AAA ARBITRATION FORUM

CLASS ACTION REPRESENTATIVES, CLAIMANTS, v. 24 HOUR FITNESS USA, INC., RESPONDENT.	)	CASE NO. ARBITRATOR:

CLASS ACTION COMPLAINT AND DEMAND FOR ARBITRATION

Action is brought by California Claimants and FLSA Claimants against Respondent 24 HOUR FITNESS USA, INC., a California corporation also doing business as 24 HOUR FITNESS (hereinafter "Respondent").

The two groups of claimants make the following three distinct claims. First, as part of a California class action pursuant to Code of Civil Procedure section 382, California Claimants bring claims for damages and resulting penalties for the failure by Respondent to pay all wages, including overtime and commissions, due to persons employed in the State of California from January 1, 2002 to the present (hereinafter "California Class"). California Claimants are informed and believe the total number of members in the California Class exceeds 20,000 individuals.

Second, as claims under California's Unfair Competition Law, California Claimants seek equitable and injunctive relief including (a) restitution for unpaid wages, including overtime, and commissions to themselves and in the interest of the general public to all affected employees employed in the State of California; (b) to enforce Labor Code penalties, and (c) for an injunction in their own interest and in the interest of the general public.

Third, FLSA Claimants bring claims as a class action under 29 U.S.C. § 216(b). The class FLSA Claimants represent consists of all current of former employees of Respondent employed from January 1, 2003 to the present, within the United States but outside the State of California, to recover from Respondent unpaid wages, including overtime, commissions, liquidated damages, and/or any other recovery authorized under the FLSA (hereinafter "FLSA

Class"). FLSA Claimants are informed and believe the total number of members in the FLSA Class exceeds 10,000 individuals.

II. THE PARTIES

A. CALIFORNIA CLAIMANTS

1. California Claimants are natural persons and residents of the State of California. During the relevant time periods, California Claimants were employed by Respondent in the State of California.

B. FLSA CLAIMANTS

2. FLSA Claimants are natural persons and residents within the United States but outside the State of California. During the relevant time periods, FLSA Claimants were employed by Respondent within the United States but outside the State of California.

C. RESPONDENT

3. Respondent 24 HOUR FITNESS, USA, INC. is, and at all relevant times mentioned herein was, a California corporation also doing business as 24 HOUR FITNESS under the laws of the State of California with places of business in Los Angeles County. Hereinafter Respondent 24 HOUR FITNESS, USA, INC. shall be referred to as 24 HOUR FITNESS.

4. Respondent is a “person(s)” as defined in Labor Code section 18 and an “employer(s)” as that term is used in the Labor Code and IWC Orders regulating wages and working conditions.

III. CLASS ALLEGATIONS

5. The wrongful acts or omissions were and are a uniform practice that affected all putative class members equally, Respondent, by its practices and policies, has violated the rights

of its employees under the California Labor Code, the Unfair Competition Law, and the FLSA. The questions raised are therefore of common or general interest to the class members, and they have a well defined community of interest in the questions of law and fact raised in this action. Each of the class members in the California class action and the FLSA class action are bound under the same respective legal theory in that Respondent did undertake a uniform and systematic set of policies and procedures with respect to the compensation of the respective class members. The only recognizable difference amount class members will be the amounts owed to each individual member.

6. The classes each of the respective Claimant groups seek to represent, as described above, are distinct and clearly ascertainable. The rights of these individuals under the California Labor Code and FLSA have been violated because Respondent, inter alia, improperly calculated wages, required work "off-the-clock," misclassified salaried employees as "exempt," failed to pay wages and overtime, failed to pay lawfully earned commission, and issued non-compliant wage stubs. The claims of each of Claimant group are typical of those of their respective class members, as they now suffer and have suffered in the past from the same violations of the law as the class. California Claimants and FLSA Claimants have retained competent counsel to represent them, and will fairly and adequately represent the interests of each of the proposed classes.

