

1 Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
1875 Century Park East, Suite 1000
6 Los Angeles, CA 90067
7 Telephone: (310) 556-4811
8 Facsimile: (310) 943-0396

9 Attorneys for Plaintiffs Donna Holley and Paul Williams

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE
13

14 DONNA HOLLEY, and PAUL WILLIAMS, as
15 aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

16 Plaintiff,

17 v.

18 24 HOUR FITNESS USA, INC., a California
19 corporation; and DOES 1 through 10, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28
29
30
31
32

Case No.: RIC1602246

CLASS ACTION

**NOTICE OF MOTION TO APPROVE
SETTLEMENT PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

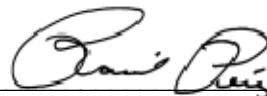
Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 11, 2018, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department 5 of the Riverside County Superior Court, located at 4050 Main
4 Street, Riverside, California 92501, Plaintiffs Donna Holley and Paul Williams, as aggrieved employees
5 pursuant to the Private Attorneys General Act, will and hereby do move this Court for an order
6 approving a settlement pursuant to the Private Attorneys General Act of 2004, California Labor Code §§
7 2698, *et seq.* (the "PAGA"). The proposed settlement resolves the claims in three separate PAGA suits
8 against Defendant 24 Hour Fitness USA, Inc.: the instant action, *Madrigal v. 24 Hour Fitness USA, Inc.*
9 (Orange County Superior Court, Case No. 30-2014-00235568), and *Vorise v. 24 Hour Fitness USA, Inc.*
10 (Contra Costa County Superior Court, Case No. CIV-MS15-02051).

11 This motion is based upon this Notice of Motion; the Memorandum of Points and Authorities;
12 the Declaration of *Holley* Plaintiffs' counsel (Raul Perez); the Declaration of *Madrigal* Plaintiff's
13 counsel (Laura Ho); the Declaration of *Vorise* Plaintiff's counsel (Carolyn Hunt Cottrell); the Private
14 Attorneys General Act Settlement Agreement and Release; the proposed Order Granting Approval of the
15 PAGA Settlement and entry of Judgment thereon; all other records, pleadings, and papers filed in this
16 action; and upon such other evidence or argument as may be presented to the Court at the hearing on this
17 motion.

18
19 Dated: June 15, 2018



Raúl Pérez (SBN 174687)
Arnab Banerjee (SBN 252618)
Brandon Brouillette (SBN 273156)
Ruhandy Glezakos (SBN 307473)
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

Attorneys for Plaintiffs Donna Holley and Paul
Williams

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105

1 John F. Edgar (*pro hac vice* to be submitted)
2 EDGAR LAW FIRM LLC
3 1032 Pennsylvania Avenue
4 Kansas City, Missouri 64105
5 Tel: (816) 531-0033
6 Fax: (816) 531-3322

7 Attorneys for Plaintiff Justin Vorise

8 David Borgen
9 Laura Ho
10 GOLDSTEIN BORGEN DARDARIAN & HO
11 300 Lakeside Drive, Suite 100
12 Oakland, CA 94612

13 Aashish Desai
14 Adrienne De Castro
15 DESAI LAW FIRM, P.C.
16 3200 Bristol Street, Suite 650
17 Costa Mesa, CA 92626

18 Attorneys for Plaintiff Alyssa Madrigal
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

[Counsel for Additional Plaintiffs Listed on Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”),

Plaintiff,

v.

24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1602246

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO APPROVE SETTLEMENT PURSUANT
TO PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

TABLE OF CONTENTS

I.	INTRODUCTION.....	5
II.	FACTS AND PROCEDURE	6
A.	Madrigal Action.....	6
B.	Vorise Action	8
C.	Holley Action.....	10
D.	Global Mediation.....	11
III.	THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES.....	12
A.	Terms of the Settlement and Distribution of PAGA Penalties	12
B.	Allocations for the PAGA Settlement Employees.....	13
C.	Payments to the PAGA Settlement Employees	14
D.	The Releases.....	15
IV.	PAGA AND ITS REQUIREMENTS.....	16
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS COURT APPROVAL.....	17
A.	Nature of the Alleged Violations	17
1.	Meal Period and Rest Break Claims	17
2.	Unpaid Wage Claims.....	19
3.	Failure to Reimburse.....	19
B.	Number Of Alleged Violations And Total Potential PAGA Penalties.....	20
C.	Factors Supporting A Reduction In Total Penalty Amount Based On The Anticipated Trial Result, Weight Of Evidence, Clarity Of Controlling Law, And Defendant's Defenses	21
VI.	THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE.....	24
A.	Plaintiffs' Counsel Are Entitled to Recover Attorneys' Fees under the Common Fund Doctrine in This Qui Tam Action.....	24
B.	A Fee of One-Third of the Gross Settlement Amount Is Fair and Reasonable and Serves the Public Policy of Attracting Competent Counsel to Litigate These Cases.....	26
C.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award	28
D.	The Litigation Costs Are Fair and Reasonable.....	29
VII.	CONCLUSION.....	30

TABLE OF AUTHORITIES

STATE CASES

<i>Amaral v. Cintas</i> , 163 Cal. App. 4th 1157 (2008).....	23
<i>Arias v. Superior Court</i> , 46 Cal. 4th 969 (2009)	passim
<i>Bank of America v. Cory</i> , 164 Cal. App. 3d 66 (1985).....	25
<i>Bluford v. Safeway</i> , 216 Cal. App. 4th 864 (2013)	19
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	26
<i>Cochran v. Schwan's Home Serv., Inc.</i> , 228 Cal. App. 4th 1137 (2014).....	20
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009)	28
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , 59 Cal. 4th 348 (2014).....	6, 24
<i>Laffitte v. Robert Half Int'l Inc.</i> , 1 Cal.5th 480 (2016).....	25, 26, 28, 29
<i>Lawson v. ZB, N.A.</i> 18 Cal. App. 5th 705 (2017).....	16
<i>Morillion v. Royal Packing Co.</i> , 22 Cal. 4th 575 (2000).....	19
<i>People ex rei. Stratham v. Acacia Research Corp.</i> , 210 Cal. App. 4th 487 (2012).....	24
<i>PLCM Group v. Drexler</i> , 22 Cal. 4th 1084 (2000).....	28
<i>Smith v. Rae Venter Law Group</i> , 29 Cal. 4th 345 (2002).....	23
<i>Spann v. J.C. Penney Corp.</i> , No. 12-0215-FMO, 2016 WL 5844606 (C.D. Cal. Sept. 30, 2016).....	29
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009)	29
<i>Thurman v. Bayshore Transit Mgmt.</i> , 203 19 Cal. App. 4th 1112 (2012).....	16
<i>Williams v. Superior Court</i> , 3 Cal. 5th 531 (2017)	7

FEDERAL CASES

<i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.</i> , No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009).....	23
<i>Boeing Co. v. Van Gernert</i> , 444 U.S. 472 (1980)	25
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016).....	23
<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326 (N.D. Cal. 2014)	29
<i>Fleming v. Covidien</i> , 2011 WL 7563047 (C.D. Cal. 2011).....	24
<i>In re Rite Aid Corp. Securities Litig.</i> , 396 F.3d 294 (3d Cir. 2005)	25
<i>Six (6) Mexican Workers v. Arizona Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990).....	25

1	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	25
2	<i>Stuart v. RadioShack Corp.</i> , 641 F. Supp. 2d 901 (N.D. Cal. 2009).....	20
3	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12–07658 DDP	
4	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	23
5	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002)	27, 29
6		
7	STATE STATUTES	
8	Cal. Lab. Code § 90.5(a)	16
9	Cal. Lab. Code § 2699(i).....	16
10	Cal. Lab. Code § 2699(l)(2).....	6, 17
11	Cal. Lab. Code § 2804.....	20
12		
13	SECONDARY AUTHORITIES	
14	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements:</i>	
15	<i>An Empirical Study</i> , J. of Empirical Legal Studies, Vol. 1, Issue 1, 27, March 2004	26
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2

Plaintiffs Donna Holley and Paul Williams seek approval of an \$11 million non-reversionary Settlement for civil penalties against Defendant 24 Hour Fitness USA, Inc. (“Defendant” or “24 Hour”) under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”; Labor Code §§ 2698, *et seq.*). The Settlement resolves the present action as well as the following two additional PAGA actions for alleged violations of the Labor Code at 24 Hour’s health club facilities in California:

Madrigal v. 24 Hour Fitness USA, Inc. (Orange County Superior Court, Case No. 30-2014-00235568) (“*Madrigal*”) and *Vorise v. 24 Hour Fitness USA, Inc.* (Contra Costa County Superior Court, Case No. CIV-MS15-02051) (“*Vorise*”). Each action has been separately, intensely litigated for more than two years—up to almost four years for *Madrigal*—and each action has overcome several challenges to the pleadings and contentious discovery battles. Defendant filed petitions for appeal up to the California Supreme Court in *Madrigal* and *Vorise*, which were denied. Defendant has denied, and continues to deny, the allegations that it has violated the Labor Code with respect to employees in California.

In early 2018, the Parties began to explore the possibility of a global resolution that would resolve all of the pending PAGA actions. On February 27, 2018, the Parties mediated the cases with Jeff Ross, a respected mediator of employment actions. The mediation was productive, and through serious, arms-length negotiations thereafter, the Parties ultimately reached an \$11,000,000.00 global Settlement that resolves all of the claims in these actions. The Parties have memorialized their agreement in the Private Attorneys General Act Settlement Agreement and Release (the “Settlement”) that is the subject of this Motion.¹

The basic terms of the Settlement are as follows: (1) the Maximum Settlement Amount is \$11,000,000.00; (2) no portion of the Maximum Settlement Amount will revert to Defendant; (3) a Net Settlement Amount of approximately \$7,103,333.00 will be available for distribution to the State of California and the “aggrieved employees” (the “PAGA Settlement Employees”); (4) the Net Settlement Amount will be allocated between a General PAGA Penalties Fund (63.5% of the Net Settlement Amount) and a 558 Civil Penalties Fund for PAGA penalties under Labor Code § 558 (36.5% of the Net Settlement Amount); (5) 75% of the General PAGA Penalties Fund will be paid to the State of

¹ A true and correct copy of the Settlement is attached as **Exhibit 1** to the Declaration of Raul Perez in Support of Motion to Approve Settlement Pursuant to Private Attorneys General Act of 2004 (“Perez Decl.”). Proof of service of the Settlement to the LWDA is attached as Exhibit 2 to the Perez Decl.

California, and 25% will be paid to the PAGA Settlement Employees; (6) 100% of the 558 Civil Penalties Fund will be paid to the PAGA Settlement Employees; (7) General Release Payments of \$15,000.00, each, will be paid to the four Named Plaintiffs in these actions for their release of all claims against Defendant; (8) the actual costs and expenses of the Settlement Administrator, CPT Group, Inc. (“CPT Group”), currently estimated to be \$70,000.00, will be paid from the Maximum Settlement Amount; (7) 33 1/3% (thirty-three and one-third percent) of the Maximum Settlement Amount for attorneys’ fees will be split among Plaintiffs’ respective counsel in the three actions; and (8) actual costs will be reimbursed to Plaintiffs’ counsel in an amount not to exceed \$100,000.00.

Plaintiffs now seek this Court’s approval of this PAGA-only Settlement. The Settlement merits full approval because it fulfills the purpose of PAGA (i.e., to deter potential violations of the Labor Code and to provide relief that is genuine, meaningful, and consistent with California’s goal of benefitting the public through enforcement of labor laws). Delivering an excellent result for the State and the alleged “aggrieved employees”, this Settlement makes more than \$3,700,000.00 available to the PAGA Settlement employees and requires Defendant to pay more than \$3,300,000.00 in PAGA penalties to the State of California. These sizeable payments of civil penalties vindicate the purpose and goals of PAGA.

Because this is a PAGA-only settlement, the process for approval is straightforward: “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Labor Code § 2699(l)(2). Based on the California Supreme Court’s holdings in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), there is no requirement under PAGA for Plaintiffs to establish the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy), nor is there the two-step preliminary and final approval process applicable to class actions. Rather, this Settlement simply requires a one-step review and approval process.

For these reasons and those discussed below, Plaintiffs respectfully request that the Court approve the Settlement.

II. FACTS AND PROCEDURE

A. Madrigal Action

Plaintiff Alyssa Madrigal filed the first of these actions on July 22, 2014 in Orange County Superior Court, alleging a PAGA-only suit for Defendant’s failure to provide Kids Club Attendants (“KCAs”) with compliant rest breaks. Plaintiff Madrigal was a non-exempt, former KCA who worked at six different 24 Hour locations in Irvine, Costa Mesa, and Huntington Beach; she seeks penalties for alleged Labor Code violations on behalf of herself and all other KCAs. KCAs are employed to supervise

1 members' children while they exercise. Her complaint alleges that Defendant failed to provide KCAs in
2 California with rest periods, and as a result, failed to provide itemized and accurate wage statements and
3 failed to maintain accurate payroll records in compliance with California law. In January 2015, Plaintiff
4 Madrigal filed a First Amended Complaint adding allegations that Defendant failed to pay overtime to
5 the KCAs in compliance with California law. Declaration of Aashish Desai in Support of Motion to
6 Approve Settlement Pursuant to Private Attorneys General Act of 2004 ("Desai Decl."), ¶ 12.

7 Plaintiff Madrigal propounded discovery seeking the names, contact information, and time-
8 keeping records for KCAs within the relevant time period. Defendant objected to this discovery and so
9 Plaintiff Madrigal filed a motion to compel. After the Court denied the motion and stayed all discovery,
10 Plaintiff Madrigal filed a writ petition to appeal this ruling as conflicting with the holding in *Arias v.*
11 *Superior Court*, 46 Cal.4th 969, 975-987 (2009), that PAGA cases are not required to meet class action
12 requirements. Soon after this writ was denied on June 29, 2015, Plaintiff Madrigal moved the Court to
13 re-consider its ruling in light of review being accepted by the California Supreme Court in *Williams v.*
14 *Superior Court*, 3 Cal. 5th 531 (2017).² The Court then ordered the production of contact information
15 for KCAs at the club locations where Madrigal worked. Desai Decl., ¶¶ 13-21.

16 Defendant contested the order and filed its own Motion for Reconsideration shortly thereafter.
17 The Court denied this motion, and then Defendant agreed to provide the contact information for the
18 KCAs that worked at facilities where Madrigal worked pursuant to a *Belaire-West* notice process.
19 Defendant provided the names in April 2016. Plaintiff Madrigal continued to seek Court intervention to
20 obtain the contact information and timekeeping data for all KCAs, ultimately obtaining the names and
21 last known contact information for all KCAs employed in California during the liability period.
22 Defendant also produced time data and Kids Club swipe records (showing entry and exit into the Kids
23 Clubs) for 20% of the KCAs employed in California since July 22, 2013 (approximately 956
24 individuals). Desai Decl., ¶¶ 15-17.

25 In an effort to create a manageable trial plan, Plaintiff Madrigal proposed that Defendant
26 stipulate that the 20% sample of time data and Kids Club swipe records is representative of the time data
27 and swipe records for all 5,050 KCAs. Defendant did not agree, and Plaintiff Madrigal proposed that
28 Defendant produce additional data for all the KCAs. At a December 2017 Status Conference, the Court
29

30
31 ² In *Williams*, the California Supreme Court ruled that PAGA did not contain any heightened
32 proof standard prior to discovery and extended PAGA discovery as broadly as class action discovery. 3
Cal.5th at 544.

1 ordered the Parties to meet and confer about the production of the additional data so the Parties could
2 proceed with crafting a trial plan. Desai Decl., ¶¶ 17-19.

3 Plaintiff Madrigal also successfully opposed a Motion for Summary Judgment. After the Court
4 denied the Motion, Defendant appealed the ruling up to the California Supreme Court, but the appeal
5 was denied. Desai Decl., ¶ 22.

6 At present, Plaintiff Madrigal has taken six depositions: two Person Most Knowledgeable
7 witnesses and four Operations Managers who worked at locations where Plaintiff Madrigal worked. She
8 has served two sets of special interrogatories and document requests, and has engaged in the extensive
9 motion practice related to discovery described above. Plaintiff Madrigal has also been deposed by
10 Defendant on two separate days. Plaintiff Madrigal's counsel has extensively analyzed and investigated
11 the KCA claims, and prepared a detailed damages analysis model based on its findings. Desai Decl., ¶¶
12 13, 20, 24-25.

13 **B. Vorise Action**

14 Plaintiff Vorise filed his action in Contra Costa County Superior Court on November 5, 2015.
15 Plaintiff Vorise worked for Defendant as a non-exempt Service Representative, Lead Service
16 Representative, and Athletic Monitor from November 2012 until October 2014 at four club locations in
17 San Diego. *Id.* at ¶ 9. He alleged various Labor Code violations against Defendant on behalf of himself
18 and a putative class of non-exempt employees, including (1) failure to authorize, permit, and make
19 available meal and rest periods, (2) waiting time penalties, (3) failure to provide accurate, itemized wage
20 statements, and (4) unfair competition pursuant to California's Business and Professions Code. Plaintiff
21 Vorise also brought PAGA claims predicated on the above violations. Declaration of Carolyn Hunt
22 Cottrell in Support of Motion to Approve Settlement Pursuant to Private Attorneys General Act of 2004
23 ("Cottrell Decl."), ¶ 8.

24 Following extensive motion practice and discovery, on May 25, 2016, the Court entered an order
25 compelling arbitration of Plaintiff Vorise's individual claims, dismissing his putative class claims,
26 severing his representative PAGA claims, and staying the action pending arbitration. On June 17, 2016,
27 Plaintiff Vorise requested dismissal of his individual claims without prejudice and the Court entered the
28 dismissal as requested. Defendant moved to vacate the dismissal, and the Court denied the motion on
29 July 22, 2016. Plaintiff Vorise's PAGA-only claims are all that remain in the *Vorise* action. Cottrell
30 Decl., ¶¶ 11-12.

