendant has acted or refused to act on grounds generally
12 applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure
13 compatible standards of conduct toward the members of the Class and making final
14 injunctive relief appropriate with respect to the Class as a whole. Defendant's policies
15 challenged herein apply and affect the members of the Class uniformly and Plaintiffs'
16 challenge of these policies hinges on Defendant's conduct with respect to the whole of the
17 Class, not on facts or law applicable only to Plaintiffs.

18 45. **Superiority (Fed. R. Civ. P. 23(b)(3)):** This class action is also appropriate for
19 certification because class proceedings are superior to all other available methods for the fair
20 and efficient adjudication of this controversy and joinder of all members of the Class is
21 impracticable. The damages suffered by the individual Class members will likely be small
22 relative to the burden and expense of individual prosecution of the complex litigation
23 necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the
24 individual Class members to obtain effective relief from Defendant's misconduct. Even if
25 members of the Class could sustain such individual litigation, it would not be preferable to a
26 class action because individual litigation would increase the delay and expense to all parties
27 due to the complex legal and factual controversies presented in this Complaint. By contrast, a
28

1 51. This oral offer of a “lifetime membership” included an oral promise that 24
2 Hour Fitness would cap the Annual Renewal Fee at a lifetime rate.

3 52. Plaintiffs accepted this oral offer, and Plaintiffs and Defendant memorialized
4 their agreement in a written contract.

5 53. Plaintiffs and Defendant’s agents both believed that the written agreement
6 accurately reflected their oral agreement.

7 54. As the draftsman of the written agreement and as the one making the
8 representation of a “lifetime membership” with a Lifetime Fee Guarantee, 24 Hour Fitness
9 bore the risk that the written agreement did not conform to the oral agreement.

10 55. The parties’ mutual mistake in accurately reducing their oral agreement to
11 writing affected a material term because it resulted in the deletion of the Lifetime Fee
12 Guarantee from the written agreement. The Lifetime Fee Guarantee was material to Plaintiffs
13 because Plaintiffs would not have paid so much money up-front if they had known that they
14 were not receiving a written promise of a lifetime membership rate.

15 56. Thus, the written agreement should be reformed to conform to the parties’ oral
16 understanding.

17 *(b) Unilateral mistake*

18 57. In the alternative, Plaintiffs are entitled to reformation on the basis of
19 unilateral mistake.

20 58. 24 Hour Fitness knew, suspected, or had reason to know that Plaintiffs
21 believed that the written agreement was a “lifetime membership” at the time of signing.

22 59. The written agreement was not actually a lifetime membership and did not
23 reflect the oral promise that a “lifetime membership” included a Lifetime Fee Guarantee.

24 60. This misunderstanding went to the essence of the contract, since Plaintiffs
25 believed that the contract was for a “lifetime membership” and would not have bought the
26 membership if they had known 24 Hour Fitness was not going to honor it.

27 61. Plaintiffs were, in fact, mistaken about whether the written agreement
28

1 contained a Lifetime Fee Guarantee. In actuality, the written agreement purported to give 24
2 Hour Fitness the power to raise the Annual Renewal Fee as much as it wanted.

3 62. 24 Hour Fitness knew or had reason to know that Plaintiffs were mistaken
4 about the terms of the written contract because 24 Hour Fitness caused Plaintiffs' mistake
5 through its oral representations.

6 63. 24 Hour Fitness used Plaintiffs' mistake to take advantage of Plaintiffs.

7 64. Had Plaintiffs known that the written contract was not a true lifetime
8 membership, Plaintiffs would not have signed the agreement.

9 65. Plaintiffs are thus entitled to reformation of the written agreement to reflect
10 Plaintiffs' understanding that the written contract reflected a lifetime membership with a
11 Lifetime Fee Guarantee.

12 (c) Fraud in the inducement

13 66. In the alternative, Plaintiffs are entitled to reformation on the basis of fraud in
14 the inducement.

15 67. Defendants represented to Plaintiffs that the written agreement reflected the
16 "lifetime membership" that they were orally promised, including a lifetime cap on the
17 Annual Renewal Fee.

18 68. Defendants knew that this representation was not true at the time it was made.

19 69. Defendants made this representation to persuade and induce Plaintiffs to sign
20 the written agreement.

21 70. Plaintiffs reasonably relied on Defendants' representation that the written
22 agreement was a "lifetime membership."

23 71. And Plaintiffs would not have signed the contract if Plaintiffs had known that
24 the written agreement did not reflect the orally promised "lifetime membership."

25 72. Thus, Plaintiffs are entitled to reformation of the written agreement to
26 conform with what Defendants' orally represented the membership to be: a lifetime
27 membership which included a Lifetime Fee Guarantee.

1 “characteristics” or “benefits” which they do not in fact have);

- 2 • Cal. Civ. Code § 1770(a)(9) (for advertising services with the intent not to
3 sell them as advertised);
- 4 • Cal. Civ. Code § 1770(a)(13) (for making false or misleading statements
5 as to the existence of price reductions);
- 6 • Cal. Civ. Code § 1770(a)(14) (for representing that a transaction confers
7 or involves legal rights when it does not in fact involve or confer those
8 rights);
- 9 • Cal. Civ. Code § 1770(a)(16) (for representing that the subject of a
10 transaction has been supplied in accordance with a previous representation
11 when it has not); and
- 12 • Cal. Civ. Code § 1770(a)(18) (for misrepresenting the authority of a
13 salesperson to negotiate the final terms of a transaction with a consumer).

14 82. By displaying posters at its gyms advertising “Lifetime Memberships” when
15 its written adhesion contracts may have not conferred any lifetime benefits, 24 Hour Fitness
16 violated Cal. Civ. Code § 1770(a)(9) by advertising services with the intent not to sell them
17 as advertised.

18 83. Plaintiffs were damaged by these CLRA violations because they would either
19 not have bought a 24 Hour Fitness membership at all, would not have paid membership fees
20 three years in advance, or would have sought cheaper options if they had not been misled to
21 believe that they were receiving a “lifetime membership”—with a Lifetime Fee Guarantee.