7. Based on information and belief, there are over thirty thousand (30,000) current and past employees who have been subject to Respondent's unlawful and wrongful practices, and therefore, their numerosity makes it impractical to bring them all before this forum, and disposition of their claims in a class action is a benefit to the parties and to the court.

8. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recover. Class action treatment will allow those similarly situated persons to litigate their claims

in a manner that is most efficient and economical for the parties and the judicial system.

9. A class action is appropriate since Claimants' damages, although by no means inconsequential, do not rise to the level to make prosecution of individual claims economically feasible for Claimants to pursue. The right to the appropriate wage was surreptitiously ignored, and the injury, although substantial, has only been discovered on an ex post facto basis, making it economically unfeasible to pursue remedies other than a class action. The burden and expense of individual litigation makes it economically unfeasible for the members of the class to seek redress other than through a class action. Consequently, there would be a failure of justice but for the maintenance of a class action.

10. The prosecution of individual remedies by members of the Claimant class would tend to establish inconsistent standards of conduct for the Respondent and would result in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties.

11. Claimants know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

12. Claimants have incurred and, during the pendency of this action, will incur attorneys' fees and expenses. Such attorneys' fees and expenses are necessary for the prosecution of this action and will result in a benefit to the class.

13. Upon information and belief, Respondent was aware of the facts herein alleged at the time they failed to perform the duties alleged herein.

14. The names and addresses of the persons who are members of the class are available from Respondent's records and are therefore known to Respondent. Notice can be provided to the members of the class by mail, or by using techniques and a form of notice similar to those customarily used in class actions under California law, with the costs of any notice to be borne by Respondent.

IV. FACTUAL ALLEGATIONS

15. Respondent engages in the business of operating health-clubs throughout the State of California and throughout the United States. At each health-club Respondent employed, and continues to employ, personal trainers, fitness managers, sales counselors, assistant general managers, operations managers, and general managers. Respondent has developed elaborate personal training programs, offered through personal trainers and marketed to the general public. The services offered and provided by Respondent, through the personal trainers and fitness managers, include personal evaluations, (physical, dietary, and nutrition assessments and counseling), coupled with personal training sessions. The programs include detailed physical examinations, body measurements, dietary menu and nutrition planning, and detailed computerized assessments of a members' progress toward specific physical and dietary goals.

16. Respondent required personal trainers, as part of their job duties, to undertake numerous tasks in addition to providing personal training sessions. These tasks include, but are not limited to:

(a) Selling personal training sessions, and dietary supplements to the general public and/or club members;

(b) Meeting with club members and undertaking initial personal training interviews that include assisting in preparing all forms in members' "passport" file including welcome letters, member assessment forms or Physical Assessment Readiness Questionnaire (PAR-Q), food preference questionnaires, favorite foods questionnaires, and client consent forms, and a members' goals and review forms;

(c) Receiving a medical history of the client including, if necessary, conducting follow-up contacts with the member or members' medical providers;

(d) Conducting a physical assessment of the member including a posture analysis and core strength assessment;

(e) Measuring physical characteristics including scale weight, and body

composition assessments (body fat composition), and girth measurements for evaluating initial physical characteristics and to provide a benchmark for changes in the body, including skin folds and other methods of body assessment, and measuring the resting heart rate;

(f) Entering data on 24 Hour Fitness computer system of members' information and assessments including measurements taken in the initial assessment;

(g) Setting up personal paper files for personal training members;

(h) Evaluation of members' food intake questionnaires and favorite food questionnaires and development of a nutritional program with individual diet and meal planning personally developed for each member;

(i) To contact members prior to personal training sessions by telephone to schedule personal training sessions, confirm scheduled sessions, and to encourage members' progress;

(j) To log personal training sessions scheduled in a master appointment book; to log the personal training sessions in a training session log; to log the personal training session in the 24 Hour Fitness computer;

(k) To maintain and update each club members dietary menus and documents in their personal file; to monitor caloric intake and types of foods and nutrition;