31 Defendant next filed a demurrer challenging the sufficiency Plaintiff Vorise's PAGA Notice.
32 The Court issued its order overruling Defendant's demurrer on December 21, 2016. Following the

1 Court's certifying its denial of the demurrer for interlocutory review, Defendant filed a Petition for Writ
2 of Mandate seeking review of that order, which the Court of Appeal denied on January 12, 2017.
3 Defendant filed a Petition for Review of the Court of Appeal's Order with the California Supreme Court.
4 Plaintiff Vorise opposed the petition, and the California Supreme Court denied it on March 15, 2017.
5 Cottrell Decl., ¶ 13.

6 Once all issues relating to Defendant's demurrer were put to rest, significant discovery disputes
7 followed. Plaintiff Vorise was required to litigate two motions to compel—both of which successfully
8 compelled Defendant to produce substantial informational, documentary, and data-based evidence. As a
9 result of these motions, and in addition to other common documentary evidence (policies, handbooks,
10 job descriptions, training modules, etc.) Defendant has produced, or was in the process of producing, the
11 following:

- 12 • The names, addresses, telephone numbers, timekeeping data, and meal period premium data for
13 employees at the four clubs where Plaintiff Vorise worked, as well as four other club locations
14 Plaintiff Vorise unilaterally selected;
- 15 • The names, addresses, and telephone numbers for a 40% random sample of all non-exempt,
16 hourly employees who worked at any other clubs in California from October 3, 2014 to the
17 present. This sample provides the complete contact information for in excess of 14,000
18 aggrieved employees;
- 19 • For these 14,000-plus employees, the timekeeping data, meal/rest period premium data, and final
20 payroll data for a 60% random sample of this group – in other words, relevant data for over
21 8,000 aggrieved employees;
- 22 • All meal period waivers and on-duty meal period agreements electronically maintained by
23 Defendant, for all aggrieved employees; and
- 24 • The location, square footage, quarterly customer check-in data, quarterly average of employees,
25 club amenities, and job titles and classifications for every club in the State of California.

26 Cottrell Decl., ¶¶ 14-15.

27 After receiving contact information for other aggrieved employees, Plaintiff Vorise's counsel
28 completed interviews with approximately 70 of Defendant's employees in an intensive outreach effort.
29 Plaintiff Vorise also served three sets of requests for production of documents and one set of special
30 interrogatories, and has also been deposed by Defendant. Defendant deposed Vorise during a full-day
31 deposition, which occurred on February 13, 2018. Plaintiff Vorise's extensive investigations confirmed
32 that many non-exempt employees are denied reasonable opportunities to take meal and rest breaks,
providing a foundation for developing a detailed damages model to analyze Defendant's exposure.

Cottrell Decl., ¶¶ 16-18.

1 **C. *Holley Action***

2 Plaintiff Holley filed the instant *Holley* action in Riverside Superior Court on February 24, 2016.
3 Plaintiff Holley worked as a former, non-exempt Group Exercise Instructor and a Personal Trainer at
4 Defendant’s Glendora and Eastvale, California locations from approximately June 2008 to May 2015.
5 Bringing a PAGA-only action on behalf of Defendant’s current and former non-exempt, hourly
6 employees, she alleges unpaid overtime, unpaid minimum wages, failure to provide meal and rest
7 periods, failure to provide itemized accurate wage statements, failure to provide split shift premiums,
8 failure to reimburse necessary business expenses, failure to provide notice under Labor Code section
9 2810.5, and derivative Labor Code violations. Perez Decl., ¶ 3.

10 Following the filing of her Complaint, the parties engaged in considerable motion practice. On
11 May 2, 2016, Defendant filed a Motion to Strike Portions of Plaintiff’s Complaint, which was granted in
12 part—without leave to amend as to the claim for violation of Labor Code Section 2810.5, and with leave
13 to amend as to the “aggrieved employee” definition to allow Plaintiff Holley to file a supplemental
14 PAGA notice expanding the scope to all non-exempt employees. After Plaintiff Holley filed her First
15 Amended Complaint (“FAC”). Defendant on July 13, 2016 file a demurrer, arguing that she had failed to
16 exhaust PAGA’s “pre-filing requirements” by failing to provide the LWDA with the requisite notice of
17 the facts and theories supporting her allegations. The Court overruled the demurrer in its entirety. Perez
18 Decl., ¶ 4.

19 For the remainder of 2016 and the beginning of 2017, the *Holley* Parties were embroiled in
20 discovery disputes regarding the scope of initial discovery, requiring two separate informal discovery
21 conferences. At the first informal discovery conference, the Court limited initial discovery to the Eastvale
22 location where Plaintiff Holley worked during the PAGA period. However, after the Supreme Court
23 published its decision in *Williams* (a case successfully litigated by Holley’s counsel, Capstone), Plaintiff
24 Holley was subsequently granted leave to file a motion to compel to seek broader discovery. Perez Decl.,
25 ¶ 5.

26 In approximately July 2017, Plaintiff Paul Williams, who worked for Defendant as an hourly,
27 non-exempt Overnight Service Representative and later as a Personal Trainer from December 2015 to
28 August 2016 at its fitness club location in Fairfield, California, was added as a second named
29 representative in their Second Amended Complaint. Shortly thereafter, the Parties began discussing
30 mediation of this action. Perez Decl., ¶ 6.

1 In August 2017, the *Holley* Parties reached an agreement to mediate and refrain from further
2 motion practice until after mediation. Perez Decl. ¶ 7. The Parties agreed that significant additional
3 discovery was required for a productive mediation, including:

- 4 • Plaintiff Holley’s deposition, which took place over two days on December 7, 2017 and
5 February 8, 2018;
- 6 • Plaintiff Williams’s deposition, which occurred on February 20, 2018;
- 7 • Two PMK depositions, which occurred on February 19, 2018 and February 23, 2018;
- 8 • The production of the names and contact information for all aggrieved employees in 10
9 randomly selected clubs throughout California;
- 10 • The production of the time, payroll, and training records for all aggrieved employees in 10
11 randomly selected clubs throughout California—which were analyzed by the *Holley* Plaintiffs’
12 expert to determine violation rates and PAGA exposure;
- 13 • The production of aggregate data regarding pay periods, aggrieved employees, meal break
14 premiums, rest break premiums, and reimbursements issued during the PAGA period

15 Plaintiff Holley completed the required pre-mediation discovery, and completed an in-depth analysis of
16 Defendant’s PAGA exposure. Perez Decl., ¶ 8.

17 **D. Global Mediation**

18 With over eight years of combined, intense litigation in these three actions, the *Holley* Plaintiffs
19 and Defendant decided to expand the scope of their long-planned mediation by inviting the *Madrigal*
20 and *Vorise* Plaintiffs in order to explore a global resolution of all PAGA claims currently pending against
21 24 Hour. On January 31, 2018, the Parties agreed to participate in a joint mediation of the three cases.
22 Perez Decl. ¶ 9; Cottrell Decl. at ¶ 20. The mediation took place on February 27, 2018 in Oakland,
23 California before Jeffrey Ross, Esq., an experienced and respected wage and hour mediator. Perez Decl.
24 ¶ 10; Cottrell Decl. at ¶ 21. The mediation involved serious and intensive arms-length negotiations. *Id.*
25 At the conclusion of mediation, Mr. Ross presented the Parties with a “mediator’s proposal,” which
26 outlined the principal terms of a global settlement of all three cases. The Parties later accepted, subject to
27 certain conditions, including approval of the Settlement by Defendant’s Board of Directors. Perez Decl. ¶
28 10; Cottrell Decl. at ¶ 21. On March 20, 2018, Defendant’s Board of Directors approved the terms of the
29 Settlement. *Id.* at ¶ 23.

III. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

A. Terms of the Settlement and Distribution of PAGA Penalties

The Settlement provides that Defendant will pay a non-reversionary settlement amount of \$11,000,000.00 (the “Maximum Settlement Amount”). From the Maximum Settlement Amount, payments will be made to the LWDA and the PAGA Settlement Employees, to the Named Plaintiffs for General Release Payments, to Plaintiffs’ attorneys for fees and litigation costs, and to the Settlement Administrator (CPT Group) for settlement administration costs. Settlement, ¶¶ 2.16, 4.16. The Settlement sets aside \$15,000.00 for each of the four Named Plaintiffs for General Release Payments, in return for their release of all claims of any kind against Defendant. Settlement, ¶ 4.11. Plaintiffs’ counsel will seek a standard fee award of one-third of the Maximum Settlement Amount, to be split among Plaintiffs’ counsel in the three actions, along with reimbursement of actual litigation costs (not to exceed \$100,000.00). Settlement, ¶ 4.14. The administration costs are currently estimated at \$70,000.00. Settlement, ¶¶ 4.6.1, 4.6.2.

After distributions for the General Release Payments, attorneys’ fees and costs, and Settlement Administrator costs, approximately \$7,103,333.00 will be available as estimated net proceeds (the “Net Settlement Amount”). Settlement, ¶ 2.17. The Net Settlement Amount will be allocated between the General PAGA Penalties Fund (approximately \$4,510,616.00, or 63.5% of the Net Settlement Amount) and a 558 Civil Penalties Fund for PAGA penalties under Labor Code § 558 (approximately \$2,592,716.00, or 36.5% of the Net Settlement Amount). Settlement, ¶¶ 2.1, 2.11. Pursuant to Labor Code § 2699(i), 75% of the General PAGA Penalties Fund will be paid to the LWDA (to be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining 25% will be paid to the PAGA Settlement Employees. Settlement, ¶ 4.7. Additionally, 100% of the 558 Civil Penalties Fund will be paid to the PAGA Settlement Employees. Settlement, ¶ 4.8.

Accordingly, the LWDA will receive approximately \$3,382,962.00 from the PAGA Settlement. The employees will receive approximately \$3,720,370.00 from the Net Settlement Amount. The following chart reflects the estimated payments under the Settlement, which may fluctuate slightly based on the actual amount of costs:

Maximum Settlement Amount	\$11,000,000.00
Less General Release Payments	\$60,000.00
Less Settlement Administrator Payment	\$70,000.00
Less Attorneys’ Fees	\$3,666,667.00
Less Attorneys’ Costs	\$100,000.00
Net Settlement Amount	<u>\$7,103,333.00</u>

General PAGA Penalties Fund	\$4,510,616.46
558 Civil Penalties Fund	\$2,592,716.55
Portion of General PAGA Penalties Fund payable to employees	\$1,127,654.11
558 Civil Penalties Fund payable to employees	<u>\$2,592,716.55</u>
Total Net Settlement Amount available to employees	\$3,720,370.66
General PAGA Penalties Fund payable to State of CA	<u>\$3,382,962.34</u>

The PAGA Settlement Employees encompassed by the proposed Settlement include (i) all current and former employees of Defendant who worked as KCAs and/or Kids Club Supervisors in California at any time from June 19, 2013 through October 2, 2014; and (ii) all current and former non-exempt employees of Defendant, including but not limited to KCAs and/or Kids Club Supervisors, who worked in clubs in California from October 3, 2014 through the Approval Date of the Settlement. Settlement, ¶ 2.22. Thus, in addition to KCAs and Kids Club Supervisors, the PAGA Settlement Employees include other non-exempt employees such as Service Representatives, Night Service Representatives, Club Attendants, Personal Trainers, Group Exercise Instructors, Facilities Technicians, Juice Bar Attendants and Managers, Athletic Monitors, Fitness Managers, Sales Managers, and Sales Advisors. Cottrell Decl. at ¶ 25. There are approximately 36,500 PAGA Settlement Employees. *Id.* at ¶ 26.

B. Allocations for the PAGA Settlement Employees

Payments to PAGA Settlement Employees will be made from General PAGA Penalties Fund and 558 Civil Penalties Fund. The individual allocations will be calculated on a pro-rata basis using the number of pay periods worked by each employee. Defendant will provide the total number of pay periods worked by each PAGA Settlement Employee and the total number of pay periods worked by all PAGA Settlement Employees during the PAGA Release Period.³ Settlement, ¶ 4.91. The Settlement Administrator will determine each PAGA Settlement Employee's payment using the proportional number of pay periods during which the employee worked. Thus, the Settlement Administrator will perform the following calculation to determine individual awards: Settlement Payment = [25% of General PAGA Penalties Fund + 100% of 558 Civil Penalties Fund] × [pay periods worked by

³ "PAGA Release Period" is defined in the Settlement as the periods (i) from June 19, 2013 through October 2, 2014 for all current and former KCAs and/or Kids Club Supervisors in California; and (ii) from October 3, 2014 through the Approval Date with respect to all current and former non-exempt employees of Defendant in California, including but not limited to KCAs and/or Kids Club Supervisors.

individual PAGA Settlement Employee during PAGA Release Period ÷ total pay periods worked by all PAGA Settlement Employees during the PAGA Release Period]. Settlement, ¶ 4.92. This is a fair and equitable means of allocating the penalties. PAGA Settlement Employees who worked for a longer duration during the Release Period will be receiving proportionally larger payments than those employees who worked for shorter tenures.

As the Settlement payments to the PAGA Settlement Employees are for the compromise of claims for alleged PAGA civil penalties, the payments will be treated as non-wage income with no taxes withheld, and will be reported by the Settlement Administrator on IRS Form 1099s to the respective PAGA Settlement Employee and governmental authorities.⁴ Settlement, ¶ 4.10.

C. Payments to the PAGA Settlement Employees

The payments under the Settlement are triggered by the occurrence of the Effective Date. If no objection is made to the Settlement, the Effective Date is the date on which all of the following have occurred: this Court has approved the Settlement and entered the approval order, both *Madrigal* and *Vorise* have been dismissed with prejudice,⁵ and this Court has entered Judgment.⁶ Settlement, ¶ 2.8. Within 21 days after the Effective Date, Defendant will wire the \$11,000,000.00 Maximum Settlement Amount to the Settlement Administrator and provide a Database that includes the name, last known address, social security number, and the total number of pay periods for each of Defendant's employees in California during the PAGA Release Period. Settlement, ¶ 4.13.3. The payments to PAGA Settlement Employees and the LWDA will be made within 14 days after Defendant's funding of the Maximum Settlement Amount. Settlement, ¶¶ 4.13.4, 4.5. With each check, the Settlement Administrator will include a letter explaining the nature of the payment (a draft of which is attached as an Exhibit to the PAGA Settlement). *Id.* Because this is a PAGA settlement, there is no claims procedure or "opt out"

⁴ The \$15,000.00 General Release Payment to each Named Plaintiff are for the settlement and compromise of both wage and non-wage claims. Each Named Plaintiff will receive two payments: (1) one for \$2,500.00, less applicable withholdings and taxes, with IRS Form W-2, and (2) a second for \$12,500.00 for alleged non-wage damages, including alleged damages for expense reimbursement, penalties and statutory interest, with IRS Form 1099.

⁵ If the Court approves the Settlement, then Plaintiffs *Madrigal* and *Vorise* will file stipulated dismissals without prejudice of their actions within five court days after the Approval Date.

⁶ If an objection is made and the Settlement is approved, but no appeal is filed, then the Effective Date is the date on which the deadline for any appeals expires (i.e., 60 days from when the Judgment is entered), provided that both *Madrigal* and *Vorise* have been dismissed and the Riverside Superior Court thereafter has entered Judgment. If an objection is made and the Settlement is approved, and an appeal is filed, then the Effective Date is the date on which the appeal is finally resolved resulting in a final court order approving this Settlement, provided that both *Madrigal* and *Vorise* have been dismissed and the Riverside Superior Court has entered Judgment.

1 process, and notice will not be provided to the PAGA Settlement Employees in advance of the
2 payments. Cottrell Decl., ¶ 27.

3 Prior to mailing, the Settlement Administrator will confirm and update the addresses in the
4 Database using the National Change of Address database. Settlement, ¶ 4.13.5. Moreover, the Settlement
5 Administrator will promptly re-mail any checks returned as non-deliverable with forwarding address
6 affixed. *Id.* If no forwarding address is provided, the Settlement Administrator will attempt to determine
7 the correct address using a skip-trace and will perform a single re-mailing. *Id.* Checks issued to PAGA
8 Settlement Employees will expire 180 calendar days from the date they are issued; after the 180-day
9 period, the Settlement Administrator will remit any unclaimed funds to the State of California
10 Unclaimed Wages Fund in the name of the PAGA Settlement Employee. Settlement, ¶ 4.13.6.

11 **D. The Releases**

12 The California Supreme Court has explained that a judgment in “a representative action brought
13 by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not
14 only on the named employee plaintiff but also on government agencies and any aggrieved employee not
15 a party to the proceeding.” *Arias*, 46 Cal. 4th at 985-986. Accordingly, the PAGA Settlement Employees
16 release certain PAGA claims under the Settlement that accrue through the Approval Date. Settlement, ¶
17 2.20. These “PAGA Released Claims” are Labor Code wage and hour claims against Defendant (and its
18 affiliates) under the PAGA, including claims under Labor Code Section 558 and the Industrial Welfare
19 Commission Wage Order 2-2001, to the extent they are raised by the allegations in the complaints,
20 amended complaints, and LWDA notices in these actions. *Id.* Thus, the PAGA Released Claims include
21 PAGA claims for violations involving meal periods, rest breaks, off-the-clock work, minimum wages,
22 overtime, unlawful deductions, pay stubs/wage statements, final pay, timing of pay, record
23 keeping/retention, expense reimbursement, and associated claims for attorneys’ fees and costs and
24 interest. *Id.* The PAGA Released Claims include a waiver under California Civil Code Section 1542. *Id.*
25 However, by its definition, the release does not encompass non-PAGA claims for the underlying wage
26 and hour violations under the Labor Code. Upon the Effective Date, each PAGA Settlement Employee
27 will be deemed to have fully released 24 Hour from the PAGA Released Claims. Settlement, ¶ 4.12.1.