22 84. As a result of Defendant’s CLRA violations, some members of the Class
23 chose to cancel their memberships instead of paying for a fee increase that they saw as
24 unfair.

25 85. Pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiffs ask for an order
26 permanently enjoining the methods, acts, and practices of 24 Hour Fitness that constitute a
27 CLRA violation—including an order requiring 24 Hour Fitness to reinstate any prepaid
28

1 members who cancelled their memberships after being assessed an increased Annual
2 Renewal Fee.

3 86. Plaintiff Marchewka also seeks damages on behalf of himself and the Class.
4 Plaintiff Marchewka complied with the CLRA's notice provisions under Section 1782.

5 87. Plaintiffs also request costs and attorneys' fees under Cal. Civ. Code §§
6 1780(d).

7 **FOURTH CAUSE OF ACTION**
8 **Violation of Unfair Competition Law**
9 **Cal. Bus. & Prof. Code § 17200**
10 **(On Behalf of all Plaintiffs and the Class)**

11 88. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

12 *(a) Unfair prong*

13 89. The unfair prong of the UCL is intentionally broad to allow courts to prevent
14 new schemes to defraud.

15 90. 24 Hour Fitness has engaged in unfair business practices by, among other
16 things, orally promising lifetime memberships with a Lifetime Fee Guarantee and then
17 increasing the Annual Renewal Fees and in some instances having consumers sign a written
18 agreement that contained no Lifetime Fee Guarantees.

19 91. Defendant's practices constitute unfair business practices in violation of the
20 UCL because, among other things, they are immoral, unethical, oppressive, unscrupulous or
21 substantially injurious to consumers, and/or any utility of such practices is outweighed by the
22 harm caused to consumers.

23 92. Defendant's practices caused substantial injury to Plaintiffs and Class
24 members, are not outweighed by any benefits, and Plaintiffs and Class members could not
25 have reasonably avoided their injuries.

26 93. Defendant's practices run counter to the public policy of the State of
27 California embodied in numerous state statutes which forbid fraud and fraudulent business
28 practices.

94. As a result of Defendant's unfair misconduct, Plaintiffs lost money or

1 property by paying up-front for a lifetime membership with a Lifetime Fee Guarantee and not
2 actually receiving a true lifetime membership. Plaintiffs were also damaged by overpaying
3 for Annual Renewal Fees that were assessed beyond the orally promised cap.

4 *(b) Fraud prong*

5 95. Members of the public were likely to be deceived when 24 Hour Fitness orally
6 promised a “lifetime membership” with Lifetime Fee Guarantees and later increased the
7 Annual Renewal Fees and in some instances excluding the Lifetime Fee Guarantees from its
8 written agreements.

9 96. Plaintiffs were so-deceived into thinking the written agreement actually
10 reflected a “lifetime membership.”

11 97. As a result of Defendant’s fraudulent misconduct, Plaintiffs lost money or
12 property by paying up-front for a lifetime membership with a Lifetime Fee Guarantee and not
13 actually receiving a true lifetime membership. Plaintiffs were also damaged by overpaying
14 for Annual Renewal Fees that were assessed beyond the orally promised cap.

15 *(c) Unlawful prong*

16 98. Defendant’s practices constitute unlawful business practices in violation of the
17 UCL because, among other things, they violate the Consumers Legal Remedies Act,
18 California Civil Code §§ 1750, *et seq.*, the Health Studio Services Contract Law, California
19 Civil Code §§ 1812.80, *et seq.*, and the California False Advertising Law, Cal. Bus. & Prof.
20 Code §§ 17500, *et seq.*

21 99. Accordingly, Plaintiffs, on behalf of themselves and all others similarly
22 situated, seek equitable relief in the form of an order prohibiting Defendant from continuing
23 to collect dues in amounts that exceed the promised Annual Renewal Fees and requiring
24 Defendant to pay Plaintiffs and Class members restitution for amounts paid above the
25 promised Annual Renewal Fees.

26 100. As a result of Defendant’s unlawful conduct, Plaintiffs have suffered injury in
27 fact and lost money or property.

FIFTH CAUSE OF ACTION
California False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, et seq.
(On Behalf of all Plaintiffs and the Class)

101. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

102. Defendant committed such violations of the False Advertising Law with actual knowledge or knowledge fairly implied on the basis of objective circumstances.

103. Plaintiffs reasonably relied on Defendant's representations and/or omissions made in violation of California Business & Professional Code §§ 17500, et seq.

104. As a result of Defendant's violations, Plaintiffs suffered injury in fact and lost money.

105. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek equitable relief in the form of an order requiring Defendant to refund Plaintiffs and Class members all monies they paid in excess of their Annual Renewal Fees, and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct described herein, and requiring Defendant to perform a corrective advertising campaign.

SIXTH CAUSE OF ACTION
Fraud
(On Behalf of all Plaintiffs and the Class)

106. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

(a) Intentional misrepresentation

107. 24 Hour Fitness orally represented to Plaintiffs that their written contracts contained a legally enforceable provision guaranteeing him a capped lifetime rate on their Annual Renewal Fee.

108. 24 Hour Fitness represented that 24 Hour Fitness could *never* increase Plaintiffs Annual Renewal Fee. And 24 Hour Fitness represented to Plaintiffs that they were becoming "lifetime members" by prepaying their membership dues.

109. 24 Hour Fitness's representations were false: it removed the Lifetime Fee Guarantee provision from its written adherence contract in April 2006. After April 2006, it effectively no longer offered lifetime memberships (in writing).

1 110. 24 Hour Fitness knew at the time of the representation of a “lifetime
2 membership” that it effectively no longer offered this type of membership (in writing).
3 Continuing to orally promise lifetime memberships to consumers was reckless, and 24 Hour
4 Fitness acted without regard for the truth.