(l) Conduct periodic re-evaluation and assessment of members physical progress including girth measurements, body fat composition, heart rate, and muscle growth;

(m) Updating computer system files of each client including date entry of periodic assessments;

(n) The development, ongoing evaluation and modification of personal training programs for each member personally and individually developed for that

member;

(o) Meeting with members to discuss progress and goals;

(p) Administrative duties such as maintaining and filling out forms, time cards, and computer entry; and

(q) Organizing and cleaning of the health-club by re-stacking weights, weight bars, or exercise equipment;

(r) Other tasks or duties which may be discovered through discovery in this matter.

17. Respondent routinely required employees to work more than 5 hours at a time without a break. Employees routinely were not permitted to take a one hour meal period or even a 30 minute meal period as required by law.

18. Respondent routinely scheduled employees to work consecutive hours(over five) during a given day without interruption. Respondent routinely required personal trainers, when not conducting personal training sessions, to undertake other tasks as stated above in between personal training sessions. Routinely, personal trainers would be required to work in between personal training session appointments and at the end of the day would have routinely worked in excess of eight hours per day. The work of personal trainers was routinely required to be performed "off-the-clock."

19. Respondent also employed floor supervisors, fitness managers, operations managers, assistant general managers, and general managers (collectively "Managers") as salaried employees, who were classified by Respondent as "exempt" under California law and the FLSA. In fact, the Managers performed more than 50% of their work performing tasks and duties that are not covered by California classifications or FLSA classifications for "exempt" work. Managers were routinely misclassified as exempt and were not paid overtime for work in excess of eight (8) hours in a day and forty (40) hours in a week.

20. Respondent also employed sales counselors, personal trainers, assistant general managers and general managers on a commission basis for sales of new club memberships,

training sessions, and supplements and fitness products. The commissions were not paid as required by California law and the FLSA.

21. Respondent did not keep accurate payroll records as required by California law and the FLSA.

22. Respondent routinely provided pay stubs to Claimants, and each of them, that did not accurately reflect all of the hours worked by the personal trainers as required by Labor Code § 226.

V. FIRST CAUSE OF ACTION

(By California Claimants Individually and As California Class Action Against Respondent)
(Failure to Pay All Wages, Overtime and Commissions Under California Law)

23. California Claimants repeat, re-allege and incorporate paragraphs 1 through 24, inclusive, as though fully set forth herein.

24. On January 1, 2000, Labor Code § 510(a) was enacted and provides:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half-times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of any workweek, shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

25. Labor Code § 1194(a) states:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

26. Labor Code § 204 states in pertinent part:

> All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

27. Under California Law, if an employee receives a draw against commissions to be earned at a future date, the "draw" must be equal at least to the minimum wage and overtime due the employee for each pay period, unless the employee is exempt. Although the draw may be reconciled against earned commissions at an agreed date or when the commission is earned, the draw is considered the basic wage and is due for each period the employee works even though commissions do not equal or exceed the amount of the draws, unless there is a specific agreement to the contrary (Agnew v. Cameron) (1967) 247 Cal.App.2d 619. Respondent may not deduct from the commissions for refunds or returns.

28. Under California Law, Respondent is required to pay wages for each hour worked, and overtime wages when non-exempt employees work over 8 hours in a day or 40 hours in a week by calculating the hourly rate and then computing the overtime premium amount owed. California Claimants, and similarly situated current and former employees of Respondent who are putative class members, have worked for Respondent without being paid for all hours worked and all commissions earned.

29. As a result of Respondent's violation of statutory duties to comply with statutory wage and commission requirements, as more fully set forth above, California Claimants were damaged in an amount above the jurisdictional limits of this court.

30. California Claimants seek as damages all wages and commissions owed to individuals employed as Personal Trainers, Floor Supervisors/Asst. Fitness Managers, Fitness Managers, Front Desk Supervisors, Operating Managers, Sales Counselors, and General Managers. Claimants' investigation is continuing, however, under information and belief the amount claimed is above the jurisdictional minimum requirements of the Superior Court

of California and Federal District Courts. California Claimants will seek leave of court to amend according to proof at the time of trial.