28 Additionally, the four Named Plaintiffs in these actions agree to a broader general release of all
29 claims of any kind against Defendant, including claims for interest, attorneys’ fees and costs, restitution,
30 and equitable and declaratory relief. Settlement, ¶ 2.21. In particular, the Named Plaintiffs release the
31 wage and hour claims that they could pursue directly against Defendant for the underlying violations that
32 they allege. *Id.* The Named Plaintiffs would retain these potential Labor Code claims against 24 Hour

1 separate and apart from their PAGA claims, and their general release of these claims pursuant to the
2 \$15,000.00 General Release Payments is a fair compromise. Upon the Effective Date, each the Named
3 Plaintiffs will be deemed to have fully released 24 Hour from any and all claims. Settlement, ¶ 4.12.2

4 **IV. PAGA AND ITS REQUIREMENTS**

5 Enacted in 2003, PAGA provides an enforcement mechanism for California’s Labor Code by
6 enlisting individual plaintiffs as private attorneys general to recover civil penalties for the state, with a
7 share also going to the individual plaintiffs and other employees. Prior to PAGA, the recovery of civil
8 penalties for violations of certain Labor Code provisions were solely the province of the California
9 Department of Labor. *See Arias*, 46 Cal.4th at 980.

10 The Labor Code’s primary purpose is to “ensure employees are not required or permitted to
11 work under substandard unlawful conditions ... and to protect employers who comply with the law from
12 those who attempt to gain a competitive advantage at the expense of their workers by failing to comply
13 with minimum labor standards.” Cal. Lab. Code § 90.5(a). In enacting PAGA, the Legislature expressly
14 stated that “the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection
15 of civil penalties as provided in the Labor Code.” Stats. 2003 ch. 906, § 1(b). The Legislature thus
16 determined that it is “in the public interest to allow aggrieved employees, acting as private attorneys
17 general, to recover civil penalties for Labor Code violations, with the understanding that labor law
18 enforcement agencies were to retain primacy over private enforcement efforts.” *Arias*, 46 Cal.4th at 980.
19 Under PAGA, an aggrieved employee may bring an action personally and on behalf of other current and
20 former aggrieved employees without meeting the requirements of class certification such as typicality
21 and commonality. *Arias*, 46 Cal.4th at 980-88.

22 Under this regime, Plaintiffs Madrigal, Vorise, Holley, and Williams, acting as private attorneys
23 general and proxies for the State of California, filed these actions seeking civil penalties for Defendant’s
24 alleged violations of the Labor Code. Penalties recovered under PAGA “shall be distributed as follows:
25 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and
26 education of employers and employees about their rights and responsibilities under this code ...; and 25
27 percent to the aggrieved employees.” Cal. Lab. Code § 2699(i). In addition, Labor Code § 558 allows
28 Plaintiffs, as the LWDA’s proxy, to recover civil penalties in the form of underpaid wages for
29 themselves and other aggrieved employees, and Section 558(a)(3) provides that these wages shall be
30 paid in whole to the affected employees. *See Thurman v. Bayshore Transit Mgmt.*, 203 19 Cal. App. 4th
31 1112 (2012); *Lawson v. ZB, N.A.* 18 Cal. App. 5th 705, 722-25 (2017), *petition for review granted*, Case
32 No. S246711, 2018 WL 1440035 (Mar. 21, 2018). In other words, Plaintiffs assert that pursuant to

1 *Thurman and Lawson*, Labor Code section 558 is “an express exception to the general rule that civil
2 penalties recovered in a PAGA action are distributed 75 percent to the [LDWA] and 25 percent to the
3 aggrieved employees.” *See Thurman*, 203 Cal. App. 4th at 1145.

4 Any settlement of a PAGA action brought by an aggrieved employee must be approved by the
5 Court. Cal. Lab. Code § 2699(l)(2). However, because PAGA is not subject to class certification
6 procedures, the Court must simply review the settlement and approve it if it is deemed to be fair and
7 reasonable. *See Arias*, 46 Cal. 4th at 976, 986.

8 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS COURT**
9 **APPROVAL**

10 This Court issued a Case Management Order (“CMO”) requesting certain information to
11 evaluate the facts and claims underlying any proposed PAGA settlement. Plaintiffs’ counsel have
12 conducted large amounts of discovery and extensive outreach to the PAGA Settlement Employees. They
13 used this information and data to perform in-depth analyses of the claims and Defendant’s exposure, the
14 results of which are presented here.

15 **A. Nature of the Alleged Violations**

16 Plaintiffs allege three core sets of claims in the actions: meal period and rest break claims, unpaid
17 wage claims, and failure to reimburse necessary business expense claims. Each of these claims expose
18 Defendant to PAGA penalties. Cottrell Decl., ¶ 27; Perez Decl., ¶ 12.

19 **1. Meal Period and Rest Break Claims**

20 The principal claim in all three actions is that 24 Hour systematically failed to provide legally
21 compliant meal periods and rest periods to non-exempt employees during the PAGA period, through
22 understaffing, not providing proper break coverage, failing to schedule meal and rest periods, not
23 providing “paid” rest breaks, and requiring certain employees to work through their meal breaks while
24 off-the-clock. Labor Code Section 512 and Section 11 of the applicable Industrial Welfare Commission
25 Wage Orders provide that an employer may not employ an employee for more than five hours without
26 providing a 30-minute meal period. Pursuant to California Labor Code Section 226.7 and the IWC Wage
27 Orders, employers must also authorize and permit all employees to take one 10-minute rest period per
28 four 4 hours of work, or major fraction thereof, unless the total daily work time is less than 3.5 hours.
29 Plaintiffs allege that Defendant’s practices uniformly prevented the PAGA Settlement Employees from
30 taking legally compliant breaks, and its managers discouraged workers from taking their breaks.
31 Plaintiffs claim that Defendant did not pay the required premium payments for missed breaks. Cottrell
32 Decl., ¶ 28; Perez Decl., ¶ 13.

1 For example, with respect to Personal Trainers, 24 Hour puts the onus on its employees to
2 schedule their own breaks; however, fitness training sessions are often scheduled for four, one-hour long
3 sessions in a row with mandatory team meetings and other required non-session time before and after
4 fitness training sessions. The mere ten minutes between each session is needed for fitness trainers to
5 prepare routines, complete paperwork, meet and greet club members, clean and wipe down the facility,
6 and stock towels and soap dispensers. Moreover, 24 Hour puts hard caps on the amount of non-session
7 time employees are able to use each month and requires that non-session time be reserved for only
8 specific tasks such as team meetings, one-on-one meetings with management, and fitness orientations.
9 Thus, if Personal Trainers had additional time between two scheduled fitness sessions, they were
10 instructed to clock out and not use non-session hours because every non-session hour had to be
11 approved. Cottrell Decl., ¶ 31; Perez Decl., ¶ 14.

12 Plaintiffs contend that Night Service Representatives, who often work alone during the
13 graveyard shifts at Defendant's clubs, typically had insufficient coverage from co-workers to take
14 breaks. As the only worker on site, they could not be relieved of all duties to take a break. Night Service
15 Representatives typically executed "on-duty" meal period agreements at or near the time of hire.
16 Plaintiffs challenge the validity of these "on-duty" meal agreements because the nature of the work
17 performed by employees did not necessitate an "on-duty" meal period under California law, but
18 Defendant stands by the agreements and the issue would be vigorously disputed. Cottrell Decl., ¶ 30;
19 Perez Decl., ¶ 15.

20 KCAs experienced meal and rest break issues because only certified employees could provide
21 their break relief. All employees who supervised children were required to have special certification
22 (including a background check), and there are strict employee to children ratios required under state
23 regulations. Plaintiffs allege that with insufficient staffing to provide break relief, the KCAs remained on
24 duty, as they could not leave the children under their care unattended. Cottrell Decl., ¶ 32; Perez Decl., ¶
25 16.

26 Group Exercise Instructors ("GXIs") experienced rest break issues because they are paid on a
27 piece-rate basis for the number of classes that they teach. Defendant only started compensating its GXIs,
28 such as Plaintiff Holley, for rest period time effective January 1, 2016. Labor Code Section 226.2
29 provides that employers must separately compensate such employees for rest periods and other
30 nonproductive time at or above specified minimum hourly rates. Section 226.2 further requires
31 employers to provide these employees with itemized statements stating the hours and pay rates for
32 compensable rest periods. A piece-rate compensation system that does not separately compensate

employees for rest periods does not comply with California’s minimum wage law. *Bluford v. Safeway*, 216 Cal. App. 4th 864, 872 (2013). Cottrell Decl., ¶ 33; Perez Decl., ¶ 17.

2. Unpaid Wage Claims

Plaintiffs also allege PAGA violations for off-the-clock work performed by non-exempt employees, including Personal Trainers and GXIs. California law defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 578 (2000). Requiring employees to work without compensation violates California’s minimum wage and overtime laws. See Cal. Lab. Code §§ 510, 1194, 1197, 1197.1 and 1198. Cottrell Decl., ¶ 34; Perez Decl., ¶ 18.

Plaintiffs allege that 24 Hour’s policies and mandatory job requirements for Personal Trainers necessitated that they work off-the-clock to complete all the tasks required of them. For example, Plaintiff Holley, who worked as a Personal Trainer and GXI, was sometimes required to clock out at the end of her scheduled shift and complete paperwork for her clients. In addition to training clients, Personal Trainers design comprehensive fitness programs, create, maintain, and regularly update folders for personal training clients, schedule all personal training sessions, and perform general tasks such as restocking towels and soap dispensers, re-racking weights, and wiping down equipment. Because Personal Trainers are scheduled to complete 50-minute training sessions back to back, Plaintiffs allege that 24 Hour unrealistically expects them to complete all of these tasks in the 10-minute time frame between sessions. Plaintiffs allege that, as they unable to do so, the Personal Trainers have no choice but to finish the leftover tasks off-the-clock. Plaintiffs also maintain that Defendant had a company-wide practice of requiring its Personal Trainers and GXIs to communicate with managers and personal training/group instruction clients via their own personal cellular phones, including on their days off and outside of their scheduled shifts. This created additional off-the-clock work. Cottrell Decl., ¶ 34; Perez Decl., ¶ 19.

Plaintiffs also allege that Defendant improperly paid required overtime to non-exempt employees, including GXIs, Personal Trainers and KCAs. Defendant incorrectly used a 0.5 multiplier, instead of a 1.5 multiplier, to compensate these employees for overtime hours. This creates additional PAGA violations for these workers.

3. Failure to Reimburse

Plaintiffs allege that 24 Hour expected Personal Trainers to use their personal cell phones to keep in contact with clients during non-work hours to provide fitness counseling and schedule fitness training

1 sessions, but did not reimburse them. Labor Code Section 2802 provides that “[a]n employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
4 employer” The statutory right to reimbursement cannot be waived. *Stuart v. RadioShack Corp.*, 641
5 F. Supp. 2d 901, 902 (N.D. Cal. 2009); Cal. Lab. Code § 2804. The use of personal cell phones for work-
6 related calls is a reimbursable expense. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137,
7 1140 (2014). Cottrell Decl., ¶ 36; Perez Decl., ¶ 20.

8 Until January 23, 2016, the Defendant did not reimburse Personal Trainers for their personal cell
9 phone costs, when required. Effective January 23, 2016, 24 Hour implemented its “Eligible Team
10 Member Mobile Device Reimbursement Policy” which reimburses certain managers and fitness trainers
11 \$2.08 per pay period. Plaintiffs allege that this amount fails to fairly compensate employees who are
12 expected to use their cellular phones for work related purposes. Cottrell Decl., ¶ 36; Perez Decl., ¶ 21.

13 **B. Number Of Alleged Violations And Total Potential PAGA Penalties**

14 Based on a comprehensive analysis of Defendant’s discovery productions and data, information
15 provided by employees during interviews with Plaintiffs’ counsel, and a review of employee payroll
16 records, Plaintiffs’ counsel were able to calculate Defendant’s maximum potential exposure for the
17 claims at issue, as summarized in the chart below. Cottrell Decl., ¶¶ 37-46; Perez Decl., ¶ 22.

Total Number of Affected Employees		36,500
Total Number of Pay Periods At Issue		1,008,810
Claim	Total No. of Pay Periods with Violations	Maximum Potential Penalties
Meal Period Claim	46,924	\$6,652,020.00
Rest Period Claim	128,281	\$23,783,105.00
Off-the-Clock/Overtime Claim	64,168	\$12,709,590.00
Business Expense Claim	14,641	\$3,210,600.00
Total	264,032	\$ 45,455,315.00

25 Adding together the above violations, Plaintiffs’ counsel estimate that Defendant committed
26 approximately 264,000 PAGA violations for all PAGA Settlement Employees during the PAGA period.
27 The total exposure for the core claims is approximately \$45.5 million. Cottrell Decl., ¶ 47; Perez Decl., ¶
28 23.

1 **C. Factors Supporting A Reduction In Total Penalty Amount Based On The**
2 **Anticipated Trial Result, Weight Of Evidence, Clarity Of Controlling Law, And**
3 **Defendant's Defenses**

4 Defendant has vigorously defended these actions, denying that it violated any section of the
5 Labor Code or Wage Order. Specifically, Defendant maintains that its approximately 230 health and
6 fitness clubs in California vary significantly based on size, employee population, and the types of
7 amenities and services available to club members. Defendant has six different types of clubs, some of
8 which are small and offer few amenities, while others are sprawling and provide a wide array of facilities
9 and amenities. The larger clubs feature employee positions like lifeguard and juice bar attendant that do
10 not exist at the smaller clubs. Cottrell Decl., ¶ 48; Perez Decl., ¶ 24.

11 Defendant argues that its policies, procedures, and training are facially compliant with California
12 labor law. Defendant has produced evidence that new employees go through onboarding and new hire
13 orientation on 24 Hour's employment policies, including the Team Member Handbook. The Team
14 Member Handbook includes facially compliant provisions for meal periods, rest breaks, recording all
15 hours worked, logging time spent working outside of club locations (e.g., for personal trainer responses
16 to client communications outside of normal work hours), travel time, and expense reimbursement. 24
17 Hour employees are also required to complete compliance trainings, including courses on Time & Labor
18 Practices (i.e., time recording) and Wage and Hour practices. Each employee must certify at the end of
19 each pay period that they have reviewed their hours recorded, including meal periods and any manager
20 edits, and that their hours are accurately recorded. The employee is given the option to disagree with the
21 accuracy of their recorded hours, and they will still be paid for the recorded time but the disagreement
22 will be escalated. Employees continue training throughout their employment via online learning courses
23 that address compliance with applicable wage and hour requirements. Cottrell Decl., ¶ 49; Perez Decl., ¶
24 25.

25 Plaintiffs recognize that the Court could credit Defendant for maintaining facially compliant
26 policies and requiring training on wage and hour issues for all employees. Defendant maintained copious
27 records to document employee completion of the training, including for the Named Plaintiffs here.
28 Additionally, Defendant has implemented changes to its wage and hour practices since the filing of these
29 actions. Defendant implemented an online payroll system in October 2016 that allows employees to
30 input and edit their time at any location where they have internet access (i.e., outside of 24 Hour clubs);
31 employees no longer have to complete manual time adjustment forms. Thus, for example, if a Personal
32 Trainer has to take a client call at home, he or she can input this time more easily. Defendant also

1 implemented a mobile device reimbursement policy in February 2016. And as discussed, Defendant
2 began providing rest break compensation to piece-rate employees (i.e., GXIs) effective January 2016.
3 All of these measures reflect a recognition of the importance of wage and hour laws, and there is a
4 significant chance that the Court will credit these efforts by reducing the penalties for Plaintiffs' claims
5 for meal and rest breaks, off-the-clock work, and failure to reimburse business expenses. Cottrell Decl., ¶
6 52-53; Perez Decl., ¶ 26.

7 In sum, Defendant argues that its wage and hour policies which applied to Plaintiffs during the
8 relevant time period complied with California law. Defendant claims that none of the Plaintiffs can prove
9 that he or she is actually an "aggrieved employee." On this basis, and in light of the numerous different
10 positions, compensation methods, scheduling practices, and club locations, Defendant argues that
11 Plaintiffs should not be able to prosecute these actions on a representative basis. Defendant contends that
12 to do so would be unmanageable and would impinge upon its due process rights. Cottrell Decl. at ¶ 50;
13 Perez Decl. at ¶ 27.

14 Applying all defenses and risks of litigation discussed above, including the likelihood of
15 prevailing on a representative basis for all employees, and factoring in the Court's discretion to reduce
16 the civil penalties, Plaintiffs assess a realistic trial value as follows:

- 17 • Plaintiffs' claims for meal break violations are worth approximately \$2.50 million
- 18 • Plaintiffs' claims for rest break violations are worth approximately \$9.8 million
- 19 • Plaintiffs' claim for off-the-clock work and unpaid overtime is worth approximately
20 \$5.7 million
- 21 • Plaintiffs' claim for failure to reimburse Personal Trainers for business expenses is worth
22 approximately \$866,000
- 23 • Plaintiffs' derivative claims (i.e., claims for wage statement violations and waiting-time
24 penalties based on the foregoing claims) are only as strong as the underlying predicate
claims. Their value was realistically assessed at approximately \$3.8 million.

25 Cottrell Decl., ¶¶ 58-59; Perez Decl., ¶ 28.

26 Plaintiffs recognize that there is a significant chance that the Court would decline to stack
27 penalties. The potential exposure described here incorporates the possibility that multiple violations can
28 be assessed for a particular pay period for a particular employee. There is a significant chance that the
29 Court would decline to stack on derivative violations for an employer that maintains comprehensive,
30 facially compliant policies and training and made voluntary changes to improve its wage and hour

practices.⁷ Cottrell Decl., ¶ 54; Perez Decl., ¶ 29.

With respect to derivative claims, such as penalties under Labor Code section 203 as incorporated into the PAGA, Defendant would have argued that no waiting-time penalties can be awarded unless the failure to pay wages is “willful,” an element that Plaintiffs acknowledge would have been difficult to prove. See 8 C.C.R 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due.”); *Smith v. Rae Venter Law Group*, 29 Cal.4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendant would also have argued that an employer’s failure to pay wages is not willful unless it reached the standard of “gross negligence or recklessness.” See *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1201 (2008). Cottrell Decl., ¶ 56; Perez Decl., ¶ 30.

Plaintiffs also recognize that some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced “subsequent violation penalty” or “heightened penalty” only after an employer has been notified that its conduct violates the Labor Code. See *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code). While Plaintiffs regards this interpretation as flawed, they nonetheless recognize that this interpretation has gained traction with some courts. Cottrell Decl., ¶ 57; Perez Decl., ¶ 31.