5 111. 24 Hour Fitness intended for Plaintiffs to rely on the promise of a lifetime
6 membership and to induce them to prepay for their memberships up-front in exchange for
7 this false promise of a Lifetime Fee Guarantee.

8 112. Plaintiffs reasonably relied on 24 Hour Fitness’s representation that they were
9 purchasing “lifetime” memberships.

10 113. Plaintiffs were harmed when 24 Hour Fitness raised their Annual Renewal
11 Fees and told them that the payment of the higher fees was mandatory or their memberships
12 would be cancelled. Had Plaintiffs not relied on 24 Hour Fitness’s promise of a “lifetime”
13 membership, they could have received a better locked-in rate from another fitness center or
14 considered other payment options with 24 Hour Fitness. If Plaintiffs had not prepaid a
15 substantial sum of money up-front, they could have received the time-value of their money
16 (such as interest).

17 *(b) False promise*

18 114. 24 Hour Fitness promised Plaintiffs a “lifetime” membership. This promise
19 was important to the transaction: Plaintiffs would have considered other gyms or other
20 payment options with 24 Hour Fitness had 24 Hour Fitness *not* promised Plaintiffs a
21 “lifetime” membership.

22 115. 24 Hour Fitness did not intend to provide this “lifetime” membership or its
23 attendant Lifetime Fee Guarantee when the promise was made. 24 Hour Fitness removed this
24 lifetime guarantee from its written contracts in April 2006 precisely because 24 Hour Fitness
25 intended to raise its Annual Renewal Fee in the future, even though it continued to orally
26 promise potential customers a “lifetime” membership rate.

27 116. 24 Hour Fitness intended that Plaintiffs rely on the promise of a “lifetime”
28

1 membership in purchasing a 24 Hour Fitness membership.

2 117. Plaintiffs reasonably relied on this promise by prepaying a significant sum of
3 money up-front in exchange for what they reasonably believed to be a “lifetime
4 membership.”

5 118. 24 Hour Fitness did not, in actuality, provide the orally promised Lifetime Fee
6 Guarantee to Plaintiffs. 24 Hour Fitness raised their rates.

7 119. Plaintiffs were harmed by paying additional money for their Annual Renewal
8 Fee when they were promised that this fee would stay capped at a lifetime rate. If Plaintiffs
9 had joined another gym instead, they could have been locked into better rates. Alternatively,
10 if Plaintiffs had known that the membership did not truly offer “lifetime” protections, they
11 could have bargained with 24 Hour Fitness for a better price.

12 120. Plaintiffs ask for compensatory and punitive damages subject to proof.

13 **SEVENTH CAUSE OF ACTION**

14 **Fraud**

15 **(On Behalf of Plaintiffs O’Shea and Losquadro and the California Class)**

16 ***(In the alternative)***

17 121. Plaintiffs O’Shea and Losquadro incorporate the foregoing allegations as if
18 fully set forth herein, excluding paragraphs 101 through 120.

19 ***(a) Intentional misrepresentation***

20 122. 24 Hour Fitness orally represented to Plaintiffs O’Shea and Losquadro that
21 their written contracts contained a legally enforceable provision guaranteeing him a capped
22 lifetime rate on their Annual Renewal Fee.

23 123. 24 Hour Fitness represented that 24 Hour Fitness could *never* increase
24 Plaintiffs O’Shea’s and Losquadro’s Annual Renewal Fee. And 24 Hour Fitness represented
25 to Plaintiffs O’Shea and Losquadro that they were becoming “lifetime members” by
26 prepaying their membership dues.

27 124. 24 Hour Fitness’s representations were false: it removed the Lifetime Fee
28 Guarantee provision from its written adhesion contract in April 2006. After April 2006, it
effectively no longer offered lifetime memberships (in writing).

1 125. 24 Hour Fitness knew at the time of the representation of a “lifetime
2 membership” that it effectively no longer offered this type of membership (in writing).
3 Continuing to orally promise lifetime memberships to consumers was reckless, and 24 Hour
4 Fitness acted without regard for the truth.

5 126. 24 Hour Fitness intended for Plaintiffs O’Shea and Losquadro to rely on the
6 promise of a lifetime membership and to induce him to prepay for their membership up-front
7 in exchange for this false promise of a Lifetime Fee Guarantee.

8 127. Plaintiffs O’Shea and Losquadro reasonably relied on 24 Hour Fitness’s
9 representation that he was purchasing a “lifetime” membership.

10 128. Plaintiffs O’Shea and Losquadro were harmed when 24 Hour Fitness raised
11 their Annual Renewal Fees and told them that the payment of the higher fees was mandatory
12 or their memberships would be cancelled. Had Plaintiffs O’Shea and Losquadro not relied on
13 24 Hour Fitness’s promise of a “lifetime” membership, they could have received a better
14 locked-in rate from another fitness center or considered other payment options with 24 Hour
15 Fitness. If Plaintiffs O’Shea and Losquadro had not prepaid a substantial sum of money up-
16 front, they could have received the time-value of their money (such as interest).

17 *(b) False promise*

18 129. 24 Hour Fitness promised Plaintiffs O’Shea and Losquadro a “lifetime”
19 membership. This promise was important to the transaction: Plaintiffs O’Shea and Losquadro
20 would have considered other gyms or other payment options with 24 Hour Fitness had 24
21 Hour Fitness *not* promised Plaintiffs O’Shea and Losquadro a “lifetime” membership.

22 130. 24 Hour Fitness did not intend to provide this “lifetime” membership or its
23 attendant Lifetime Fee Guarantee when the promise was made. 24 Hour Fitness removed this
24 lifetime guarantee from its written contracts in April 2006 precisely because 24 Hour Fitness
25 intended to raise its Annual Renewal Fee in the future, even though it continued to orally
26 promise potential customers a “lifetime” membership rate.

27 131. 24 Hour Fitness intended that Plaintiffs O’Shea and Losquadro rely on the
28

1 promise of a “lifetime” membership in purchasing a 24 Hour Fitness membership.