31. California Claimants are entitled to and therefore request an award of pre-judgment interest on the unpaid wages set forth herein.

32. California Claimants have incurred, and will continue to incur attorney fees and costs in the prosecution of this action. California Claimants seek attorneys' fees under all applicable provisions of law. Wherefore, California Claimants pray judgment as set forth herein below.

VI. SECOND CAUSE OF ACTION

(By California Claimants Individually and As California Class Action Against Respondent)
(Waiting Time Penalties California Labor Code §§ 203)

33. California Claimants repeat, re-allege and incorporate paragraphs 1 through 34, inclusive, as though fully set forth herein.

34. California Labor Code sections 201 and 202 require Respondent to pay its employees all wages due immediately upon discharge or 72 hours after an employee quits. California Labor Code section 203 provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages. A worker need not prove malice or intentional conduct in establishing their claim for waiting time penalties, but merely establish the employer did not do something it was obligated to do. (See Mamika v. Barca (1998) 68 Cal. App. 4th 487; Barnhill v. Robert Saunders & Co. (1981) 125 Cal.App.3d 1.)

35. California Claimants, and similarly situated former employees who are putative class members, are entitled to unpaid compensation, but to date have not received such compensation. As a consequence of Respondent's willful conduct in not paying compensation for all hours worked, and similarly situated installers who are putative class members, are entitled to 30 days wages as penalty under Labor Code section 203, together with interest

thereon and attorney's fees and costs. Wherefore, California Claimants prays judgment as set forth herein below.

VII. THIRD CAUSE OF ACTION

(By California Claimants Individually and As a California Class Action Against Respondent)
(Penalties for Failure to Itemize Wage Stubs Pursuant to Labor Code § 226)

36. California Claimants repeat, re-allege and incorporate herein by this reference all of the allegations set forth in paragraphs 1 through 37, inclusive.

37. Respondent knowingly and intentionally failed to provide California Claimants, and similarly situated current and former employees who are putative class members, with accurate, itemized wage statements in compliance with Labor Code § 226. Such failures in Respondent's itemized wage statements included, among other things, not accurately showing the number of all hours worked, including overtime hours, and/or incorrectly reporting gross wages earned.

38. As a direct result of Respondent's failure, California Claimants were injured and are entitled to recover an amount to be proved at trial, of not less than $100.00 for each violation up to $4,000.00.

39. California Claimants, and similarly situated current and former employees who are putative class members, are entitled to statutory penalties and attorney fees pursuant to Labor Code § 226 and Civil Code § 1021.5. Wherefore, California Claimants pray judgment as set forth herein below.

VIII. FOURTH CAUSE OF ACTION

(By California Claimants Individually and As California Class Action Against Respondent)
(Failure to Afford Mandatory Breaks or Meal Periods as Required by IWC Orders)

40. California Claimants, repeat, re-allege and incorporate by this reference the allegations set forth in paragraphs 1 through 41, inclusive as though fully set forth below.

41. At all times during California Claimants' employment with Respondent,

California Claimants were covered by the provisions of Industrial Wage Commission Orders, including IWC orders 4-2000 and 4-2001.

42. The IWC Wage Orders provide in applicable part:

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. In the case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work.
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> (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
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> (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

43. California Labor Code § 226.7(b) states:

> (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

44. Respondent routinely failed to provide the California Claimants, and the putative class, with a 30 minute unpaid meal period within the first 5 hours of work in compliance with IWC Orders and Labor Code § 226.7. As a result of Respondent's failure, California Claimants are entitled to recover an amount to be proved at trial, of not less than one additional hour of pay at Claimants' regular rate of compensation for each workday that the meal

period was not provided.