The PAGA also gives the Court wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, Courts have considered issues including whether the employees suffered actual injury from the violations, whether Defendant was aware of the violations, and the employer’s willingness to fix the violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*, 2011

⁷ Even without stacking derivative violations, a given employee may present multiple PAGA violations (e.g., for meal and rest violations, off-the-clock work, and failure to reimburse) for a particular pay period. There is a chance that the Court would decline to assess multiple violations per pay period per employee.

1 WL 7563047, at *4 (C.D. Cal. 2011). For instance, in the *Lyft* case, the Court found that a \$1 million
2 PAGA settlement was fair and reasonable in light of the unsettled nature of the law, resulting in a \$2.52
3 per pay period award to the aggrieved employees (there were 397,110 pay periods in a \$1 million PAGA
4 settlement, resulting in a 97.5% reduction from the maximum). In *Fleming v. Covidien*, the Court
5 reduced the potential penalties by over 82%, awarding \$500,000 for 28,742 pay periods at issue. Here,
6 Defendant argues the Court should exercise its discretion to significantly reduce the PAGA penalties.
7 Cottrell Decl., ¶ 51; Perez Decl., ¶ 32.

8 Considering the issues, defenses, and the risks, an \$11 million settlement is an excellent result
9 and furthers PAGA's objectives.

10 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR** 11 **AND REASONABLE**

12 For their efforts and the substantial risk they undertook in obtaining a large common fund
13 settlement to benefit the LWDA and the PAGA Settlement Employees, the Parties allocated one-third of
14 the Maximum Settlement Amount to Plaintiffs' Counsel for reasonable attorneys' fees, plus actual
15 litigation costs in an amount not to exceed \$100,000.00. These fees are warranted under the law and
16 within the range commonly awarded in similar cases.

17 **A. Plaintiffs' Counsel Are Entitled to Recover Attorneys' Fees under the Common** 18 **Fund Doctrine in This *Qui Tam* Action**

19 PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and
20 costs. Section 2699(g)(1) of the California Labor Code provides that "[a]ny employee who prevails in
21 any action shall be entitled to an award of reasonable attorney's fees and costs." As discussed below, in a
22 *qui tam* action, reasonable attorneys' fees and costs are typically awarded under the common fund
23 doctrine where, as here, the litigation creates a common fund of money in a specific amount for the
24 benefit of others.

25 A *qui tam* action allows a private person to sue to recover damages or penalties, all or part of
26 which will be paid to the government. "A *qui tam* action 'is a type of private attorney general lawsuit'
27 [citation], in which 'the *qui tam* plaintiff stands in the shoes of the state or political subdivision
28 [citation].'" *People ex rei. Stratham v. Acacia Research Corp.*, 210 Cal. App. 4th 487, 501 (2012). A
29 PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as the proxy of
30 the State's labor law enforcement agency, to sue his or her employer for Labor Code violations and
31 recover civil penalties that otherwise would have been assessed and collected by the LWDA. See
32 *Iskanian*, 59 Cal.4th at 382 ("A PAGA representative action is therefore a type of *qui tam* action.").

1 Indeed, majority of the civil penalties recovered in a PAGA action are paid to the State, with a smaller
2 portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved
3 employees). See Cal. Lab. Code § 2699(i).

4 As here, where a common fund is created in a *qui tam* action by the successful litigation of a
5 plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common
6 fund:

7 Those benefiting from the recovery of the fund, in this case some depositors and
8 eventually the People of the State of California, must bear their share of the cost of
9 litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each
10 claimant's share reduced proportionately. To the extent the judgment relies upon section
1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to
the common fund theory.

11 *Bank of America v. Cory*, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a *qui tam*
12 taxpayer suit against certain banks).

13 Likewise, in these cases, through the successful efforts of Plaintiffs and their attorneys, a
14 common fund was created in the amount of \$11 million for the benefit of the employees and the State of
15 California. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted
16 from the Maximum Settlement Amount under the common fund theory. *Id.* Such fees are deducted as a
17 percentage of the settlement amount. See, e.g., *Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482
18 (1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990);
19 *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing*
20 *Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

21 The California Supreme Court recently upheld the use of the common fund theory of recovery
22 for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 506 (2016). In *Laffitte*, the
23 settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in
24 the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the
25 common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based
26 on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the
27 best results possible for the class. See *Laffitte*, 1 Cal. 5th at 492-494. Indeed, "the percentage method is
28 generally favored in common fund cases because it allows courts to award fees from the fund in a
29 manner that rewards counsel for success and penalties it for failure. *Id.* at 493 (quoting *In re Rite Aid*
30 *Corp. Securities Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

31 California state and federal courts routinely award attorneys' fees equaling one-third of the
32 common fund. See, e.g., *Laffitte v. Robert Half Int'l*, 180 Cal. Rptr. 3d 136, 149 (2016) ("33 1/3 percent

of the common fund is consistent with, and in the range of, awards in other class action lawsuits”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *See Laffitte*, 1 Cal. 5th at 506.

A one-third common fund attorneys’ fee award is also consistent with what courts have awarded in other representative action cases. The following list shows PAGA actions where attorneys’ fees were awarded on a common fund basis of 33.33%:

- *Garcia v. Macy’s*, San Bernardino County Superior Court, Case No. CIVDS1516007 (33.33% fee awarded on \$12,500,000 settlement of a PAGA only case);
- *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-OC-CXC (33.33% fee awarded on a PAGA only case);
- *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

Based on the foregoing, awarding attorneys’ fees based on a one-third percentage of the gross settlement amount is favored by California Courts when a fund established for the common benefit of others is involved, as is the case here. Accordingly, awarding fees on this basis in the amount of one third of the \$11 million Maximum Settlement Amount is reasonable and appropriate.

B. A Fee of One-Third of the Gross Settlement Amount Is Fair and Reasonable and Serves the Public Policy of Attracting Competent Counsel to Litigate These Cases

An award of fees from the gross settlement amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the

percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

Among the factors considered in determining whether the requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). All these factors support an award here of one-third of the common fund.

First, Plaintiffs’ counsel’s efforts resulted in a common fund settlement amount of \$11 million. This is a very large PAGA settlement by any standard, and an especially good result in light of the challenges Plaintiffs would face in litigating the claims on a representative basis and the facially compliant policies that Defendant maintained. This result was achieved by the work and success of Plaintiffs’ counsel, who negotiated the Settlement after extensive preparation, discovery, deposition, a full mediation session, and substantial negotiations. Desai Decl., ¶ 3; Cottrell Decl., ¶¶ 4-22; Perez Decl., ¶¶ 2-10.

Second, Plaintiff faced significant risks going forward with the litigation. Defendant raised various defenses throughout this litigation, any one of which, if successful, could have decimated Plaintiffs’ case. A key risk was, again, Plaintiffs’ ability to litigate on a representative basis, and Defendant argued that the affected employees did not incur the wage and hour violations alleged. Defendant vowed to raise all of its defenses at trial and would continue to raise them on appeal (in fact, Defendant already filed numerous appeals in these actions). Accordingly, Plaintiffs faced serious risks with forward with their cases, and it would have taken several more years to realize any recovery.

Third, Plaintiffs’ counsel are experienced representative action litigators. See Desai Decl., ¶¶ 6-9; Cottrell Decl., ¶ 62-65; Perez Decl., ¶¶ 38-41, Ex. 3, Ho. Decl., ¶¶ 3-4, Exhs. B-C. This experience and expertise, combined with the high quality of work performed in this case by Plaintiffs’ counsel, resulted in the Settlement achieved.

Fourth, Plaintiffs’ counsel have been representing Plaintiffs (and the State of California) in these matters on strictly contingency basis, and had to forego opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment of time, money, and resources, and have done so since the inception of the cases without any payment or compensation. This is no easy burden for any firm. If, despite these hardships and risks, Plaintiffs’ counsel are paid only basic hourly rates multiplied by the number of hours worked on the case, they would not be fairly compensated for the hardships and serious risks they incurred. More generally, plaintiff’s attorneys would not be incentivized to take on similar

1 private attorney general/*qui tam* cases in the future.

2 Fifth, as discussed above, the request for attorneys' fees in the amount of one-third of the
3 common fund falls well within the range accepted by state and federal courts in California in comparable
4 wage and hour actions. The award of a one-third fee recovery under the common fund doctrine was
5 recently approved by the California Supreme Court in *Laffitte*, 1 Cal.5th at 503.

6 For all of these reasons, a common fund fee award in the amount of one-third of the \$11 million
7 common fund created by Plaintiffs and their attorneys is fair and reasonable.

8 **C. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award**

9 The trial court may use an abbreviated lodestar "cross-check" for common fund awards if the
10 court considers it useful. *Laffitte*, 1 Cal. 5th at 504-05. However, under *Laffitte*, this is not meant to
11 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly
12 instructed that "the lodestar calculation, when used in this manner, does not override the trial court's
13 primary determination of the fee as a percentage of the common fund and thus does not impose an
14 absolute maximum or minimum on the fee award." *Id.* at 505. Critically, the Court in *Laffitte*
15 emphasized that only where the "multiplier calculated by means of a lodestar cross-check is
16 **extraordinarily high or low**" should the court "consider whether the percentage should be adjusted so
17 as to bring the imputed multiplier within a justifiable range." *Id.* (emphasis added). Accordingly, when
18 the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for
19 a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not
20 "required to closely scrutinize each claimed attorney-hour." *Id.* at 505. An evaluation may be done by
21 reviewing "counsel declarations summarizing overall time spent." *Id.*

22 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
23 multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In re*
24 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested
25 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.
26 *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community
27 for comparable legal services even though party used in-house counsel). Here, Plaintiffs' counsel's
28 hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and
29 the firms defending class actions, and have been approved by numerous federal and state courts. Here,
30 the aggregate lodestar for the firms who litigated the *Holley*, *Madrigal*, and *Vorise* actions is
31 approximately \$2.53 million. This is comprised of approximately \$525,000 for *Holley* counsel,
32 approximately \$1,115,600 for *Madrigal* counsel, and \$890,000 for *Vorise* counsel. Desai Decl., ¶¶ 3, 10;

1 Cottrell Decl., ¶¶ 66-67; Perez Decl., ¶¶ 34-36, Ho. Decl., ¶¶ 8-9 (detailed breakdowns of each firm’s
2 lodestar by attorney and staff member, and by project, are included in counsel’s declarations).

3 Applying a modest 1.45 multiplier to that lodestar yields the requested fees. A 1.45 multiplier is
4 not “extraordinarily high”—to the contrary, the normal range for a multiplier on a lodestar cross-check
5 “can range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255
6 (2001); *see also See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (multipliers
7 “ranging from one to four are frequently awarded ... when the lodestar method is applied”; affirming fees
8 where the cross-check multiplier is 3.65).

9 Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. *See, e.g., Sutter*
10 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
11 lodestar cross-check); *Chavez.*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class
12 action); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,
13 2015) (approving a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells*
14 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in
15 lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
16 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

17 Indeed, courts following *Laffitte* have reaffirmed that a multiplier between 2 and 4 to be
18 reasonable and not so “extraordinarily high” as to require greater judicial scrutiny. *See Spann v. J.C.*
19 *Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07 multiplier is
20 “well within the range for reasonable multipliers” under *Laffitte*); *Beaver v. Tarsadia Hotels*, No. 11-CV-
21 01842-GPC-KSC, 2017 WL 4310707, at *13 (S.D. Cal. Sept. 28, 2017) (“The one-third fee Class
22 Counsel seeks reflects a multiplier of 2.89 on the lodestar which is reasonable for a complex class action
23 case.”). The lodestar cross-check confirms that Plaintiffs’ fee request is fair and reasonable and should be
24 approved.

25 A cross-check of Plaintiffs’ counsel’s aggregate lodestar, which results in the application of a
26 modest 1.45 multiplier, confirms that a fee award of one third of the \$11 million Settlement amount is a
27 reasonable and fair payment.

28 **D. The Litigation Costs Are Fair and Reasonable**

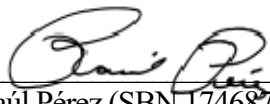
29 Plaintiffs’ counsel request reimbursement of their actual out-of-pocket expenses incurred to
30 prosecute these actions, not to exceed a total of \$100,000.00. Attorneys are permitted to recover their
31 litigation costs and expenses under PAGA and the common fund doctrine. Cal. Lab. Code § 2699(g)(1);
32 *Serrano III*, 20 Cal.3d at 35; *Rider v. County of San Diego*, 11 Cal.App.4th 1410, 1424 n.6 (1992). To

1 date, Plaintiffs' counsel's costs total approximately \$63,610 for all firms. Desai Decl., ¶ 3; Cottrell Decl.,
2 ¶ 71; Perez Decl., ¶ 37, Ho. Decl., ¶ 9. Plaintiffs' counsel incurred costs including mediation fees, filing
3 fees, online research, court reporters, deposition costs, travel to hearings and depositions, and service of
4 process fees. These expenses were incidental and necessary to the effective representation of the PAGA
5 Settlement Employees. Desai Decl., ¶ 3; Cottrell Decl., ¶ 71; Perez Decl., ¶ 37, Ho. Decl., ¶ 9. They are
6 reasonable and uncontested, and should be approved.

7 **VII. CONCLUSION**

8 As set forth herein, the proposed PAGA Settlement provides excellent results for both the State
9 of California and the PAGA Settlement Employees. Plaintiffs respectfully request that the Court approve
10 the Settlement.

11
12 Dated: June 15, 2018



Raúl Pérez (SBN 174687)
Arnab Banerjee (SBN 252618)
Brandon Brouillette (SBN 273156)
Ruhandy Glezakos (SBN 307473)
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

18 Attorneys for Plaintiffs Donna Holley and Paul
19 Williams

20 Carolyn H. Cottrell (SBN 166977)
21 David C. Leimbach (SBN 265409)
22 SCHNEIDER WALLACE COTTRELL
23 KONECKY WOTKYNS LLP
24 2000 Powell Street, Suite 1400
25 Emeryville, California 94608
26 Tel: (415) 421-7100
27 Fax: (415) 421-7105

28 John F. Edgar (*pro hac vice* to be submitted)
29 EDGAR LAW FIRM LLC
30 1032 Pennsylvania Avenue
31 Kansas City, Missouri 64105
32 Tel: (816) 531-0033
Fax: (816) 531-3322

Attorneys for Plaintiff Justin Vorise

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

David Borgen
Laura Ho
GOLDSTEIN BORGEN DARDARIAN & HO
300 Lakeside Drive, Suite 100
Oakland, CA 94612

Aashish Desai
Adrianne De Castro
DESAI LAW FIRM, P.C.
3200 Bristol Street, Suite 650
Costa Mesa, CA 92626

Attorneys for Plaintiff Alyssa Madrigal

Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

[Counsel for Additional Plaintiffs Listed on Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1602246

CLASS ACTION

**NOTICE OF ERRATA MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO APPROVE SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

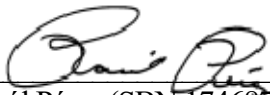
1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiffs hereby provide notice of errata and correction on
3 pages 28 and 29 of the Memorandum of Points and Authorities in Support of Motion to Approve
4 Settlement Pursuant to Private Attorneys General Act of 2004:

5 Here, the aggregate lodestar for the firms who litigated the *Holley*, *Madrigal*, and *Vorise* actions
6 is approximately \$2.68 ~~\$2.53~~ million. This is comprised of approximately \$525,000 for *Holley* counsel,
7 approximately \$1,264,160 ~~\$1,115,600~~ for *Madrigal* counsel, and \$890,000 for *Vorise* counsel. Desai
8 Decl., ¶¶ 3, 10; Cottrell Decl., ¶¶ 66-67; Perez Decl., ¶¶ 34-36, Ho. Decl., ¶¶ 8-9 (detailed breakdowns of
9 each firm's lodestar by attorney and staff member, and by project, are included in counsel's
10 declarations).

11 Applying a modest 1.37 ~~1.45~~ multiplier to that lodestar yields the requested fees. A 1.37 ~~1.45~~
12 multiplier is not "extraordinarily high"—to the contrary, the normal range for a multiplier on a lodestar
13 cross-check "can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
14 224, 255 (2001); *see also See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002)
15 (multipliers "ranging from one to four are frequently awarded ... when the lodestar method is applied";
16 affirming fees where the cross-check multiplier is 3.65).

17
18
19 Dated: June 15, 2018



Raúl Pérez (SBN 174687)
Arnab Banerjee (SBN 252618)
Brandon Brouillette (SBN 273156)
Ruhandy Glezakos (SBN 307473)
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

Attorneys for Plaintiffs Donna Holley and Paul
Williams

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

John F. Edgar (*pro hac vice* to be submitted)
EDGAR LAW FIRM LLC
1032 Pennsylvania Avenue
Kansas City, Missouri 64105
Tel: (816) 531-0033
Fax: (816) 531-3322

Attorneys for Plaintiff Justin Vorise

David Borgen
Laura Ho
GOLDSTEIN BORGEN DARDARIAN & HO
300 Lakeside Drive, Suite 100
Oakland, CA 94612

Aashish Desai
Adrianne De Castro
DESAI LAW FIRM, P.C.
3200 Bristol Street, Suite 650
Costa Mesa, CA 92626

Attorneys for Plaintiff Alyssa Madrigal

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

SEE ATTACHED SERVICE LIST


Signature

SERVICE LIST

Eric Meckley
Jennifer Svanfeldt
Nicole L. Antonopoulos
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, California 94105-1596
Telephone: +1.415.442.1000
Facsimile: +1.415.442.1001
eric.meckley@morganlewis.com
jennifer.svanfeldt@morganlewis.com
nicole.antonopoulos@morganlewis.com
Attorneys for 24 Hour Fitness USA, Inc.