2 132. Plaintiffs O’Shea and Losquadro reasonably relied on this promise by
3 prepaying a significant sum of money up-front in exchange for what they reasonably
4 believed to be a “lifetime membership.”

5 133. 24 Hour Fitness did not, in actuality, provide the orally promised Lifetime Fee
6 Guarantee to Plaintiffs O’Shea and Losquadro. 24 Hour Fitness raised their rates.

7 134. Plaintiffs O’Shea and Losquadro were harmed by paying additional money for
8 their Annual Renewal Fee when they were promised that this fee would stay capped at a
9 lifetime rate. If Plaintiffs O’Shea and Losquadro had joined another gym instead, they could
10 have been locked into better rates. Alternatively, if Plaintiffs O’Shea and Losquadro had
11 known that the membership did not truly offer “lifetime” protections, they could have
12 bargained with 24 Hour Fitness for a better price.

13 135. Plaintiffs O’Shea and Losquadro ask for compensatory and punitive damages
14 subject to proof.

15 **EIGHTH CAUSE OF ACTION**
16 **Violation of Health Studio Services Contract Law**
17 **Cal. Civ. Code §§ 1812.80, *et seq.***
(On Behalf of all Plaintiffs and the Class)

18 136. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

19 137. 24 Hour Fitness is a provider of “health studio services” within the meaning
20 of Cal. Civ. Code § 1812.81.

21 138. 24 Hour Fitness violated Cal Civ. Code § 1812.86 by placing *no limit* in its
22 contracts on the amount it can charge customers over their lifetimes. For customers who
23 signed up between January 1, 2006 and January 1, 2010, 24 Hour Fitness is not permitted to
24 charge them more than \$3,000 (including their prepayment amount) over the course of their
25 lifetimes. § 1812.86(b). For customers that signed up after January 1, 2010, 24 Hour Fitness
26 cannot charge them more than \$4,400 (including their prepayment amount) over the course
27 of their lifetimes. § 1812.86(c). Contracts that are non-compliant with § 1812.86 are void *ab*
28 *initio*, so Plaintiffs are entitled to have their membership fees refunded. Cal. Civ. Code §

1 1812.91.

2 139. 24 Hour Fitness violated § 1812.82 by not reducing to writing its oral
3 representations and promises to Plaintiffs and the Class that they would receive a fixed,
4 annual renewal rate for each year they wished to remain 24 Hour Fitness members after the
5 term of the prepaid membership period expired. Under § 1812.82, all health studio contracts
6 must be in writing. Because 24 Hour Fitness's conduct violated §1812.82, its prepaid
7 memberships are void *ab initio*, so Plaintiffs are entitled to have their membership fees
8 refunded. § 1812.91.

9 140. 24 Hour Fitness violated § 1812.84(b) by not providing a contract in writing
10 reflecting its oral representations and promises to Plaintiffs and the Class containing the
11 length of the contract term in a size equal to at least 14-point type above the place for the
12 member's signature. Under § 1812.84(b), all health studio contracts must state the length of
13 the contract term in a size equal to at least 14-point type above the place for the member's
14 signature. Because 24 Hour Fitness's conduct violated §1812.84(b), its prepaid memberships
15 are void *ab initio*, so Plaintiffs are entitled to have their membership fees refunded. §
16 1812.91.

17 141. 24 Hour Fitness also violated § 1812.92 by willfully and falsely, fraudulently,
18 and/or misleadingly representing to consumers that its prepaid memberships contained
19 Lifetime Fee Guarantees, when the written contract contained no such provisions. Consumers
20 reasonably relied on 24 Hour Fitness's representations by investing a substantial sum of
21 money to purchase a prepaid membership in the belief that they were receiving Lifetime Fee
22 Guarantees. 24 Hour Fitness specifically trained its salespeople to tell consumers that they
23 were receiving lifetime memberships, even though such memberships did not exist on paper
24 after 2006. Because 24 Hour Fitness's conduct violated §1812.92, its prepaid memberships
25 are void *ab initio*, so Plaintiffs are entitled to have their membership fees refunded. §
26 1812.91.

27 142. For 24 Hour Fitness's violation of California's Health Studio Services
28

1 Contract Law, Plaintiffs request actual damages, treble damages, and attorneys’ fees,
2 pursuant to Cal. Civ. Code § 1812.94(a).

3 **NINTH CAUSE OF ACTION**
4 **Unlawful Trade Practices Act**
5 **Or. Rev. Stat. §§ 646.638, *et seq.***
6 **(On behalf of Plaintiff Vitcov and the Oregon Class)**
7 **(*In the alternative*)**

8 143. Plaintiff Vitcov incorporates the foregoing allegations as if fully set forth
9 herein, excluding paragraphs 80 through 105.

10 144. By orally representing that Plaintiff Vitcov would receive a “lifetime
11 membership” with a Lifetime Fee Guarantee when the written contract contained no such
12 lifetime provisions, 24 Hour Fitness violated the following provisions of Oregon’s UTPA:

- 13 • Or. Rev. Stat. § 646.608(e) (for representing that services have
14 “characteristics,” “benefits,” and “qualities” that they do not have);
- 15 • Or. Rev. Stat. § 646.608(j) (for making false or misleading statements of
16 facts regarding the existence of price reductions);
- 17 • Or. Rev. Stat. § 646.608(t) (for concurrently with delivery of services,
18 failing to disclose any known, material nonconformity);
- 19 • Or. Rev. Stat. § 646.608(u) (for engaging in unfair or deceptive conduct in
20 trade or commerce); and
- 21 • Or. Rev. Stat. § 646.608(cc) (for failing to furnish a written list of all
22 membership categories, which would have shown there was no lifetime
23 membership, and for orally selling a form of membership plan that was
24 not included on any written list). *See also* Or. St. § 646A.032.