45. California Claimants are entitled to and therefore request an award of pre-judgment interest on the unpaid wages set forth herein.

46. California Claimants have incurred, and will continue to incur attorney fees and costs in the prosecution of this action. California Claimants seek attorneys' fees under all applicable provisions of law. Wherefore, California Claimants pray judgment as set forth herein below.

IX. FIFTH CAUSE OF ACTION

(By California Claimants Individually and As Against Respondent)
(Equitable and Injunctive Relief for Unlawful Business Practices in Violation of California Business and Professions Code §§ 17200 et seq.)

47. California Claimants, repeat, re-allege and incorporate by this reference the allegations set forth in paragraphs 1 through 49, inclusive as though fully set forth below.

48. In addition to bringing this action as a class action, California Claimants bring it as private attorneys general on behalf of themselves and general public, including former, current and future employees of Respondent, pursuant to Business and Professions Code sections 17200 et seq. to enjoin Respondent from engaging in the practices alleged in this complaint and to require Respondent to restore to those persons affected all monies wrongfully obtained from them by Respondent’s unfair business practices.

49. At all times relevant hereto, California Business and Professions Code §§ et seq. were in full force and effect. Section 17200 of the Business and Professions 17200 Code provides, in relevant part, that "unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice..."

50. Respondent is a "persons" as defined under Business and Professions Code § 17021. Each of the directors, officers, and/or agents of Respondent, are equally responsible for the acts of the other directors, officers, employees and/or agents as set forth in the Business and

Professions Code § 17095.

51. California Claimants bring this action in the interest of themselves, as representatives, and in the interest of other employees of Respondent, and in the interest of the public pursuant to § 17203 of the California Business and Professions Code. California Claimants bring this cause of action seeking restitution for the wages and commissions owed for the failure to pay all wages, including overtime wages, and commissions because Respondent's compensation system did not include the payment for all wages and for the overtime or premium wages of class members, who are members of the general public, and worked more then 8 hours in a day and/or 40 hours in a week. California Claimants also request an injunction prohibiting Respondent from not paying wages now and in the future.

52. California Claimants bring this action to pursue claims during a four year statute of limitations under § 17208 of the California Business and Professions Code.

53. The following practices of Respondent are unlawful and unfair business practices under California Business and Professions Code §§ 17200 et seq.:

(a) failure to pay all wages and commissions under Labor Code and all other applicable laws;

(b) failure to provide rest breaks and meal periods pursuant to IWC wage orders.

(c) violation of Labor Codes § 226 (improper wage stubs).

(d) unjust enrichment due to the failure to pay wages including overtime wages.

54. At all times material to this action, Respondent's conduct described above is an unfair, unlawful and/or fraudulent business practice in violation of California Business & Professions Code §§ 17200, et seq.

55. As set forth below, California Claimants are informed and believe and thereupon allege, that by failing to pay wages to all employees at Respondent's business, Respondent has engaged in business within the State of California, as set forth and defined in

Business and Professions Code §§ 17026, 17029, and 17073, in a manner that injured competitors, lead to misrepresentations to the public about the manner in which Respondent engaged in business, and/or destroying competition in violation of Business and Professions Code § 17043. Upon information and belief, California Claimants allege that Respondent engaged in the acts and omissions heretofore alleged for the purpose of profiting from lower labor costs, including employer taxes, workers compensation insurance, employer related expenses, and obtaining an unlawful or unfair advantage in the California health-club market, all in a scheme to engage in unfair competition, at the expense of their employees and to the detriment of public policy for the lawful employment of employees.

56. Pursuant to Business and Professions Code §§ 17071 and 17075, the failure of Respondent to pay all wages, including overtime wages, and commissions is admissible as evidence of Respondent's intent to violate the California Unfair Practices Act.

57. At all times material to this action, Respondent's conduct results in economic loss to the following workers: California Claimants and former, current, and future similarly-affected employees of Respondent.