Carolyn H. Cottrell
David C. Leimbach
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
dleimbach@schneiderwallace.com
ccottrell@schneiderwallace.com
Attorneys for Plaintiff Justin Vorise

John F. Edgar
EDGAR LAW FIRM LLC
1032 Pennsylvania Avenue
Kansas City, Missouri 64105
Tel: (816) 531-0033
Fax: (816) 531-3322
jfe@edgarlawfirm.com
Attorneys for Plaintiff Justin Vorise

David Borgen
Laura Ho
GOLDSTEIN BORGEN DARDARIAN & HO
300 Lakeside Drive, Suite 100
Oakland, CA 94612
dborgen@gbdhlegal.com
lho@gbdhlegal.com
Attorneys for Plaintiff Alyssa Madrigal

Aashish Desai
Adrienne De Castro
DESAI LAW FIRM, P.C.
3200 Bristol Street, Suite 650
Costa Mesa, CA 92626
aashish@desai-law.com
adrienne@desai-law.com
Attorneys for Plaintiff Alyssa Madrigal

1 Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
6 1875 Century Park East, Suite 1000
Los Angeles, CA 90067
7 Telephone: (310) 556-4811
8 Facsimile: (310) 943-0396

9 Attorneys for Plaintiffs Donna Holley and Paul Williams

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF RIVERSIDE

12
13 DONNA HOLLEY, and PAUL WILLIAMS, as
14 aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

15 Plaintiff,

16 v.

17 24 HOUR FITNESS USA, INC., a California
18 corporation; and DOES 1 through 10, inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28
29
30
31
32

Case No.: RIC1602246

CLASS ACTION

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION TO APPROVE
SETTLEMENT PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

DECLARATION OF RAUL PEREZ

I, Raul Perez, hereby declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California. I am a Partner at Capstone Law APC (“Capstone”), counsel of record for Plaintiffs Donna Holley and Paul Williams in the above-captioned action. Unless indicated otherwise, I have personal knowledge of the facts recited in this declaration. I make this declaration in support of the Motion to Approve Settlement Pursuant to Private Attorneys General Act of 2004.

2. Over the last several years Defendant 24 Hour Fitness USA, Inc. (“Defendant” or “24 Hour”) has been sued in multiple actions for alleged violations of the Labor Code at its health club facilities throughout California. Three such actions, *Holley, et al. v. 24 Hour Fitness USA, Inc.* (“Holley”), pending in Riverside County Superior Court, *Madrigal v. 24 Hour Fitness USA, Inc.* (“Madrigal”), pending in Orange County Superior Court, and *Vorise v. 24 Hour Fitness USA, Inc.* (“Vorise”), pending in Contra Costa County Superior Court. Together, these related actions seek penalties for 24 Hour’s alleged failure to: (1) pay minimum wages, (2) pay overtime, (3) provide meal breaks, (4) permit and/or authorize rest breaks, (5) pay wages for rest break time to employees paid on a piece-rate basis, (6) furnish complete and accurate wage statements, (7) furnish accurate records, (8) timely pay wages owed during employment, (9) timely pay final wages, and (10) reimburse for all necessary business expenses.

3. Plaintiff Holley worked as a former, non-exempt Group Exercise Instructor and a Personal Trainer at Defendant’s Glendora and Eastvale, California locations from approximately June 2008 to May 2015. Plaintiff Holley filed her action in Riverside Superior Court on February 24, 2016. She alleges unpaid overtime, unpaid minimum wages, failure to provide meal and rest periods, failure to provide itemized accurate wage statements, failure to provide split shift premiums, failure to reimburse necessary business expenses, failure to provide notice under Labor Code section 2810.5, and derivative Labor Code violations.

4. Following the filing of her Complaint, the parties engaged in considerable motion practice. On May 2, 2016, Defendant filed a Motion to Strike Portions of Plaintiff’s Complaint, which was granted in part—without leave to amend as to the claim for violation of Labor Code Section 2810.5, and with leave to amend as to the “aggrieved employee” definition to allow Plaintiff Holley to file a supplemental PAGA notice expanding the scope to all non-exempt employees. After Plaintiff Holley filed her First Amended Complaint (“FAC”), Defendant on July 13, 2016 file a demurrer, arguing that she had failed to exhaust PAGA’s “pre-filing requirements” by failing to provide the LWDA with the

1 requisite notice of the facts and theories supporting her allegations. The Court overruled the demurrer in
2 its entirety.

3 5. For the remainder of 2016 and the beginning of 2017, the *Holley* Parties were embroiled
4 in discovery disputes regarding the scope of initial discovery, requiring two separate informal discovery
5 conferences. At the first informal discovery conference, the Court limited initial discovery to the Eastvale
6 location where Plaintiff Holley worked during the PAGA period. However, after the Supreme Court
7 published its decision in *Williams* (a case successfully litigated by Holley's counsel, Capstone), Plaintiff
8 Holley was subsequently granted leave to file a motion to compel to seek broader discovery.

9 6. In approximately July 2017, Plaintiff Paul Williams, who worked for Defendant as an
10 hourly, non-exempt Overnight Service Representative and later as a Personal Trainer from December
11 2015 to August 2016 at its fitness club location in Fairfield, California, was added as a second named
12 representative in the *Holley* Second Amended Complaint. Shortly thereafter, the Parties began discussing
13 mediation of this action.

14 7. In August 2017, the *Holley* Parties reached an agreement to mediate and refrain from
15 further motion practice until after mediation. The Parties agreed that significant additional discovery was
16 required for a productive mediation, including:

- 17 a. Plaintiff Holley's deposition, which took place over two days on December 7,
18 2017 and February 8, 2018;
- 19 b. Plaintiff Williams's deposition, which occurred on February 20, 2018;
- 20 c. Two PMK depositions, which occurred on February 19, 2018 and February 23,
21 2018;
- 22 d. The production of the names and contact information for all aggrieved
23 employees in 10 randomly selected clubs throughout California;
- 24 e. The production of the time, payroll, and training records for all aggrieved
25 employees in 10 randomly selected clubs throughout California—which were
26 analyzed by the *Holley* Plaintiffs' expert to determine violation rates and PAGA
27 exposure;
- 28 f. The production of aggregate data regarding pay periods, aggrieved employees,
29 meal break premiums, rest break premiums, and reimbursements issued during
30 the PAGA period

31 8. Plaintiff Holley completed the required pre-mediation discovery, and completed an in-
32 depth analysis of Defendant's PAGA exposure.

1 9. On January 31, 2018, in response to the urging of the courts overseeing the three related
2 actions, it was decided to expand the scope of the long-planned mediation by inviting plaintiffs in *Vorise*
3 and *Madrigal* in order to explore a global resolution of all PAGA claims currently pending against 24
4 Hour. The joint mediation session would involve eight years of combined, intense litigation in the three
5 related actions.

6 10. The mediation took place on February 27, 2018 in Oakland, California before Jeffrey
7 Ross, Esq., an experienced and respected wage and hour mediator. The mediation involved serious and
8 intensive arms-length negotiations. At the conclusion of mediation, Mr. Ross presented the Parties with a
9 “mediator’s proposal,” which outlined the principal terms of a global settlement of all three cases. The
10 Parties later accepted, subject to certain conditions, including approval of the Settlement by Defendant’s
11 Board of Directors. On March 20, 2018, Defendant’s Board of Directors approved the terms of the
12 Settlement. The long-form PAGA settlement agreement is attached as Exhibit 1. A copy of the
13 settlement agreement has been e-filed with the LWDA. See Exhibit 2.

14 **THE PAGA SETTLEMENT IS FAIR AND REASONABLE**

15 11. In 2016, PAGA was amended to require the Court to “review and approve any
16 settlement of any civil action filed pursuant to this part.” Cal. Lab. Code § 2699(1)(2). This Court issued
17 a Case Management Order (“CMO”) requesting certain information to evaluate the facts and claims
18 underlying any proposed PAGA settlement. Plaintiffs’ counsel have conducted large amounts of
19 discovery and extensive outreach to the PAGA Settlement Employees. They used this information and
20 data to perform an in-depth analysis of the claims and Defendant’s exposure, a summary of which is
21 provided below.

22 12. Plaintiffs allege four core sets of claims in the actions: meal period and rest break claims,
23 unpaid wage claims, and failure to reimburse necessary business expense claims. Each of these claims
24 expose Defendant to PAGA penalties.

25 13. **Meal Period and Rest Break Claims.** The principal claim in all three actions is that 24
26 Hour systematically failed to provide legally compliant meal periods and rest periods to non-exempt
27 employees during the PAGA period, through understaffing, not providing proper break coverage, failing
28 to schedule meal and rest periods, not provided “paid” rest breaks, and requiring certain employees to
29 work through their meal breaks while off-the-clock. Labor Code Section 512 and Section 11 of the
30 applicable Industrial Welfare Commission Wage Orders provide that an employer may not employ an
31 employee for more than five hours without providing a 30-minute meal period. Pursuant to California
32 Labor Code Section 226.7 and the IWC Wage Orders, employers must also authorize and permit all

employees to take one 10-minute rest period per four 4 hours of work, or major fraction thereof, unless the total daily work time is less than 3.5 hours. Plaintiffs allege that Defendant's practices uniformly prevented the PAGA Settlement Employees from taking legally compliant breaks, and its managers discouraged workers from taking their breaks. Plaintiffs claim that Defendant did not pay the required premium payments for missed breaks.

14. For example, with respect to Personal Trainers, 24 Hour puts the onus on its employees to schedule their own breaks; however, fitness training sessions are often scheduled for four, one-hour long sessions in a row with mandatory team meetings and other required non-session time before and after fitness training sessions. The mere ten minutes between each session is needed for fitness trainers to prepare routines, complete paperwork, meet and greet club members, clean the facility, and stock towels and soap dispensers. Moreover, 24 Hour puts hard caps on the amount of non-session time employees are able to use each month and requires that non-session time be reserved for only specific tasks such as team meetings, one-on-one meetings with management, and fitness orientations. Thus, if Personal Trainers had additional time between two scheduled fitness sessions, they were instructed to clock out and to not use non-session hours because every non-session hour had to be approved.

15. Plaintiffs contend that Night Service Representatives, who often work alone during the graveyard shifts at Defendant's clubs, typically had insufficient coverage from co-workers to take breaks. As the only worker on site, they could not be relieved of all duties to take a break. Night Service Representatives typically executed "on-duty" meal period agreements at or near the time of hire. Plaintiffs challenge the validity of these "on-duty" meal agreements because the nature of the work performed by employees did not necessitate an "on-duty" meal period under California law, but Defendant stands by the agreements and the issue would be vigorously disputed.

16. Kids Club Attendants ("KCAs") experienced meal and rest break issues because only certified employees could provide their break relief. All employees who supervised children were required to have special certification (including a background check), and there are strict employee to children ratios required under state regulations. Plaintiffs allege that with insufficient staffing to provide break relief, the KCAs remained on duty, as they could not leave the children under their care unattended.

17. Group Exercise Instructors ("GXIs") experienced rest break issues because they are paid on a piece-rate basis for the number of classes that they teach. Defendant started compensating its GXIs, such as Plaintiff Holley, for rest period time only after January 1, 2016. Labor Code Section 226.2 provides that employers must separately compensate such employees for rest periods and other

1 nonproductive time at or above specified minimum hourly rates. Section 226.2 further requires
2 employers to provide these employees with itemized statements stating the hours and pay rates for
3 compensable rest periods. A piece-rate compensation system that does not separately compensate
4 employees for rest periods does not comply with California’s minimum wage law. *Bluford v. Safeway*,
5 216 Cal. App. 4th 864, 872 (2013).

6 18. **Unpaid Wage Claims.** Plaintiffs also allege PAGA violations for off-the-clock work
7 performed by non-exempt employees, including Personal Trainers and GXIs. California law defines
8 “hours worked” as “the time during which an employee is subject to the control of an employer, and
9 includes all the time the employee is suffered or permitted to work, whether or not required to do so.”
10 *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 578 (2000). Requiring employees to work without
11 compensation violates California’s minimum wage and overtime laws. See Cal. Lab. Code §§ 510, 1194,
12 1197, 1197.1 and 1198.

13 19. Plaintiffs allege that 24 Hour’s policies and mandatory job requirements for Personal
14 Trainers necessitated that they work off-the-clock to complete all the tasks required of them. For
15 example, Plaintiff Holley, who worked as a Personal Trainer and GXI, was sometimes required to clock
16 out at the end of her scheduled shift and complete paperwork for her clients. In addition to training
17 clients, Personal Trainers design comprehensive fitness programs, create, maintain, and regularly update
18 folders for personal training clients, schedule all personal training sessions, and perform general tasks
19 such as restocking towels and soap dispensers, re-racking weights, and wiping down equipment.
20 Because Personal Trainers are scheduled to complete 50-minute training sessions back to back, Plaintiffs
21 allege that 24 Hour unrealistically expects them to complete all of these tasks in the 10-minute time
22 frame between sessions. Plaintiffs allege that, as they unable to do so, the Personal Trainers have no
23 choice but to finish the leftover tasks off-the-clock. Plaintiffs also maintain that Defendant had a
24 company-wide practice of requiring its Personal Trainers and GXIs to communicate with managers and
25 personal training/group instruction clients via their own personal cellular phones, including on their days
26 off and outside of their scheduled shifts. This created additional off-the-clock work.

27 20. **Failure to Reimburse.** Plaintiffs allege that 24 Hour expected Personal Trainers to use
28 their personal cell phones to keep in contact with clients during non-work hours to provide fitness
29 counseling and schedule fitness training sessions, but did not reimburse them as required by Labor Code
30 Section 2802 (“[a]n employer shall indemnify his or her employee for all necessary expenditures or
31 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
32 her obedience to the directions of the employer ...”).

21. Until January 23, 2016, the Defendant did not reimburse Personal Trainers for their personal cell phone costs. Effective January 23, 2016, 24 Hour implemented its “Eligible Team Member Mobile Device Reimbursement Policy” which reimburses certain managers and fitness trainers \$2.08 per pay period. Plaintiffs allege that this amount fails to fairly compensate employees who are expected to use their cellular phones for work related purposes.

22. **Number Of Alleged Violations And Total Potential PAGA Penalties.** Based on a comprehensive analysis of Defendant’s discovery productions and data, information provided by employees during interviews with Plaintiffs’ counsel, and a review of employee payroll records, Plaintiffs’ counsel were able to calculate Defendant’s maximum potential exposure for the claims at issue, as summarized in the chart below.

Total Number of Affected Employees		36,500
Total Number of Pay Periods At Issue		1,008,810
Claim	Total No. of Pay Periods with Violations	Maximum Potential Penalties
Meal Period Claim	46,924	\$6,652,020.00
Rest Period Claim	128,281	\$23,783,105.00
Off-the-Clock/Overtime Claim	64,168	\$12,709,590.00
Business Expense Claim	14,641	\$3,210,600.00
Total	264,032	\$ 45,455,315.00

23. Adding together the above violations, Plaintiffs’ counsel estimate that Defendant committed approximately 264,000 PAGA violations for all PAGA Settlement Employees during the PAGA period. The total exposure for the core claims is approximately \$45.5 million.

24. **Factors Supporting A Reduction In Total Penalty Amount Based On The Anticipated Trial Result, Weight Of Evidence, Clarity Of Controlling Law, And Defendant’s Defenses.** Defendant has vigorously defended these actions, denying that it violated any section of the Labor Code or Wage Order. Specifically, Defendant maintains that its approximately 230 health and fitness clubs in California vary significantly based on size, employee population, and the types of amenities and services available to club members. Defendant has six different types of clubs, some of which are small and offer few amenities, while others are sprawling and provide a wide array of facilities and amenities. The larger clubs feature employee positions like lifeguard and juice bar attendant that do not exist at the smaller clubs.

25. Defendant argues that its policies, procedures, and training are facially compliant with California labor law. Defendant has produced evidence that new employees go through onboarding and

1 new hire orientation on 24 Hour's employment policies, including the Team Member Handbook. The
2 Team Member Handbook includes facially compliant provisions for meal periods, rest breaks, recording
3 all hours worked, logging time spent working outside of club locations (e.g., for personal trainer
4 responses to client communications outside of normal work hours), travel time, and expense
5 reimbursement. 24 Hour employees are also required to complete compliance trainings, including
6 courses on Time & Labor Practices (i.e., time recording) and Wage and Hour practices. Each employee
7 must certify at the end of each pay period that they have reviewed their hours recorded, including meal
8 periods and any manager edits, and that their hours are accurately recorded. The employee is given the
9 option to disagree with the accuracy of their recorded hours, and they will still be paid for the recorded
10 time but the disagreement will be escalated. Employees continue training throughout their employment
11 via online learning courses that address compliance with applicable wage and hour requirements.

12 26. Plaintiffs recognize that the Court could credit Defendant for maintaining facially
13 compliant policies and requiring training on wage and hour issues for all employees. Defendant
14 maintained copious records to document employee completion of the training, including for the Named
15 Plaintiffs. Additionally, Defendant implemented changes to its wage and hour practices since the filing
16 of these actions. For example, Defendant implemented an online payroll system in October 2016 that
17 allows employees to input and edit their time at any location where they have internet access (i.e., outside
18 of 24 Hour clubs); employees no longer have to complete manual time adjustment forms. Thus, for
19 example, if a Personal Trainer has to take a client call at home, he or she can input this time more easily.
20 Defendant also implemented a mobile device reimbursement policy in February 2016. And as discussed,
21 Defendant began providing rest break compensation to piece-rate employees (i.e., GXIs) effective
22 January 2016. All of these measures reflect a recognition of the importance of wage and hour laws, and
23 there is a significant chance that the Court will credit these efforts by reducing the penalties for Plaintiffs'
24 claims for meal and rest breaks, off-the-clock work, and failure to reimburse business expenses.

25 27. In sum, Defendant argues that its wage and hour policies which applied to Plaintiffs
26 during the relevant time period complied with California law. Defendant claims that none of the
27 Plaintiffs can prove that he or she is actually an "aggrieved employee." On this basis, and in light of the
28 numerous different positions, compensation methods, scheduling practices, and club locations,
29 Defendant argues that Plaintiffs should not be able to prosecute these actions on a representative basis.
30 Defendant contends that to do so would be unmanageable and would impinge upon its due process
31 rights.

32 28. Applying all defenses and risks of litigation discussed above, including the likelihood of

prevailing on a representative basis for all employees, and factoring in the Court's discretion to reduce the civil penalties, Plaintiffs assess a realistic trial value as follows:

- a. Plaintiffs' claims for meal break violations are worth approximately \$2.5 million
- b. Plaintiffs' claims for rest break violations are worth approximately \$9.8 million
- c. Plaintiffs' claim for off-the-clock work and unpaid overtime is worth approximately \$5.7 million
- d. Plaintiffs' claim for failure to reimburse Personal Trainers for business expenses is worth approximately \$866,000
- e. Plaintiffs' derivative claims (i.e., claims for wage statement violations and waiting-time penalties based on the foregoing claims) are only as strong as the underlying predicate claims. Their value was realistically assessed at approximately \$3.8 million.