25 145. By posting signs around its gyms stating “Lifetime Memberships,” 24 Hour
26 Fitness violated Or. Rev. Stat. § 646.608(i) for advertising goods with the intent not to
27 provide them as advertised.

28 146. Plaintiff Vitcov has suffered an ascertainable loss by overpaying beyond the
orally promised lifetime cap on his Annual Renewal Fees. This loss was the direct result of

1 Defendant's aforementioned violations of Oregon's UTPA.

2 147. On behalf of himself and others similarly situated, Plaintiff Vitcov requests
3 the greater of: actual damages or statutory damages of \$200 per person, plus punitive
4 damages, and any equitable relief the Court considers necessary or proper to remedy the
5 violations of the UTPA. Plaintiff Vitcov also request costs and attorneys' fees pursuant to §
6 646.638(3).

7 **TENTH CAUSE OF ACTION**
8 **Fraud under Oregon Law**
9 **(On behalf of Plaintiff Vitcov and the Oregon Class)**
10 ***(In the alternative)***

11 148. Plaintiff Vitcov incorporates the foregoing allegations as if fully set forth
12 herein, excluding paragraphs 106 through 135.

13 149. Defendant made a representation that Plaintiff Vitcov was purchasing a
14 lifetime membership, which included a Lifetime Fee Guarantee.

15 150. Defendant's representation was in fact false because: the written agreement
16 nowhere contained the word "lifetime" and it even asserted 24 Hour Fitness's right to raise
17 the Annual Renewal Fee at any time.

18 151. The representation that Plaintiff Vitcov was buying a "lifetime membership"
19 was material to the transaction because it went to the very core of what Plaintiff Vitcov
20 believed he was buying.

21 152. 24 Hour Fitness knew or was willfully ignorant about the truth of its
22 representation that the written agreement represented a "lifetime membership."

23 153. 24 Hour Fitness intended for its representation that Plaintiff Vitcov was
24 buying a "lifetime membership" to induce him to pay a significant amount of money up-front
25 and to sign its written adhesion contract.

26 154. Plaintiff Vitcov did both of these things in reliance on Defendant's oral
27 representations.

28 155. Plaintiff Vitcov did not know that he was not in fact getting any written legal
promise of a "lifetime" membership or a lifetime cap on Annual Renewal Fees.

1 were lifetime memberships, when the written contract contained no lifetime provisions.
 2 Consumers reasonably relied on this representation by investing a substantial sum of money
 3 to purchase a prepaid membership from 24 Hour Fitness in the belief that they were receiving
 4 a locked-in lifetime rate. 24 Hour Fitness specifically trained its salespeople to tell consumers
 5 that they were receiving lifetime memberships, even though such memberships did not exist
 6 on paper. Because 24 Hour Fitness's conduct violated § 702.311(3), its prepaid memberships
 7 are void *ab initio*, so Plaintiff is entitled to have his membership fees returned. § 702.311(3).

8 163. For 24 Hour Fitness's violation of the HSA, Plaintiff Morris requests actual
 9 damages, punitive damages, reasonable attorneys' fees and costs, and all proper equitable
 10 relief, including reformation to reflect a Lifetime Fee Guarantee and a permanent injunction
 11 requiring 24 Hour Fitness to retrain its sales staff to stop representing prepaid memberships
 12 as lifetime memberships.

13 **TWELFTH CAUSE OF ACTION**
 14 **Texas Deceptive Trade Practices Act**
 15 **Tex. Bus. & Com. Code §§ 17.50 *et seq.***
 16 **(On Behalf of Plaintiff Morris and the Texas Class)**
 17 ***(In the alternative)***

18 164. Plaintiff Morris incorporates by reference the foregoing allegations as if fully
 19 set forth herein, excluding paragraphs 80 through 120 and paragraphs 143 through 147.

20 *(a) Unconscionable act or course of conduct*

21 165. By orally promising consumers a "lifetime membership" when none existed in
 22 writing with the intent to later claim that no such agreement existed, 24 Hour Fitness engaged
 23 in an "unconscionable action or course of action" in violation of Tex. Bus. & Com. Code §
 24 17.50(a)(3).

25 166. 24 Hour Fitness took advantage of consumers' lack of legal knowledge and
 26 experience in a grossly unfair manner.

27 *(b) Enumerated violations*

28 167. By misleading consumers as to the nature of the written contract and as to the
 existence in the writing of a "lifetime membership" with its attendant Lifetime Fee

1 Guarantee, 24 Hour Fitness used a false, misleading, or deceptive practice. 24 Hour Fitness's
2 conduct—when coupled with consumers' detrimental reliance on its oral representations and
3 24 Hour Fitness's violation of an enumerated provision of Tex. Bus. & Com. Code §
4 17.46(b)—constitutes a violation of the Texas DTPA.

5 168. 24 Hour Fitness's misleading oral representation that its written adhesion
6 contracts contained "lifetime" guarantees violates the following enumerated provisions of the
7 DTPA:

- 8 • § 17.46(b)(5): for representing that services have "characteristics" that they in
9 fact do not have;
- 10 • § 17.46(b)(7): for representing that services are of a particular type when they
11 are not;
- 12 • § 17.46(b)(11): for making false or misleading statements about the existence
13 of price reductions;
- 14 • § 17.46(b)(12): for representing that an agreement confers legal rights that it
15 does not confer;
- 16 • § 17.46(b)(14): for misrepresenting the authority of a salesman to negotiate
17 the final terms of a consumer contract;
- 18 • § 17.46(b)(24): for failing to disclose information concerning services—which
19 was known at the time of the transaction—when such failure to disclose was
20 intended to induce the consumer into a transaction into which the consumer
21 would not have entered had the information been disclosed; and
- 22 • Tex. Occ. Code § 702.402(a)(2)(D): for making material misrepresentations to
23 prospective members about the membership rights they would be receiving if
24 they purchased a prepaid membership. A violation of Tex. Occ. Code §
25 702.402(a)(2)(D) is also a violation of the DTPA. Tex. Occ. Code § 702.403.