58. As California Claimants are informed and believe and thereon allege that as a direct and proximate result of these acts and omissions, the Respondent was able to unfairly compete in the State of California by not paying all wages in violation of the Labor Code and the Business and Professions Code.

59. As California Claimants are informed and believe and thereon allege that the Respondent, by committing the above-described acts, has deceived the public by illegally depriving its employees of wages thus injuring its employees.

60. Business and Professions Code § 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of unlawful and unfair business practices. California Claimants seek restitution of all unpaid wages owing to them and members of the general public, according to proof, that the Respondent has enjoyed as a result of the unfair business practices.

61. Section 7202 of the California Business and Professions Code states: "Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition."

62. In addition to restoration of all wages owed, California Claimants seek to enforce penalties in the interest of themselves, in the interest of other employees of Respondent, and in the interest of the general public pursuant to § 17202:

(a) violation of Labor Codes § 203 (waiting time penalties);

(b) extra hour of pay for not authorizing or permitting breaks or meal periods (Labor Code 226.7); and

(c) violation of Labor Codes § 226 (improper wage stubs).

63. Private enforcement of these rights is necessary, as no other agency has raised a claim to protect these workers. There is a financial burden incurred in pursuing this action which would be unjust to place on California Claimants, because the burden of enforcing workforce-wide rights is disproportionate to that of enforcing only Claimants' individual claims. It would be against the interests of justice to force payment of attorney fees from Claimants' recovery in this action. Therefore, attorney fees are appropriate and sought pursuant to all applicable laws, including but not limited to California Code of Civil Procedure § 1021.5. Wherefore, California Claimants pray judgment as set forth herein below.

X. SIXTH CAUSE OF ACTION

(By FSLA Claimants Individually and As Against Respondent)
(For Willful Nonpayment of Wages, Overtime and Commissions in Violation of 29 U.S.C. § 207)

64. FSLA Claimants, repeat, re-allege and incorporate by this reference the allegations set forth in paragraphs 1 through 65, inclusive as though fully set forth below.

65. FSLA Claimants bring these claims on behalf of all current and former employees of Respondent employed as personal trainers, floor supervisors, fitness managers, operating

managers, sales counselors, assistant general managers, and general managers in the United States, except for the State of California.

66. FSLA Claimants are informed and believe Respondent was advised by human resource professionals, attorneys and/or other professionals, employees and advisors knowledgeable about the requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq. to pay overtime compensation at a rate of one and one-half times the regular rate, and to pay commissions as required under the FLSA. FLSA Claimants allege that they knew or should have known that FLSA Claimants worked in excess of 40 hours in a workweek and that FLSA Claimants' commissions were not being paid as required under the FLSA. FLSA Claimants are informed and believe and thereon allege that at all times herein mentioned, Respondent knew that it had a duty to compensate FLSA Claimants and class members at the proper overtime rates and commission as required by the FLSA, and that Respondent had the financial ability to pay such overtime compensation, but willfully, knowingly and intentionally failed to do so.

67. Notwithstanding such knowledge, Respondent failed to compensate FLSA Claimants at the rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek. Respondent has either recklessly or knowingly and intentionally failed to properly compensate FLSA Claimants for all of the overtime hours FLSA Claimants worked and all commissions earned.

68. FLSA Claimants are informed and believe and thereon allege that Respondent similarly failed to pay overtime compensation at the proper rate of one and one-half times the regular rate and failed to pay minimum wages, overtime, and commission to all other persons similarly employed by 24 Hour Fitness throughout the United States.

69. In doing all the things described and alleged, Respondent deprived FLSA Claimants, and other similarly situated employees, of their rights, privileges and immunities secured to them by federal law which clearly sets forth that they were entitled to. Respondent knew, or should have known, that its reckless and/or willful and

intentional failure to pay FLSA Claimants wages, overtime and commission violates these rights, privileges and immunities.