29. Plaintiffs recognize that there is a chance that the Court would decline to stack penalties. The potential exposure described here incorporates the possibility that multiple violations can be assessed for a particular pay period for a particular employee. There is a chance that the Court would decline to stack on derivative violations for an employer that maintains comprehensive, facially compliant policies and training and made voluntary changes to improve its wage and hour practices.

30. With respect to derivative claims, such as penalties under Labor Code section 203 as incorporated into the PAGA, Defendant would have argued that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiffs may be difficult to prove at trial. See 8 C.C.R 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."); *Smith v. Rae Venter Law Group*, 29 Cal.4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendant would also have argued that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." See *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1201 (2008).

31. Plaintiffs also recognize that some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that its conduct violates the Labor Code. See *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the

Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code). While Plaintiffs regards this interpretation as flawed, they nonetheless recognize that this interpretation has gained traction with some courts.

32. The PAGA also gives the Court wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, Courts have considered issues including whether the employees suffered actual injury from the violations, whether Defendant was aware of the violations, and the employer’s willingness to fix the violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*, 2011 WL 7563047, at *4 (C.D. Cal. 2011). For instance, in the *Lyft* case, the Court found that a \$1 million PAGA settlement was fair and reasonable in light of the unsettled nature of the law, resulting in a \$2.52 per pay period award to the aggrieved employees (there were 397,110 pay periods in a \$1 million PAGA settlement, resulting in a 97.5% reduction from the maximum). In *Fleming v. Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000 for 28,742 pay periods at issue. Here, Defendant argues the Court should exercise its discretion to significantly reduce the PAGA penalties.

33. Considering the issues, defenses, and the risks, an \$11 million settlement is an excellent result and furthers PAGA’s objectives.

LODESTAR AND COST ANALYSIS

34. I have reviewed a summary of Capstone’s billing records, which are maintained during the regular course of business and billed contemporaneously. The following charts sets forth the billable hourly rate and the hours billed by each attorney to the major tasks/phases of the litigation. In the exercise of billing discretion, I voluntarily wrote off over \$35,000.

Lawyer	Title	CA Bar Adm.	Rate	Hours	Fees
Raul Perez	Partner	1994	\$725	127.2	\$92,220.00
Ryan Wu	Partner	2002	\$625	25.5	\$15,937.50
Stan Karas	Fmr. Senior Counsel	2002	\$595	24	\$14,280.00
Arnab Banerjee	Senior Counsel	2007	\$495	156	\$77,220.00
Eduardo Santos	Senior Counsel	2007	\$495	55	\$27,225.00
Jamie Greene	Senior Counsel	2007	\$495	50.5	\$24,997.50
Mao Shiokura	Associate	2009	\$435	38.2	\$16,617.00
Anthony Castillo	Associate	2009	\$435	37.8	\$16,443.00
Robin Hall	Associate	2009	\$435	32.7	\$14,224.50

Lawyer	Title	CA Bar Adm.	Rate	Hours	Fees
Brandon Brouillette	Associate	2010	\$395	344.3	\$135,998.50
Ruhandy Glezakos	Associate	2015	\$295	253.9	\$74,900.50
Jordan Carlson	Associate	2013	\$295	50.9	\$15,015.50
Total				1196	\$525,079.00

Major Tasks/Phases	Hours	Fees
Case Assessment, Development and Administration	70.2	\$28,693.00
Fact Investigation/Development	116.3	\$49,459.50
Pleadings	83.5	\$36,807.50
Other Written Motions and Submissions	202.4	\$91,457.00
Written Discovery	276.5	\$92,565.50
Depositions	153.8	\$66,654.00
Settlement/Non-Binding ADR	293.3	\$159,442.50
Total	1196	\$525,079.00

35. While adjusting our rates to track market increases, Capstone's rates have steadily remained reasonable and competitive, and have been consistently approved by many federal and state courts over the past several years, including this judicial district. *See, e.g., Cuellar v. Towne Park, LLC*, No. PSC1600142 (Riverside County Superior Court Apr. 27, 2018) (approving Capstone's rates for Associates (\$245 to \$420) and Senior Counsel/Partners (\$470 to \$725)); *Williams v. Marshalls of CA, LLC*, No. BC503806 (Los Angeles County Superior Court Feb. 15, 2018) (approving Capstone's rates for Associates (\$420) and Senior Counsel/Partners (\$570 to \$725)); *McKinney v. Blue Shield of California Life & Health Insurance Co.*, No. SC RD CV-CV-15-0183766-000 (Shasta County Superior Court Dec. 2, 2017) (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Chambless v. Islands Restaurants, L.P.*, No. BC458426 (Los Angeles County Superior Court Aug. 22, 2017) (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Linares v. Ann Inc.*, No. BC605635 (Los Angeles County Superior Court Aug. 22, 2017) (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$570 to \$725)); *Grillo v. Key Energy Services, LLC*, No. 2:14-cv-00881-AB-AGR (C.D. Cal. Oct. 13, 2017) (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Newberry v. Cotti Foods California, Inc.*, No. RIC1504918 (Riverside County Superior Court Feb. 9, 2017) (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$570 to \$695)); *Carter v. GMRI, Inc.*, No. RIC1506085 (Riverside County Superior Court Jan. 10, 2017) (approving Capstone's rates for Associates (\$345 to \$470) and Senior Counsel/Partners (\$570 to \$695)); *Rodriguez v. Swissport North America, Inc.*, No. BC441173 (Los

1 Angeles County Superior Court April 17, 2017) (approving Capstone’s rates for Associates (\$370 to
2 \$470) and Senior Counsel/Partners (\$520 to \$695)); *Luxottica Wage and Hour Cases*, No. FCS041512
3 (Solano County Superior Court April 4, 2017) (approving Capstone’s rates for Associates (\$395 to \$470)
4 and Senior Counsel/Partners (\$595 to \$695)); *Emmons v. Quest Diagnostics Clinical Laboratories, Inc.*,
5 No. 1:13-cv-00474-DAD-BAM (E.D. Cal. Feb. 27, 2017) (approving Capstone’s rates for Associates
6 (\$370 to \$495) and Senior Counsel/Partners (\$545 to \$695)); *Rickerd v. OneWest Resources LLC*, No.
7 BC562538 (Los Angeles County Superior Court Jan. 19, 2017) (approving Capstone’s rates for
8 Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$695)); *Nunnally v. Dave & Busters,*
9 *Inc.*, No. 8:16-cv-00855-DOC-KES (C.D. Cal. Jan. 9, 2017) (approving Capstone’s rates for Associates
10 (\$395 to \$495) and Senior Counsel/Partners (\$545 to \$695)); *Ford v. CEC Entertainment, Inc.*, No.
11 3:14-cv-01420-RS (N.D. Cal. Nov. 18, 2016) (approving Capstone’s rates for Associates (\$420 to \$470)
12 and Senior Counsel/Partners (\$545 to \$695)); *Lutin v. Lerner New York, Inc.*, No. BC498443 (L.A.
13 County Super. Ct. Sept. 20, 2016) (approving Capstone’s rates for Associates (\$370-470) and Senior
14 Counsel/Partners (\$695)); *The Children’s Place Retail Stores Wage & Hour Cases*, No. JCCP4790
15 (L.A. County Super. Ct. Sept. 1, 2016) (approving Capstone’s rates for Associates (\$245 to \$470) and
16 Senior Counsel/Partners (\$520 to \$695)); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A.
17 County Super. Ct. July 26, 2016) (L.A. County Super. Ct. Sept. 1, 2016) (approving Capstone’s rates for
18 Associates (\$370 to \$470) and Senior Counsel/Partners (\$545 to \$695)); *King v. Burke Williams, Inc.*,
19 No. BC467906 (L.A. County Super. Ct. Mar. 4, 2015) (“the Court finds that the rates and hours billed to
20 the litigation are fair and reasonable”); *Morales v. Daniel’s Jewelers*, Case No. BC513353 (L.A. County
21 Super. Ct. February 4, 2015) (“the award [of attorneys’ fees is] reasonable in light of [Capstone’s] actual
22 lodestar, which the court finds to be based on reasonable market rates”); *Thompson v. Smart &*
23 *Final, Inc.*, Case No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014) (finding that Capstone had
24 “demonstrated to the Court’s satisfaction that the attorney rates and hours billed to the litigation were
25 reasonable”); *Marquez v. Shakey’s USA, Inc.*, Case No. BC424205 (L.A. County Super. Ct. July 30,
26 2014) (“the hourly rates charged also appear to be reasonable and in line with prevailing rates in the
27 community”).

28 36. Capstone’s rates are comparable to those judicially approved for other plaintiff’s firms,
29 such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-\$630 for non-
30 partners), Wasserman Comden Casselman & Essensten (rates ranging from \$670-750 for partners and
31 \$300-500 for associates), and Blood Hurst & Reardon (\$510-695 for partners). *See Aarons v. BMW of*
32 *North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D. Cal. Apr. 29, 2014)

(also approving rates of Strategic and Capstone). Other courts have approved hourly rates in this range for plaintiff's side law firms in the Southern California area. *See, e.g., Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys in consumer class action); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010) (approving hourly rates between \$445 and \$675); *Faigman v. AT&T Mobility LLC*, 2011 U.S. Dist. LEXIS 15825, * 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650 an hour for partner services and \$500 an hour for associate attorney services); *Richard v. Ameri-Force Mgmt. Servs., Inc.*, No. 37-2008-00096019 (San Diego Super. Ct., Aug. 27, 2010) (\$695 to \$750 an hour for partners; \$495 an hour for associates); *Barrera v. Gamestop Corp.*, No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) (\$700 an hour for partners; \$475 an hour for associates); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010) (\$655 to \$750 an hour for partners; \$300 to \$515 an hour for associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving 2012 partner rates between \$550 and \$850 per hour); and *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.) (approving 2011 partner rates of \$825 to \$700 an hour, associate rates between \$355 and \$405 per hour).

37. To date, Capstone's costs and expenses—costs that would be normally billed to a fee-paying client—consist of the following:

Cost & Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$409.25
Court Fees, Filings & Service of Process	\$6,091.19
Court Reporters, Transcripts & Depositions	\$8,304.65
Delivery & Messenger (UPS, FedEx, messenger, etc.)	\$480.68
Investigation Services	\$35.00
Mediation Fees	\$6,000.00
Postage & Mailings	\$382.51
Research Services (PACER, Lexis, etc.)	\$362.17
Telephone (Long distance, conference calls, etc.)	\$29.05
Travel & Lodging (Airfare, Mileage, Parking, Hotel, etc.)	\$4,213.68
Fountain Consulting, Inc.	\$2,470.00
Total	\$28,778.18

QUALIFICATIONS AND EXPERIENCE

38. I received both my undergraduate degree and my law degree from Harvard University and was admitted to the California Bar in December 1994. I have more than 20 years of litigation experience representing clients in complex litigation in state and federal courts, and since 2011, I have

1 focused exclusively on wage and hour and consumer class actions.

2 39. Capstone Law APC is one of California’s largest plaintiff-only labor and consumer law
3 firms. With over thirty seasoned attorneys, many formerly with prominent class action or defense firms,
4 Capstone has the experience, resources, and expertise to successfully prosecute complex employment
5 and consumer actions.

6 40. Since its founding in 2012, Capstone has emerged as a major force in aggregate
7 litigation, making law on cutting-edge issues and obtaining tens of millions of dollars in recovery for
8 employees and consumers. The firm’s accomplishments include:

- 9 a. In February, 2015, three Capstone attorneys, Glenn A. Danas, Raul Perez, and
10 Ryan H. Wu, were honored with the prestigious California Lawyer of the Year
11 (CLAY) award in labor and employment for their work in the landmark case
12 *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), which
13 preserved the right of California workers to bring representative actions under
14 the Labor Code Private Attorneys General Act (“PAGA”) notwithstanding a
15 representative action waiver in an arbitration agreement.
- 16 b. Recognized as a leading firm in the prosecution of PAGA enforcement actions,
17 Capstone is responsible for some of the most important decisions in this area. In
18 *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone
19 attorneys achieved a landmark decision before the California Supreme Court as
20 to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv.*
21 *Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone
22 attorneys successfully argued that PAGA actions are state enforcement actions
23 not covered by the Class Action Fairness Act.
- 24 c. In April 2017, Capstone obtained another important decision, *McGill v. Citibank*
25 *N.A.*, 2 Cal. 5th 945 (2017). In *McGill*, the California Supreme Court held that
26 the right to seek public injunctive relief under the state’s consumer protection
27 laws cannot be waived by agreement and that consumers need not satisfy class
28 certification requirements to enjoin unfair business practices on behalf of the
29 public.
- 30 d. Capstone serves as class counsel in a number of significant wage and hour
31 settlements, including \$12 million on behalf of a nationwide class of nonexempt
32 tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No.

1 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers
2 in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super.
3 Ct.); and \$9 million on behalf of non-exempt hourly workers in *Dittmar v.*
4 *Costco Wholesale Corp.*, No. 3:14-cv-01156-LAB-JLB (S.D. Cal.).

5 e. Capstone is class counsel in a number of significant consumer actions, including
6 *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.), *Asghari v.*
7 *Volkswagen Group of America*, No. 13-02529 (C.D. Cal.), *Klee v. Nissan North*
8 *America*, Case No. 12-08238 (C.D. Cal.), *MacDonald v. Ford Motor Co.*, 142
9 F. Supp. 3d 884 (N.D. Cal. 2015) (finding action was catalyst for nationwide
10 recall), *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.), *Fernandez v. Home*
11 *Depot U.S.A.*, No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-
12 677 (S.D. Cal.), that have conferred benefits to class members valued in the tens
13 of millions. These benefits include cash payments for statutory violations,
14 complementary automotive repairs, costs reimbursement, parts replacement and
15 extension of express warranties.

16 41. Attached as Exhibit 3 is a true and correct copy of Capstone's firm resume.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed this 18th day of June, 2018, at Los Angeles, California.

20 
21 _____
22 Raul Perez
23
24
25
26
27
28
29
30
31
32

Exhibit 1

1 CAPSTONE LAW APC
Raúl Pérez (SBN 174687)
2 Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
3 Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
4 Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
5 Ruhandy.Glezakos@capstonelawyers.com
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Tel: (310) 556-4811
7 Fax: (310) 943-0396

8 Attorneys for Plaintiffs
Donna Holley and Paul Williams

9 MORGAN, LEWIS & BOCKIUS LLP
10 Eric Meckley (SBN 168181)
eric.meckley@morganlewis.com
11 Andrew P. Frederick (SBN 284832)
andrew.frederick@morganlewis.com
12 Nicole Antonopoulos (SBN 306882)
nicole.antonopoulos@morganlewis.com
13 One Market Street, Spear Street Tower
San Francisco, CA 94105
14 Tel: (415) 442-1000
Fax: (415) 442-1001

15 Attorneys for Defendant
16 24 Hour Fitness USA, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18
19 FOR THE COUNTY OF RIVERSIDE

20 DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
21 Attorneys General Act ("PAGA"),

22 Plaintiff,

23 v.

24 24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

25 Defendants.
26
27

Case No. RIC1602246

**PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT
AND RELEASE**

1 This Private Attorneys General Act (“PAGA”) Settlement Agreement and Release
2 (“Agreement”) is made by and between Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal,
3 and Justin Vorise (“Plaintiffs”), on behalf of themselves and as the authorized proxies and agents
4 for the State of California, and Defendant 24 Hour Fitness USA, Inc. (“Defendant” or “24 Hour
5 Fitness”) (collectively, the “Parties”). The Parties hereby agree to the following settlement
6 (“Settlement”) negotiated in connection with the pending PAGA-only actions entitled *Holley, et*
7 *al. v. 24 Hour Fitness USA, Inc.* (Riverside County Superior Court, Case No. RIC1602246)
8 (“Holley Action”), *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County Superior Court, Case
9 No. 30-2014-00735568-CU-OE-CXC) (“Madrigal Action”), and *Vorise v. 24 Hour Fitness USA,*
10 *Inc.* (Contra Costa County Superior Court, Case No. CIV-MS15-02051) (“Vorise Action”)
11 (collectively, the “Actions”).

12 **1. THE CONDITIONAL NATURE OF THIS AGREEMENT**

13 1.1. This Agreement and all associated exhibit(s) and attachment(s) are made for the
14 purpose of settling the PAGA representative claims, as described further herein, at issue as a
15 result of the Actions. This Agreement and the Settlement it evidences are made in compromise of
16 disputed claims. Because this Agreement involves settlement of PAGA representative action
17 claims, the “superior court shall review and approve any settlement of any civil action filed
18 pursuant to [Labor Code §§ 2698 *et seq.*]” Cal. Lab. Code § 2699(l)(2). Accordingly, the Parties
19 enter into this Agreement and associated Settlement on a conditional basis. If the Riverside
20 Superior Court does not enter the Approval Order and Judgment, and/or the Effective Date does
21 not occur, pursuant to the terms of this Agreement, then this Agreement shall be deemed null and
22 void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for
23 any purpose whatsoever, it shall not constitute or evidence any admission of purported liability
24 against 24 Hour Fitness, and the terms and negotiation of the Agreement shall remain subject to
25 the provisions of California Evidence Code section 1152 and any other analogous rules of
26 evidence that are applicable.

27 1.2. Defendant denies all the allegations asserted in the Actions and also denies any
28 claims for relief, including claims for underlying wages, civil penalties, attorneys’ fees, costs of

1 suit, and interest. Defendant has agreed to resolve the Actions, but to the extent this Agreement is
2 not approved in accordance with its express terms or the Effective Date does not occur,
3 Defendant does not waive, but rather expressly reserves, all rights to challenge all claims and
4 allegations in the Actions upon all procedural and factual grounds, as well as asserting any and all
5 other potential defenses or privileges. Plaintiffs and Plaintiffs' Counsel agree that Defendant
6 retains and reserves these rights, and agree not to argue or present any argument, and hereby
7 waive any argument that, based on this Agreement, Defendant cannot assert any and all potential
8 defenses and privileges if these Actions were to proceed.