26 169. Also, 24 Hour Fitness's placing signs on its gyms stating "Lifetime
27 Memberships" constituted advertising services with intent not to sell them as advertised, in
28

1 violation of Tex. Bus. & Com. Code § 17.46(b)(9).

2 170. Plaintiff Morris is a consumer within the meaning of the DTPA and has
3 suffered economic damages—in the form of overpayments and opportunity costs in failing to
4 seek a better deal—as a direct result from 24 Hour Fitness’s violations of the DTPA.

5 171. 24 Hour Fitness’s conduct was a producing cause of Plaintiff Morris’s
6 damages.

7 172. Plaintiff Morris asks for economic damages equal to any money had and
8 received by 24 Hour Fitness that constituted an overpayment of the Annual Renewal Fee
9 above-and-beyond the orally promised lifetime cap. Plaintiff Morris additionally seeks treble
10 damages as punitive damages under the DTPA. Awarding treble damages in this case is
11 necessary to encourage private enforcement of Texas’s consumer protection laws. Pursuant
12 to § 17.50(d), Plaintiff Morris also requests attorneys’ fees. Lastly, Plaintiff Morris requests
13 any other relief the Court deems proper, as permitted by the DTPA.

14 **THIRTEENTH CAUSE OF ACTION**
15 **Fraud under Texas Law**
16 **(On Behalf of Plaintiff Morris and the Texas Class)**
(In the alternative)

17 173. Plaintiff Morris incorporates the foregoing allegations as if fully set forth
18 herein, excluding paragraphs 106 through 135 and paragraphs 143 through 158.

19 ***(a) Fraudulent misrepresentation***

20 174. A representation was made by 24 Hour Fitness that Plaintiff Morris was
21 buying a “lifetime membership,” with a Lifetime Fee Guarantee. This representation was
22 material because Plaintiff Morris would not have purchased the membership or would have
23 demanded to pay less for it if he knew that the contract did not reflect any lifetime
24 guarantees.

25 175. The representation was false: 24 Hour Fitness’s written contract contained no
26 “lifetime” guarantees.

27 176. At the time the statement was made, 24 Hour Fitness knew it was false or
28 acted with reckless disregard of its truth.

1 177. 24 Hour Fitness made the representation with the intent that it induce Plaintiff
2 Morris to sign the written agreement and pay a substantial sum up-front in the belief he was
3 receiving a “lifetime membership.”

4 178. Plaintiff Morris in fact relied on the representation of a “lifetime membership”
5 by purchasing the membership and signing the written contract.

6 179. Plaintiff Morris thereby suffered injury by overpaying Annual Renewal Fees
7 beyond the capped-amount and by losing an opportunity to seek more advantageous
8 membership options from other fitness-providers or from 24 Hour Fitness itself.

9 (b) Fraud by nondisclosure

10 180. Alternatively, Plaintiff Morris pleads fraud by nondisclosure.

11 181. 24 Hour Fitness failed to disclose to Plaintiff Morris that the written adhesion
12 contract did not contain the word “lifetime” anywhere in it and did not reflect any of the oral
13 representations of its salespeople of a “lifetime” membership.

14 182. 24 Hour Fitness did not disclose that the written contract did not contain a
15 Lifetime Fee Guarantee.

16 183. By making oral suggestions to the contrary, Defendant had a duty to inform
17 Plaintiff Morris that the written contract did not contain these material provisions.

18 184. These provisions were material because Plaintiff Morris would not have
19 bought a membership with 24 Hour Fitness or would have sought a better deal if he had
20 known that the written contract did not contain any “lifetime” guarantees.

21 185. Defendant knew that Plaintiff Morris was ignorant of these facts, and Plaintiff
22 Morris was not on equal footing with Defendant in terms of discovering these facts because
23 Defendant drafted the adhesion contract.

24 186. Defendant was deliberately silent in correcting Plaintiff Morris’s belief that
25 the written contract contained lifetime guarantees.

26 187. By failing to disclose these facts, 24 Hour Fitness intended to induce Plaintiff
27 Morris to sign the written contract and pay a substantial sum of money up-front in exchange
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1 for what Plaintiff *believed* was a “lifetime membership.”

2 188. Plaintiff Morris relied on Defendant’s nondisclosure in signing the agreement
3 and paying the up-front agreed sum.

4 189. Plaintiff Morris was injured by acting without knowledge that the adhesion
5 contract did not reflect a true lifetime membership because 24 Hour Fitness later used the
6 terms of the written contract to raise the Annual Renewal Fees beyond the orally represented
7 lifetime-cap.

8 190. Plaintiff Morris asks for compensatory and punitive damages for Defendant’s
9 fraudulent conduct.

10 **FOURTEENTH CAUSE OF ACTION**
11 **Breach of Contract**
12 **(On Behalf of Plaintiff Losquadro and the Class)**
13 ***(In the alternative)***

14 191. Plaintiff Losquadro incorporates the foregoing allegations as if fully set forth
15 herein, excluding paragraphs 48 through 79.

16 192. Plaintiff Losquadro entered into a contract with Defendant for a pre-paid
17 membership on March 18, 1997.

18 193. In exchange for Plaintiff Losquadro’s pre-paid membership dues, Defendant
19 represented and agreed that it would not raise his dues from \$168 per year.

20 194. Plaintiff Losquadro fully performed his contractual obligation to Defendant by
21 paying his yearly membership dues in a timely manner each year thereafter.

22 195. Defendant 24 Hour Fitness breached its contract with Plaintiff Losquadro by
23 raising his yearly dues for November 2015 to \$317.

24 196. Defendant’s contractual breach caused Plaintiff Losquadro to suffer harm in
25 the form of paying increased yearly membership dues.

26 197. As a result of its misconduct, Defendant 24 Hour Fitness is liable to Plaintiff
27 Losquadro for the full measure of damages allowable under applicable law. Plaintiff,
28 individually and on behalf of the Class, seeks actual damages from Defendant’s contractual
breaches, as well as interest, reasonable attorneys’ fees, expenses, and costs to the extent

1 allowable.