70. As a direct and proximate result of Respondent's actions and inactions, FLSA Claimants and other similarly situated employees have been damaged, and are entitled to compensatory and/or liquidated damages in an amount according to proof at trial including, but not limited to, a sum in excess to that required by 29 U.S.C § 216(b).

71. FSLA Claimants are entitled to and therefore request an award of pre-judgment interest on the unpaid wages set forth herein.

72. FSLA Claimants have incurred and will continue to incur attorney fees and costs in the prosecution of this action. FSLA Claimants seek attorneys' fees under all applicable provisions of law. Wherefore, California Claimants pray judgment as set forth herein below.

XI. SEVENTH CAUSE OF ACTION

(By FSLA Claimants Individually and As Against Respondent)
For Willful Late Payment of Overtime in Violation of § 207(a)
Of the Fair Labor Standards Act

73. FLSA Claimants reassert and re-allege paragraphs 1 through 74, above, inclusive, as though fully set forth herein and incorporates said paragraphs herein by reference.

74. Respondent has either recklessly or knowingly and intentionally failed and refused to compensate FLSA Claimants and all other similarly situated persons for overtime compensation earned in a particular work period by the regular pay day for the period in which the work ended.

75. Respondent has delayed the payment of overtime for a period longer than is reasonably necessary for them to compute and arrange for payments of the amounts due. As set forth above, Respondent knew or should have known that FLSA Claimants were working in non-exempt jobs in excess of 40 hours per week workweek without overtime compensation. Notwithstanding such knowledge, Respondent failed to pay FLSA Claimants for their overtime hours worked in a timely manner as required under the FLSA.

76. Although Respondent has been appraised of the law regarding the payment of hours covered by the FLSA, Respondent routinely failed to compensate FLSA Claimants for their overtime in a timely manner.

77. In doing all the things described and alleged, Respondent deprived FLSA Claimants and similarly situated persons of their rights, privileges and immunities secured to them by federal law which clearly sets forth that FLSA Claimants are entitled to be paid for overtime hours worked in a workweek by the regular pay day for the period in which such workweek ended. Respondent knew or should have known that their reckless and/or willful and intentional failure to pay in a timely manner for the overtime worked by FLSA Claimants and others violates these rights, privileges and immunities.

78. As a direct proximate result of Respondent's actions and inactions, FLSA Claimants and other similarly situated persons have been damaged, and are entitled to compensatory and/or liquidated damages in an amount according to proof including, but not limited to, a sum equivalent to and in addition to their overtime compensation which was paid late for the three years preceding the date of their opt-in into the present actions as required by 29 U.S.C. § 216(b).

79. FSLA Claimants are entitled to and therefore request an award of pre-judgment interest on the unpaid wages set forth herein.

80. FSLA Claimants have incurred, and will continue to incur attorney fees and costs in the prosecution of this action. FSLA Claimants seek attorneys' fees under all applicable provisions of law. Wherefore, California Claimants pray judgment as set forth herein below.

XII. ATTORNEY FEES AND COSTS

81. Enforcement of federal and state statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public policy. Consequently, Claimants' success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the

general public. Private enforcement of the rights enumerated herein is necessary as no public agency has pursued enforcement for the class. Claimants are incurring a financial burden in pursuing this action and it would be against the interest of justice to require the payment of any attorney's fees and costs from any recovery that might be obtained herein. As prayed for below, Claimants and their counsel all other counsel retained by Claimants, are entitled to and seeks an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Labor Code § 1194, the FSLA and all other applicable laws.