9 **2. DEFINITIONS**

10 The following terms, when used in this Agreement, shall have the following meanings:

11 2.1. "558 Civil Penalties Fund" means thirty-six and one-half percent (36.5%) of the
12 portion of the Net Settlement Amount. The 558 Civil Penalties Fund is currently estimated at
13 Two Million Five Hundred Ninety-Two Thousand Seven Hundred Sixteen Dollars and Fifty-Five
14 Cents (\$2,592,716.55).

15 2.2. "Actions" mean the following currently pending civil actions: (1) *Holley, et al. v.*
16 *24 Hour Fitness USA, Inc.* (Riverside County, Case No. RIC1602246); (2) *Madrigal v. 24 Hour*
17 *Fitness USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC); and (3) *Vorise v.*
18 *24 Hour Fitness USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051).

19 2.3. "Approval Date" means the date that the Riverside Superior Court enters the
20 Approval Order.

21 2.4. "Approval Order" means the Riverside Superior Court's Order approving this
22 Private Attorneys General Act Settlement Agreement and Release.

23 2.5. "Attorneys' Fees and Costs" means the attorneys' fees and costs to be requested by
24 Plaintiffs' Counsel and subject to approval by the Riverside Superior Court for Plaintiffs'
25 Counsel's litigation and resolution of the Actions.

26 2.6. "Database" means information in electronic form provided by Defendant to the
27 Settlement Administrator (as defined below) that for each PAGA Settlement Employee includes
28 his or her name, last known address, social security number, and the total number of pay periods

1 the PAGA Settlement Employee worked for Defendant in California during the PAGA Release
2 Period.

3 2.7. "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

4 2.8. "Effective Date" means the latest of the following: (i) provided that no objection
5 is made or filed to the Settlement, the date on which *all* of the following events have occurred:
6 the Riverside Superior Court approves the Settlement and enters the Approval Order, both the
7 Madrigal Action and Vorise Action are dismissed, and the Riverside Superior Court enters the
8 Judgment; (ii) if an objection is made or filed and the Approval Date occurs, but no appeal is
9 filed, then the date on which the deadline for any appeals expires (i.e., 60 days from when the
10 Judgment is entered), provided that both the Madrigal Action and Vorise Action have been
11 dismissed and the Riverside Superior Court has entered the Judgment; and (iii) if an objection is
12 made or filed and the Approval Date occurs, and an appeal is filed, then the date on which the
13 appeal is finally resolved resulting in a final court order approving this Settlement, provided that
14 both the Madrigal Action and Vorise Action have been dismissed and the Riverside Superior
15 Court has entered the Judgment.

16 2.9. "Funding Date" means twenty-one (21) calendar days after the Effective Date.

17 2.10. "General Release Payments" means the amounts to be paid to each of the Plaintiffs
18 as payment for general releases of all claims arising out of their employment with Defendant.

19 2.11. "General PAGA Penalties Fund" means sixty-three and one-half percent (63.5%)
20 of the Net Settlement Amount. The General PAGA Penalties Fund is currently estimated at Four
21 Million Five Hundred Ten Thousand Six Hundred Sixteen Dollars and Forty Five Cents
22 (\$4,510,616.45).

23 2.12. "Holley Action" means the action entitled *Donna Holley, et al. v. 24 Hour Fitness*
24 *USA, Inc.*, Case No. RIC1602246, pending in Riverside Superior Court.

25 2.13. "Judgment" means the judgment that is executed and entered by the Riverside
26 Superior Court pursuant to this Agreement.

27 2.14. "LWDA" means the State of California Labor & Workforce Development Agency.
28

1 2.15. “Madrigal Action” means the action entitled *Madrigal v. 24 Hour Fitness USA,*
2 *Inc.*, Case No. 30-2014-00735568-CU-OE-CXC, pending in the Superior Court of the State of
3 California for the County of Orange.

4 2.16. “Maximum Settlement Amount” is the total gross sum of Eleven Million Dollars
5 and Zero Cents (\$11,000,000.00), which represents the maximum amount payable pursuant to
6 this settlement by Defendant, and which includes all payments to PAGA Settlement Employees,
7 Attorneys’ Fees and Costs, General Release Payments, Settlement Administration Costs, and the
8 payment to the LWDA

9 2.17. “Net Settlement Amount” is the amount remaining after deducting the Attorneys’
10 Fees and Costs, the General Release Payments, and Settlement Administration Costs from the
11 Maximum Settlement Amount.

12 2.18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
13 Cal. Lab. Code §§ 2698 *et seq.*

14 2.19. “PAGA Release Period” means the periods (i) from June 19, 2013 through and
15 including October 2, 2014, with respect to all current and former employees of Defendant who
16 worked in the position(s) of Kids Club Attendant and/or Kids Club Supervisor in California; and
17 (ii) from October 3, 2014, through and including the Approval Date with respect to all current and
18 former non-exempt employees of Defendant, including but not limited to employees who worked
19 in the position(s) of Kids Club Attendants and/or Kids Club Supervisors, who worked in clubs in
20 California.

21 2.20. “PAGA Released Claims” means any and all claims against Releasees that have
22 been or could have been asserted under the PAGA, including under Labor Code Section 558,
23 based upon alleged violations of the Labor Code, the Industrial Welfare Commission Wage Order
24 2-2001 (“Wage Order”), and any other provision of law as alleged in the complaints, amended
25 complaints, LWDA letters, and amended LWDA letters in the Actions, including claims based on
26 meal periods, rest breaks, off-the-clock work, minimum wage, straight time wages, overtime,
27 double time, unlawful deductions, split shift pay, premium pay, pay stubs/wage statements, final
28 pay, timing of pay, record keeping/retention, and expense reimbursement, whether known or

1 unknown, and whether anticipated or unanticipated, that accrue through the Approval Date,
2 whether based on the Wage Order, including, but not limited to, Sections 3, 4, 5, 7, 8, 9, 11, and
3 20, the California Labor Code, including, but not limited to, Sections 201, 202, 203, 204, 204b,
4 210, 221, 223, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197,
5 1197.1, 1198, 2698, 2699 *et seq.*, 2800, 2802, and any other provision of law, as well as all
6 associated claims for penalties, attorneys' fees, and costs and interest. With respect to these
7 PAGA Released Claims *only*, all PAGA Settlement Employees waive their rights under
8 California Civil Code section 1542, which states: "A general release does not extend to claims
9 which the creditor does not know or suspect to exist in his or her favor at the time of executing
10 the release, which if known by him or her must have materially affected his or her settlement with
11 the debtor."

12 2.21. "Plaintiffs' Released Claims" means any and all claims, demands, liens,
13 agreements, contracts, covenants, actions, suits, causes of action, grievances, obligations, debts,
14 expenses, damages, judgments, orders and liabilities of whatever kind or nature in state, federal or
15 local law, or based on any constitutional provision, statute or regulation, or in tort, or in contract,
16 equity or otherwise, whether known or unknown, which arose at any time up to and including the
17 Approval Date, including but not limited to any and all wage and hour and pay related claims
18 under California law, the Fair Labor Standards Act (FLSA), federal, state or local laws and/or
19 ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or
20 unanticipated, including unknown claims covered by California Civil Code Section 1542, as
21 quoted in Section 4.12.3, below, and that were or could have been asserted in these Actions,
22 including but not limited to claims based on meal periods, rest breaks, off-the-clock work,
23 minimum wage, straight time, overtime, double time, unlawful deductions, split shift pay,
24 premium pay, pay stubs/wage statements, final pay, timing of pay, record keeping/retention,
25 expense reimbursement, penalties, and/or liquidated damages under the FLSA, the Wage Order,
26 and/or claims under the Labor Code, including but not limited to Sections 201, 202, 203, 204,
27 204b, 210, 221, 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 510, 512, 558, 1174,
28 1174.5, 1175, 1182 *et seq.*, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and

1 including claims for penalties under the Private Attorneys General Act, 2698 *et seq.*, claims under
2 any and all city and county living wage ordinances, any waiting time penalties that could have
3 been sought, other penalties, related tort, contract, and punitive damages claims, claims for
4 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
5 declaratory relief, and violations of the California Civil Code, the California Government Code,
6 the California Business & Professions Code, section 17200 *et seq.*, and/or 29 U.S.C. §§ 206,
7 211(c) and 215(a).

8 2.22. "PAGA Settlement Employees" mean and include (i) all current and former
9 employees of Defendant who worked in the position(s) of Kids Club Attendant and/or Kids Club
10 Supervisor in California at any time from June 19, 2013 through and including October 2, 2014;
11 and (ii) all current and former non-exempt employees of Defendant, including but not limited to
12 employees who worked in the position(s) of Kids Club Attendants and/or Kids Club Supervisors,
13 who worked in clubs in California from October 3, 2014, through and including the Approval
14 Date.

15 2.23. "Plaintiffs" mean Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and
16 Justin Vorise.

17 2.24. "Plaintiffs' Counsel" means, collectively, Capstone Law APC, Schneider Wallace
18 Cottrell Konecky Wotkyns LLP, Edgar Law Firm LLC, Goldstein, Borgen, Dardarian & Ho, and
19 the Desai Law Firm.

20 2.25. "Releasees" means Defendant 24 Hour Fitness USA, Inc., and its parents,
21 subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and
22 present, and each of their respective trustees, directors, officers, agents, joint employers,
23 attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons
24 acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of
25 them.

26 2.26. "Riverside Superior Court" means the Superior Court of the State of California for
27 the County of Riverside.

1 2.27. “Settlement Administration Costs” mean the amount to be paid to the Settlement
2 Administrator for all costs associated with administering the Settlement, including, but not
3 limited to, all tax document preparation, custodial fees, and accounting fees incurred by the
4 Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any
5 and all communications to PAGA Settlement Employees; all costs and fees associated with
6 issuing settlement payments; and all costs and fees associated with issuing IRS Form 1099s (to
7 the extent required by applicable law) relating to payments made under the settlement; all costs
8 and fees associated with preparing any tax returns and any other filings required by any
9 governmental taxing authority or agency; all costs and fees associated with preparing any other
10 notices, reports, or filings to be prepared in the course of administering the settlement, and any
11 other costs and fees incurred and/or charged by the Settlement Administrator in connection with
12 the execution of its duties under this Agreement.

13 2.28. “Settlement Administrator” means CPT Group, Inc.

14 2.29. “Vorise Action” means the action of *Justin Vorise v. 24 Hour Fitness USA, Inc.*,
15 Case No. CIV-MS15-02051, pending in the Superior Court of the State of California for the
16 County of Contra Costa.

17 **3. RECITALS**

18 3.1. Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and Justin Vorise are
19 currently prosecuting three (3) separate wage and hour actions against Defendant in which
20 Plaintiffs allege claims under the PAGA.

21 3.2. On July 22, 2014, Plaintiff Madrigal, a former Kids’ Club Attendant (“KCA”),
22 filed the Madrigal Action in Orange County Superior Court, alleging a PAGA-only action. Her
23 complaint alleged that Defendant failed to provide KCAs in California with rest periods, failed to
24 provide itemized and accurate wage statements, and failed to maintain accurate payroll records in
25 compliance with California law. In January 2015, Madrigal filed a First Amended Complaint
26 adding allegations that Defendant failed to pay overtime compensation in compliance with
27 California law. Defendant filed a motion for summary judgment, which was denied by the court.
28 The court certified its ruling denying summary judgment for interlocutory review under Code of

1 Civil Procedure § 166.1. Defendant filed a petition for writ of mandate. The Court of Appeal
2 and, thereafter, the California Supreme Court denied Defendant's petitions for writ of mandate.

3 3.3. On November 5, 2015, Plaintiff Vorise, a former Service Representative, Lead
4 Service Representative, and Athletic Monitor, filed the Vorise Action in Contra Costa County
5 Superior Court, alleging that Defendant failed to provide meal periods, failed to provide rest
6 periods, failed to provide itemized accurate wage statements, failed timely to pay wages upon
7 termination, and failed to maintain accurate payroll records. Vorise originally sought to bring his
8 case as a putative class action and PAGA action. In 2016, the court granted Defendant's motion
9 to compel arbitration of Vorise's individual claims, dismiss his putative class claims, sever
10 Vorise's PAGA claims, and stay the action pending arbitration. Vorise thereafter dismissed his
11 individual claims without prejudice, leaving the PAGA claims as the only active claims.
12 Defendant demurred to Vorise's PAGA claims. The court overruled the demurrer, but certified
13 its ruling for interlocutory review under Code of Civil Procedure § 166.1. Defendant filed a
14 petition for writ of mandate. The Court of Appeals and, thereafter, the California Supreme Court
15 denied Defendant's writ petitions.

16 3.4. On February 24, 2016, Plaintiff Holley, a former Group Exercise Instructor and
17 Personal Trainer, filed the Holley action in Riverside Superior Court, alleging a PAGA-only
18 action for alleged unpaid overtime, unpaid minimum wages, failure to provide meal periods,
19 failure to provide rest periods, failure to provide itemized accurate wage statements, failure to pay
20 wages timely upon termination, failure to pay wages timely and appropriately during
21 employment, failure to provide split shift premiums, failure to reimburse necessary business
22 expenses, and failure to provide notice under Labor Code section 2810.5. In September 2017,
23 Holley filed a Second Amended Complaint adding an additional named plaintiff, Paul Williams, a
24 former Night Service Representative and Personal Trainer. The amended complaint included
25 allegations challenging Defendant's on-duty meal period agreement.

26 3.5. Defendant asserts that fitness club employees hold multiple job positions during
27 their employment. For example, Plaintiff Holley worked both as a Group Exercise Instructor and
28 Personal Trainer. Plaintiff Williams worked both as a Personal Trainer and Night Service

1 Representative. Plaintiff Vorise worked as an Athletic Monitor, Service Representative, and lead
2 Service Representative. Defendant asserts that employees oftentimes may work in multiple
3 different job positions within the same pay period.

4 3.6. On or around January 30 and 31, 2018, Defendant filed and served notices of
5 related cases in the Madrigal, Vorise, and Holley Actions, as well as in the following two
6 actions: *Mark Smiley v. 24 Hour Fitness USA, Inc.*, Case No. MSC17-00622 (Contra Costa
7 Superior Court, filed on April 3, 2017); and *Lita Abella v. 24 Hour Fitness USA, Inc.*, Case No.
8 BC658905 (Los Angeles Superior Court, filed on April 24, 2017). The notices of related cases
9 identified all of the then-pending PAGA actions, and also included notification and identification
10 regarding a sixth PAGA action, *Joseph Bullock et al. v. 24 Hour Fitness USA, Inc.*, Case No.
11 RG16806772 (Alameda Superior Court, filed on March 8, 2016), which has been abated/stayed
12 since approximately September 16, 2016, based on the pending Holley Action. On or around
13 February 7, 2018, Vorise's counsel filed and served in the *Bullock* matter a response to the related
14 case filing that identified all of the above pending cases.

15 3.7. The Parties have conducted exhaustive discovery in the Actions. Each of the
16 Plaintiffs has been deposed. In addition, multiple days of person most knowledgeable depositions
17 of Defendant have been taken by Plaintiffs in the Madrigal, Vorise, and Holley Actions. The
18 Parties have propounded and responded to multiple sets of written interrogatories and requests for
19 production of documents in the Actions. The Parties have filed discovery motions seeking
20 additional discovery that resulted in court orders in the Actions. Defendant has produced
21 information and documents/data regarding thousands of employees, including names and contact
22 information, time keeping records, and payroll data.

23 3.8. Following nearly eight years of combined vigorous litigation and at the strong
24 urging of the courts overseeing the Actions, the Parties agreed to participate in a joint mediation
25 of the Actions. The mediation took place on February 27, 2018 in Oakland, California before
26 Jeffrey Ross, Esq., an experienced and respected wage and hour mediator. At the conclusion of
27 mediation, Mr. Ross presented the parties with a "mediator's proposal," which outlined the
28 principal terms of a global settlement of all the Actions, which the Parties later accepted, subject

1 to certain conditions, including approval of the settlement by Defendant's Board of Directors. On
2 March 20, 2018, Defendant's Board of Directors approved the settlement.

3 3.9. Defendant has denied all of the allegations in the Actions, and specifically has
4 denied that it has violated any section of the Labor Code or Wage Order or committed any
5 misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any
6 kind. Defendant further has denied that the Actions may be maintained or prosecuted as
7 representative actions on behalf of any other employees of Defendant.

8 3.10. The Parties understand, acknowledge, and agree that this Agreement constitutes a
9 compromise of PAGA representative claims, and that it is the desire and intention of the Parties to
10 affect a final, complete and binding resolution of the PAGA representative claims, which have
11 been brought on behalf of the State of California. The Parties further acknowledge that this
12 Agreement is a compromise of disputed claims and that nothing in this Agreement shall be
13 construed as an admission or concession by Defendant of any liability.

14 3.11. The Parties and their counsel recognize the continuing expense and significant
15 length of continued proceedings necessary to litigate the disputes through trial and any
16 subsequent appeals. The Parties have also taken into account the uncertainty and risk of the
17 outcome of further litigation, and the difficulties and delays inherent in such litigation. The
18 Parties and their respective counsel are aware of the burdens of proof necessary to establish
19 liability for the claims alleged, the affirmative and other defenses asserted, and the risk that the
20 court could significantly reduce civil penalties, if any, awarded under Labor Code section
21 2699(e)(2). Thus, reaching this Settlement now has the potential for achieving a higher value
22 today than it might have later if the litigation were to continue. Based on the all of the foregoing,
23 Plaintiffs have determined that the settlement is fair and reasonable and promotes the PAGA's
24 objectives.