2 **FIFTEENTH CAUSE OF ACTION**
3 **Violation of the Washington State Consumer Protection Act**
4 **(Deceptive Business Practices, RCW 19.86 *et seq.*)**
5 **(On Behalf of Plaintiff Marchewka and the Washington Class)**
6 ***(In the alternative)***

7 198. Plaintiff Marchewka incorporates the foregoing allegations as if fully set forth
8 herein, excluding paragraphs 80 through 105 and paragraphs 143 through 158.

9 199. Defendant is a “person” within the meaning of the Washington Consumer
10 Protection Act, RCW 19.86.010(1), and conducts “trade” and “commerce” within the
11 meaning of the Washington Consumer Protection Act, RCW 19.86.010(2).

12 200. Plaintiff Marchewka and Class members are “persons” within the meaning of
13 the Washington Consumer Protection Act, RCW 19.86.010(1).

14 201. Defendant engaged in deceptive acts or practices by orally promising
15 consumers a “lifetime membership” when none existed in writing with the intent to later
16 claim that no such agreement existed.

17 202. Defendant engaged in deceptive acts or practices by failing to disclose to
18 Plaintiff Marchewka that the written adhesion contract did not contain the word “lifetime”
19 anywhere in it and did not reflect any of the oral representations of its salespeople of a
20 “lifetime” membership.

21 203. Defendant’s deceptive acts or practices have occurred in its trade or business
22 and were and are capable of deceiving a substantial portion of the public. As such,
23 Defendant’s general course of conduct as alleged herein is injurious to the public interest,
24 and the acts complained of herein are ongoing and/or have a substantial likelihood of being
25 repeated.

26 204. The facts misrepresented to Plaintiff Marchewka and the Class are material in
27 that a reasonable consumer would consider annual renewal rates after a prepaid membership
28 period important in deciding whether to pay for three years’ worth of membership in
advance.

205. As a direct and proximate result of Defendant’s deceptive acts or practices,

1 Plaintiff Marchewka and Class members suffered injury in fact and lost money.

2 206. Plaintiff Marchewka and the Class are therefore entitled to an order enjoining
3 the conduct complained of herein; actual damages; treble damages pursuant to RCW
4 19.86.090; costs of suit, including a reasonable attorney's fee; and such further relief as the
5 Court may deem proper.

6 207. Plaintiff Marchewka and the Class are also entitled to equitable relief as the
7 Court deems appropriate, including, but not limited to, disgorgement, for the benefit of the
8 Class members, of all or part of the ill-gotten profits Defendants received from their
9 deceptive acts or practices.

10 **SIXTEENTH CAUSE OF ACTION**
11 **Violation of the Washington State Consumer Protection Act**
12 **(Unfair Business Practices, RCW 19.86 *et seq.*)**
13 **(On Behalf of Plaintiff Marchewka and the Washington Class)**
14 **(*In the alternative*)**

15 208. Plaintiff Marchewka incorporates the foregoing allegations as if fully set forth
16 herein, excluding paragraphs 80 through 105 and paragraphs 143 through 158.

17 209. Defendant is a "person" within the meaning of the Washington Consumer
18 Protection Act, RCW 19.86.010(1), and conducts "trade" and "commerce" within the
19 meaning of the Washington Consumer Protection Act, RCW 19.86.010(2).

20 210. Plaintiff Marchewka and Class members are "persons" within the meaning of
21 the Washington Consumer Protection Act, RCW 19.86.010(1).

22 211. Defendant engaged in unfair acts or practices by orally promising consumers a
23 "lifetime membership" when none existed in writing with the intent to later claim that no
24 such agreement existed.

25 212. Defendant engaged in unfair acts or practices by failing to disclose to Plaintiff
26 Marchewka that the written adherence contract did not contain the word "lifetime" anywhere
27 in it and did not reflect any of the oral representations of its salespeople of a "lifetime"
28 membership.

29 213. Defendant's actions are unfair because these acts or practices offend public
policy as it has been established by statutes, regulations, the common law or otherwise,

1 including, but not limited to, the public policy established by RCW 19.138 *et seq.*

2 214. Defendant's actions are unfair because these acts or practices (1) have caused
3 substantial financial injury to Plaintiff Marchewka and Class members; (2) are not
4 outweighed by any countervailing benefits to consumers or competitors; and (3) are not
5 reasonably avoidable by consumers.

6 215. Defendant's acts are unfair because these acts or practices are immoral,
7 unethical, oppressive and/or unscrupulous.

8 216. Defendant's unfair acts or practices have occurred in its trade or business and
9 were and are capable of injuring a substantial portion of the public. As such, Defendant's
10 general course of conduct as alleged herein is injurious to the public interest, and the acts
11 complained of herein are ongoing and/or have a substantial likelihood of being repeated.

12 217. As a direct and proximate result of Defendant's unfair acts or practices,
13 Plaintiff Marchewka and Class members suffered injury in fact and lost money.

14 218. Plaintiff Marchewka and the Class are therefore entitled to an order enjoining
15 the conduct complained of herein; actual damages; treble damages pursuant to RCW
16 19.86.090; costs of suit, including a reasonable attorney's fee; and such further relief as the
17 Court may deem proper.

18 219. Plaintiff Marchewka and the Class are also entitled to equitable relief as the
19 Court deems appropriate, including, but not limited to, disgorgement, for the benefit of the
20 Class members, of all or part of the ill-gotten profits Defendant received from their force-
21 placed insurance scheme.

22 **SEVENTEENTH CAUSE OF ACTION**
23 **Fraud under Washington Law**
24 **(On Behalf of Plaintiff Marchewka and the Washington Class)**
25 ***(In the alternative)***

26 220. Plaintiff Marchewka incorporates the foregoing allegations as if fully set forth
27 herein, excluding paragraphs 106 through 135, paragraphs 148-158, and paragraphs 173
28 through 190.