XIII. PRAYER FOR RELIEF

WHEREFORE, Claimants pray for judgment against Respondent as follows:

FOR THE FIRST THROUGH FOURTH CAUSES OF ACTION:

l . To certify the action as a class action as to current and former employees of Respondent employed in the State of California and/or various sub-classes of similarly situated employees;

2. To name Claimants counsel as class counsel;

3. For damages for unpaid wages, including overtime and commissions, and such general and special damages as may be appropriate, according to proof at trial;

4. For 30 days waiting-time penalties under Labor Code Section 203.

5. Penalties of not less than $100.00 for each violation of Labor Code Section 226 and up to $4,000.00 per employee.

6. Statutory penalties under Labor Code Sections 204, 210, 558(a)(3).

7. For damages unpaid wages for extra hours calculated at one extra hour for each day where no rest period was provided and at one extra hour where no meal period was provided. (Labor Code 226.7)

FOR THE FIFTH CAUSE OF ACTION:

1. An award of restitution to Claimants and other of Respondent's similarly situated affected employees employed at any time during the four years preceding filing of the complaint, in the amount equal to all unpaid wages, including overtime wages, and commissions owed to each of them, in a total amount to be proven at trial, plus interest as provided by statute.

2. Restitution, including unpaid wages, unpaid regular wages, overtime wages, commissions, interest and owing by Respondent to workers employed at any time during the four years preceding filing of the complaint, where such wages and interest apportioned directly to a worker to whom the restitution is owed and who has been identified by the Respondent.

3. Labor Code penalties pursuant to Labor Code Sections 203, 210, 226, and 226.7,

4. A permanent and mandatory injunction as provided under California Business and Professions Code §§ 17200 et seq. ordering Respondent, now and in the future, to pay employees the proper wage, and issue wage stubs that comply with California Labor Code section 226, in compliance with applicable state wage laws, and to provide rest periods and meal periods as required.

5. Equitable remedies including, but not limited to, an equitable accounting, as the court deems just and proper under the circumstances.

FOR THE SIXTH AND SEVENTH CAUSES OF ACTION:

1. To certify the action as a class action as to current and former employees of Respondent employed in the United States, except the State of California, and/or various sub-classes of similarly situated employees;

2. To name Claimants counsel as class counsel;

3. All actual consequential, liquidated and incidental losses and damages,

according to proof at time of trial;

4. Such other damages as may be allowed in accordance with the Federal Rules of Civil Procedure, Rule 54(c), and 29 U.S.C. § 216(b) according to proof;

5. Liquidated damages, attorneys fees, and costs pursuant to 29 U.S.C. § 216(b); and

6. Any and all relief, including equitable relief, as the Court may deem just and proper.

FOR ALL CAUSES OF ACTION:

1. For recovery of reasonable attorney's fees and costs of suit incurred by Claimants in the interest of themselves, other employees, and the general public in the prosecution of this action pursuant to applicable law, including without limitation, class action remedies, California Labor Code §§ 1194, 2802, 226, 2699 and California Code of Civil Procedure § 1021.5 and 29 U.S.C. § 216(b);

2. For expenses and costs of suit; and

3. For pre-judgment interest;

4. Such other relief as the court deems just and proper under the circumstances.

Respectfully submitted,

_____

Dated: _____

PROOF OF SERVICE
Code Civ. Proc. § 1013a(3)

I am employed in the County of Orange, State of California. I am over the age of 18. On _____ I served the foregoing document(s) described as:

STATEMENT OF CLAIM

1. CALIFORNIA CLASS ACTION COMPLAINT FOR DAMAGES [CAL. CCP § 382]

2. FOR UNFAIR BUS. PRACTICES [CAL. BUS. & PROF. CODE § 17200 et seq.]

3. CLASS ACTION, EXCLUDING CALIFORNIA, FOR CLAIMS UNDER FAIR LABOR STANDARDS ACT [29 U.S.C. § 216(b)]]

DEMAND FOR ARBITRATION

on all parties to this action as follows:

_____ _transmitting the foregoing document(s), via facsimile to the fax number(s) set forth below on this date.

_____ depositing the foregoing document(s) in the United States mail in California in a sealed envelope with postage thereon fully prepaid, addressed as set forth below.

_____ personally serving the foregoing document(s) to the address(es) set forth below, or by leaving the document(s) with the secretary in charge.

____
_____ causing personal delivery of the document(s) listed above to the address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing mail. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____ in California.

_____

Dated:_____