(a) Fraudulent misrepresentation

1 221. A representation was made by 24 Hour Fitness that Plaintiff Marchewka was
2 buying a “lifetime membership,” with a Lifetime Fee Guarantee. This representation was
3 material because Plaintiff Marchewka would not have purchased the membership or would
4 have demanded to pay less for it if he knew that the contract did not reflect any lifetime
5 guarantees.

6 222. The representation was false: 24 Hour Fitness’s written contract contained no
7 “lifetime” guarantees.

8 223. At the time the statement was made, 24 Hour Fitness knew it was false or
9 acted with reckless disregard of its truth.

10 224. 24 Hour Fitness made the representation with the intent that it induce Plaintiff
11 Marchewka to sign the written agreement and pay a substantial sum up-front in the belief he
12 was receiving a “lifetime membership.”

13 225. Plaintiff Marchewka in fact relied on the representation of a “lifetime
14 membership” by purchasing the membership and signing the written contract.

15 226. Plaintiff Marchewka thereby suffered injury by overpaying Annual Renewal
16 Fees beyond the capped-amount and by losing an opportunity to seek more advantageous
17 membership options from other fitness-providers or from 24 Hour Fitness itself.

18 *(b) Fraud by nondisclosure*

19 227. Alternatively, Plaintiff Marchewka pleads fraud by nondisclosure.

20 228. 24 Hour Fitness failed to disclose to Plaintiff Marchewka that the written
21 adhesion contract did not contain the word “lifetime” anywhere in it and did not reflect any
22 of the oral representations of its salespeople of a “lifetime” membership.

23 229. 24 Hour Fitness did not disclose that the written contract did not contain a
24 Lifetime Fee Guarantee.

25 230. By making oral suggestions to the contrary, Defendant had a duty to inform
26 Plaintiff Marchewka that the written contract did not contain these material provisions.

27 231. These provisions were material because Plaintiff Marchewka would not have
28

1 bought a membership with 24 Hour Fitness or would have sought a better deal if he had
2 known that the written contract did not contain any “lifetime” guarantees.

3 232. Defendant knew that Plaintiff Marchewka was ignorant of these facts, and
4 Plaintiff Marchewka was not on equal footing with Defendant in terms of discovering these
5 facts because Defendant drafted the adhesion contract.

6 233. Defendant was deliberately silent in correcting Plaintiff Marchewka’s belief
7 that the written contract contained lifetime guarantees.

8 234. By failing to disclose these facts, 24 Hour Fitness intended to induce Plaintiff
9 Marchewka to sign the written contract and pay a substantial sum of money up-front in
10 exchange for what Plaintiff believed was a “lifetime membership.”

11 235. Plaintiff Marchewka relied on Defendant’s nondisclosure in signing the
12 agreement and paying the up-front agreed sum.

13 236. Plaintiff Marchewka was injured by acting without knowledge that the
14 adhesion contract did not reflect a true lifetime membership because 24 Hour Fitness later
15 used the terms of the written contract to raise the Annual Renewal Fees beyond the orally
16 represented lifetime-cap.

17 237. Plaintiff Marchewka asks for compensatory and punitive damages for
18 Defendant’s fraudulent conduct.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request
21 that the Court enter an order:

22 A. Certifying this case as a class action on behalf of the Class defined above,
23 appointing Plaintiffs as representatives of the Class, and appointing their counsel as class
24 counsel;

25 B. Declaring that Plaintiffs are entitled to reformation of their written contracts to
26 reflect a lifetime membership with its attendant guarantees, or in the alternative, finding that
27 Defendant breached its contract with Plaintiff Losquadro by raising his yearly dues, and
28

1 therefore that, Plaintiff Losquadro is entitled to the resulting consequential damages;

2 C. Declaring that Defendant’s conduct, as set out above, violate the statutes
3 alleged herein;

4 D. Declaring that Defendant’s conduct constitutes fraud;

5 E. Awarding damages, including restitutionary, statutory, and punitive damages
6 where applicable, to Plaintiffs and the Class in an amount to be determined at trial;

7 F. Awarding Plaintiffs and the Class their reasonable litigation expenses and
8 attorneys’ fees;

9 G. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the
10 extent allowable;

11 H. Awarding such other injunctive and declaratory relief as is necessary to
12 protect the interests of Plaintiffs and the Class; and

13 I. Awarding such other and further relief as the Court deems reasonable and just.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs demand a trial by jury for all issues so triable.

16 Respectfully submitted,

17 **KEVIN O’SHEA, MARK VITCOV, ROD**
18 **MORRIS, MICHAEL LOSQUADRO, AND**
19 **RUSSELL MARCHEWKA**, individually and
on behalf of all others similarly situated

20 Dated: July 26, 2016

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Attorney for Plaintiffs and the Putative Class

Dated: July 26, 2016

By: Rosemary M. Rivas

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**DECLARATION OF EVE-LYNN J. RAPP
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Eve-Lynn J. Rapp, declare as follows:

1. I am an attorney with the law firm Edelson PC, counsel of record for Plaintiffs O’Shea, Morris, Losquadro, and Marchewka. I am admitted to practice law in and a member in good standing of the State Bar of Illinois. I am admitted to practice before this Court *pro hac vice*. This Declaration is made pursuant to California Civil Code section 1780(d). I make this Declaration based on my research of public records and also upon personal knowledge, and if called upon to do so, could and would testify competently thereto.

2. Based on my research of publicly available records available at the website of the California Secretary of State, 24 Hour Fitness USA, Inc. maintains its headquarters in San Ramon, California, within this District, and also conducts business within this District.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of July 2016 at Chicago, Illinois.

/s/ Eve-Lynn J. Rapp

CERTIFICATE OF SERVICE

I, Eve-Lynn J. Rapp, an attorney, hereby certify that on July 26, 2016, I served the above and foregoing document by causing true and accurate copies of such paper to be transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Eve-Lynn J. Rapp_____

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