25 3.12. Under California law, the State of California may assess and collect civil penalties
26 from employers for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§
27 2699 *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by
28 certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged

1 to have been violated,” and the State thereafter decides not to investigate, the employee may, “as
2 an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law
3 enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of
4 himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by
5 aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the
6 aggrieved employees.” *Id.*

7 3.13. Along with the aforementioned PAGA penalties, Plaintiffs contend that “an
8 aggrieved employee acting as the LWDA’s proxy or agent by bringing a PAGA action may
9 likewise recover underpaid wages as a civil penalty under section 558.” *Thurman v. Bayshore*
10 *Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1148 (2012); *Lawson v. ZB, N.A.*, 18 Cal.
11 App. 5th 705, 722-25 (2017), *petition for review granted*, Case No. S246711, 2018 WL 1440035
12 (Mar. 21, 2018). Plaintiffs further contend that Labor Code section 558 provides for a “civil
13 penalty that consists of both the \$50 or \$100 penalty amount and [an amount sufficient to
14 recover] underpaid wages, with the underpaid wages going entirely to the affected employee or
15 employees[.]” *See Thurman*, 203 Cal. App. 4th at 1145. Plaintiffs contend that under *Thurman*
16 and *Lawson*, all remedies provided by Labor Code section 558 are treated as civil penalties. *See*
17 *Thurman*, 203 Cal. App. 4th at 1145 (“[t]hese statements show that the Supreme Court viewed the
18 recovery of underpaid wages under section 558, subdivision (a) as being part of, rather than in
19 addition to, the civil penalty provided by that subdivision”); *Lawson*, 18 Cal. App. 5th at 722
20 (“Section 558, by its terms and as we interpreted it in *Thurman*, expressly provides for civil
21 penalties and hence claims under section 558, including claims for underpaid wages, are
22 cognizable under the PAGA”). Plaintiffs assert that pursuant to *Thurman*, Labor Code section
23 558 is “an express exception to the general rule that civil penalties recovered in a PAGA action
24 are distributed 75 percent to the [LDWA] and 25 percent to the aggrieved employees.” *See*
25 *Thurman*, 203 Cal. App. 4th at 1145.

26 3.14. With respect to Plaintiffs’ contentions as reflected in Paragraph 3.13, Defendant
27 disagrees with the characterization of the recovery of underpaid wages under Labor Code section
28 558 as a “civil penalty” and notes that there currently exists a split in authority as to whether the

1 recovery of wages under Labor Code section 558 constitutes a civil penalty. *Compare Lawson*,
2 18 Cal. App. 5th at 722, with *Esparza v. KS Industries, L.P.*, 13 Cal. App. 5th 1228, 1234 (2017)
3 (finding that the recovery of wages under Labor Code section 558 constitutes “statutory
4 damages,” not “civil penalties”). Defendant does not accept or agree with the contentions stated
5 in Paragraph 3.13 and expressly reserves any and all rights it may have to challenge the assertion
6 that the recovery of wages under Labor Code section 558 constitutes a “civil penalty” in the
7 Actions and/or in other pending or future actions.

8 **4. OPERATIVE TERMS OF THE PAGA SETTLEMENT**

9 The Parties to the Actions agree as follows:

10 4.1. Conditional Nature of the Settlement; Sequencing of Settlement Approval. The
11 Settlement will not become effective, binding, and enforceable—and Defendant will have no
12 obligation whatsoever to fund the Settlement—until and unless the following events occur in the
13 following sequence and order: (1) first, the Riverside Superior Court must approve the Settlement
14 and enter the Approval Order; (2) second, the Madrigal Action and Vorise Action must be
15 dismissed by the Orange County and Contra Costa Superior Courts, respectively; and (3) third,
16 the Riverside Superior Court must enter the Judgment. In addition, even if all these events occur,
17 if any objection is made or filed to the Settlement, then the Settlement will not become effective,
18 binding, and enforceable—and Defendant will have no obligation whatsoever to fund the
19 Settlement—until and unless (a) the deadline for filing an appeal expires without an appeal
20 having been filed; or (b) an appeal is filed, but the appeal is resolved resulting in a final court
21 order approving the Settlement.

22 4.2. Court Approval of the Settlement. The Parties will present this Settlement
23 Agreement to the Riverside Superior Court for approval via a formally noticed motion pursuant to
24 the Court’s standing order at the same time they submit a copy of the Agreement to the LWDA.
25 Plaintiffs’ Counsel will prepare a draft of the noticed motion for approval of the Settlement.
26 Defendant will have five (5) business days to review and comment on the draft for approval prior
27 to it being filed with the Court. The Parties will request that the Riverside Superior Court issue
28 the Approval Order, in the form attached hereto as **Exhibit A**, approving and incorporating by

1 reference the terms and conditions of the Settlement Agreement. If the Riverside Superior Court
2 enters the Approval Order, then Plaintiffs' counsel in accordance with Labor Code Section
3 2699(l)(3) will submit a copy of the Approval Order to the LWDA within ten (10) days of the
4 entry of the Approval Order.

5 4.3. Dismissals with Prejudice of the Madrigal Action and the Vorise Action. Within
6 five (5) court days of the Approval Date, Plaintiffs Madrigal and Vorise will file stipulated
7 dismissals without prejudice of the Madrigal Action and the Vorise Action. Attached hereto as
8 **Exhibits B** and **C** are copies of the stipulated dismissals without prejudice that will be filed with
9 the courts overseeing the Madrigal Action and the Vorise Action, respectively, provided that the
10 Riverside County Superior Court approves the Settlement. To the extent that either the Orange
11 County Superior Court in Madrigal or the Contra Costa County Superior Court in Vorise refuses
12 to enter the dismissal without prejudice of the respective pending action, the Parties agree to work
13 promptly and cooperatively to attempt to secure such dismissal.

14 4.4. Entry of Final Judgment. Within five (5) court days of the date on which both the
15 Madrigal Action and the Vorise Action have been dismissed without prejudice, Plaintiffs Holley
16 and Williams will file a proposed Judgment with the Riverside County Superior Court that
17 incorporates by reference the terms and conditions of the Approval Order and Settlement
18 Agreement and dismisses the Holley Action with prejudice. Plaintiffs also will file with the
19 Riverside County Superior Court copies of the dismissals entered by the courts in the Vorise
20 Action and the Madrigal Action. Attached hereto as **Exhibit D** is a copy of the proposed
21 Judgment that Plaintiffs Holley and Williams will file in the Holley Action, provided that the
22 Settlement has been approved and provided that the Madrigal Action and the Vorise Action each
23 have been dismissed without prejudice. If the Riverside Superior Court enters the Judgment, then
24 Plaintiffs' counsel in accordance with Labor Code Section 2699(l)(3) will submit a copy of the
25 Judgment to the LWDA within ten (10) days of the entry of the Judgment.

26 4.5. Maximum Settlement Amount. Provided that and conditioned upon the Effective
27 Date occurring, Defendant shall pay a Maximum Settlement Amount of Eleven Million Dollars
28 and Zero Cents (\$11,000,000.00) pursuant to the terms of this Agreement.

1 4.6. Settlement Administrator.

2 4.6.1. The Settlement Administrator shall be CPT Group, Inc. The Settlement
3 Administrator will be responsible for administering the Settlement, including establishing a
4 qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA
5 Settlement Employees, the LWDA, Plaintiffs, and Plaintiffs' Counsel. The Settlement
6 Administration Costs will all be paid from the Maximum Settlement Amount; Defendant shall
7 neither owe nor be responsible for paying any administration costs outside of the Maximum
8 Settlement Amount.

9 4.6.2. Based on the Parties' estimates that there are currently approximately
10 Thirty-Six Thousand Five Hundred (36,500) PAGA Settlement Employees, Settlement
11 Administration Costs are estimated at approximately Seventy Thousand Dollars (\$70,000).

12 4.6.3. The actions of the Settlement Administrator shall be governed by the terms
13 of this Agreement, any orders from the Riverside Superior Court, and any agreement by counsel
14 of record regarding communications with the Settlement Administrator.

15 4.6.4. In the event that either Defendant's Counsel or Plaintiffs' Counsel takes the
16 position that the Settlement Administrator is not acting in accordance with the terms of the
17 Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary with
18 the Settlement Administrator or the Riverside Superior Court to attempt to resolve the issue.

19 4.7. General PAGA Penalties Fund. The General PAGA Penalties Fund will be paid to
20 PAGA Settlement Employees and the LWDA. Pursuant to the PAGA, seventy-five percent
21 (75%), of the General PAGA Penalties Fund will be paid to the LWDA, and the remaining
22 twenty-five percent (25%), will be paid to all PAGA Settlement Employees according to the
23 formula in Section 4.9.

24 4.8. Section 558 Civil Penalties Fund. The entire 558 Civil Penalties Fund,
25 approximately \$2,592,716.55, will be paid to PAGA Settlement Employees according to the
26 formula in Section 4.9.

1 4.9. Calculation of Settlement Payments. Payments to PAGA Settlement Employees
2 from the General PAGA Penalties Fund and 558 Civil Penalties Fund will be calculated and
3 issued as follows:

4 4.9.1. Based on its business records, Defendant will calculate and provide to the
5 Settlement Administrator: (i) the total number of pay periods worked by each PAGA Settlement
6 Employee during the PAGA Release Period, and (ii) the total number of pay periods worked by
7 all PAGA Settlement Employees during the PAGA Release Period. Pay periods will not be
8 double-counted.

9 4.9.2. To determine each individual PAGA Settlement Employee's payment from
10 the General PAGA Penalties Fund and 558 Civil Penalties Fund, the Settlement Administrator
11 will use the following formula: Settlement Payment = [25% of General PAGA Penalties Fund +
12 100% of 558 Civil Penalties Fund] × [pay periods worked by individual PAGA Settlement
13 Employee during PAGA Release Period ÷ total pay periods worked by all PAGA Settlement
14 Employees during the PAGA Release Period].

15 4.10. Tax Treatment of PAGA Settlement Payments. Because the settlement payments
16 to PAGA Settlement Employees are payments in compromise and settlement of claims for alleged
17 PAGA civil penalties, these settlement payments will be treated as non-wage income with no tax
18 withholdings to be made, and will be reported, if required by applicable tax laws, by the
19 Settlement Administrator on IRS Form 1099s to the respective PAGA Settlement Employee and
20 applicable governmental authorities. The Settlement Administrator will issue an IRS Form 1099
21 to Plaintiffs' Counsel and applicable governmental authorities for the payment of attorneys' fees
22 and costs in the amount approved by the Court. Plaintiffs agree to hold Defendant harmless from
23 and against any damage or penalty incurred by Defendant as a result of any taxing authority
24 assessing any tax or penalty upon Defendant as a consequence of any tax being due and unpaid on
25 each of their portions of the Maximum Settlement Amount.

26 4.11. General Release Payments. For general releases of all claims Plaintiffs may have
27 against Releasees arising out of their employment with Defendant, Defendant agrees to pay each
28 Plaintiff the sum of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for a total of Sixty

1 Thousand Dollars and Zero Cents (\$60,000.00). Because the General Release Payments are in
2 compromise and settlement of both wage and non-wage claims, a portion of these payments will
3 be subject to withholding and deduction. Each Plaintiff therefore will receive two payments: (1)
4 one payment in the gross amount of Five Thousand Hundred Dollars and Zero Cents (\$5,000.00),
5 less applicable withholdings and taxes, for alleged unpaid wages for which the Settlement
6 Administrator will issue an IRS Form W-2 and (2) a second payment in the amount of Ten
7 Thousand Dollars and Zero Cents (\$10,000.00) for alleged non-wage damages, including alleged
8 damages for expense reimbursement, penalties and statutory interest, for which the Settlement
9 Administrator will issue an IRS Form 1099. The Settlement Administrator will report these
10 payments to the pertinent taxing authorities as required by law. Plaintiffs assume full
11 responsibility for paying all taxes, federal and state, if any, due as a result of the General Release
12 Payments and agree to indemnify Releasees for any penalties, costs, expenses, and fees associated
13 with the failure to withhold and deduct with respect to the non-wage payments to them for which
14 a Form 1099 is issued. Notwithstanding the foregoing, the terms and recitals herein are not
15 intended to provide, and should not be relied on for, tax, legal, or accounting advice. Plaintiffs
16 should consult their own tax advisors regarding the payments described herein. Defendant will be
17 responsible for employer payroll taxes on the portions of the General Release Payments allocated
18 to wages. The Settlement Administrator will pay the General Release Payments to Plaintiffs no
19 later than fourteen calendar (14) days following the Funding Date.

20 4.12. Releases

21 4.12.1. Upon the Effective Date, each PAGA Settlement Employee shall be
22 deemed to have fully, finally, and forever released the Releasees from the PAGA Released
23 Claims for and during the PAGA Release Period, and the Judgment entered by the Riverside
24 Superior Court shall have *res judicata* effect as to each PAGA Settlement Employee with respect
25 to the PAGA Released Claims.

26 4.12.2. Upon the Effective Date, Plaintiffs Donna Holley, Paul Williams, Alyssa
27 Madrigal, and Justin Vorise shall be deemed to have fully, finally, and forever released Releasees
28 from all Plaintiffs' Released Claims through the Approval Date.

1 4.12.3. In addition, Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and
2 Justin Vorise shall be deemed to have expressly waived and relinquished, to the fullest extent
3 permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the
4 Plaintiffs' Released Claims pursuant to Section 1542 of the California Civil Code, which provides
5 as follows:

6 A general release does not extend to claims which the creditor does not know or
7 suspect to exist in his or her favor at the time of executing the release, which if
8 known to him or her must have materially affected his or her settlement with the
debtor.

9 4.13. Settlement Payment Procedures.

10 4.13.1. Seven (7) calendar days after the Effective Date, the Settlement
11 Administrator shall send counsel for Defendant electronic wiring instructions to fund the
12 Maximum Settlement Amount.

13 4.13.2. Fourteen (14) calendar days after Defendant's receipt of electronic wiring
14 instructions from the Settlement Administrator, Defendant will send to the Settlement
15 Administrator the Database. This information shall be treated as and remain confidential and
16 shall be used solely to manage the notice and payment process described herein, shall not be
17 disclosed to anyone (including Plaintiffs' counsel) other than the Settlement Administrator,
18 except to applicable taxing authorities if required, or pursuant to express written authorization of
19 Defendant, the individual in question, or by order of the Riverside Superior Court.

20 4.13.3. Fourteen (14) calendar days after Defendant's receipt of electronic wiring
21 instructions from the Settlement Administrator, Defendant will wire to the Settlement
22 Administrator the amount of Eleven Million Dollars and Zero Cents (\$11,000,000.00) to fund the
23 Settlement.

24 4.13.4. Because this is a PAGA settlement and not a class action settlement, and
25 because there is no claims procedure and no ability to "opt out," there will be no procedure by
26 which the PAGA Settlement Employees must submit claims in order to receive a settlement
27 payment and no prior notice provided to the PAGA Settlement Employees advising them of the
28 PAGA settlement. Fourteen (14) calendar days following the Settlement Administrator's receipt

1 of the settlement funds from Defendant, the Settlement Administrator shall mail a Letter
2 (substantially in the form attached hereto as **Exhibit E**) and a settlement check to each PAGA
3 Settlement Employee in the amount of his or her combined share of the 558 Civil Penalties Fund
4 and General PAGA Penalties Fund.

5 4.13.5. Prior to mailing the Letter and settlement check, the Settlement
6 Administrator shall check the addresses provided in the Database using the National Change of
7 Address database and shall update any addresses accordingly. Any checks returned as non-
8 deliverable on or before the check cashing deadline will be sent promptly via regular First-Class
9 U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, then the
10 Settlement Administrator will promptly attempt to determine the correct address using a skip-
11 trace, or other search using the name, address or Social Security number of the PAGA Settlement
12 Employee involved, and will then perform a single re-mailing.

13 4.13.6. Expiration of Settlement Checks. Checks issued to PAGA Settlement
14 Employees pursuant to this Agreement will expire 180 calendar days from the date they are
15 issued by the Settlement Administrator. After the 180-day period, the Settlement Administrator
16 shall remit any unclaimed funds to the State of California Unclaimed Wages Fund pursuant to the
17 then-applicable instructions of the California State Controller.

18 4.14. Attorneys' Fees and Costs. The Settlement Administrator shall pay to Plaintiffs'
19 Counsel from the Maximum Settlement Amount the amount of attorney's fees (not to exceed
20 Three Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars and Zero Cents
21 (\$3,666,667.00)) and costs (not to exceed One Hundred Thousand Dollars and Zero Cents
22 (\$100,000.00)) that are approved and awarded by the Riverside County Superior Court.
23 Defendant's Counsel will not oppose Plaintiffs' Counsel's request for attorneys' fees not to
24 exceed \$3,666,667 and for costs not to exceed \$100,000. An award by the Riverside County
25 Superior Court of less than the amount of requested attorneys' fees and/or costs shall not be a
26 basis upon which Plaintiffs' Counsel may void this Agreement, and any amounts of requested
27 attorneys' fees or costs not awarded shall be included the Net Settlement Fund. The Settlement
28 Administrator will issue an IRS Form 1099 to Plaintiffs' Counsel as required by IRS regulations.

1 The Settlement Administrator shall pay the amount awarded by the Riverside County Superior
2 Court to Plaintiffs' Counsel no later than fourteen calendar (14) days following the Funding Date.
3 This payment shall include and satisfy all past and future fees and costs incurred to prosecute,
4 settle, and administer this action, including obtaining approval of the settlement and securing
5 dismissals required by the settlement. Plaintiffs and Plaintiffs' Counsel expressly represent that
6 they are not aware of and have no knowledge of any liens filed or placed on this Action by any
7 person or entity.

8 4.15. LWDA Payment. No later than fourteen calendar (14) days following the Funding
9 Date, the Settlement Administrator will issue a payment to the LWDA from the General PAGA
10 Penalties Fund for the LWDA's share of the settlement attributable to claims for civil penalties
11 brought under the PAGA.

12 4.16. Non-Reversionary. This settlement is non-reversionary. Any portion(s) of the
13 requested Attorneys' Fees and Costs not awarded by the Court shall become part of the Net
14 Settlement Fund.

15 4.17. Impact of Non-Approval by Court. Should the Riverside County Superior Court
16 not approve the settlement, the Parties shall meet and confer to make reasonable efforts to address
17 any issues raised by the Court in order to obtain the Court's approval, except that Defendant will
18 not be required under any circumstances to increase the Maximum Settlement Amount or to
19 diminish or lessen the scope and time period of the PAGA Released Claims. If the Parties cannot
20 obtain approval from the Riverside County Superior Court, or if the Effective Date does not
21 occur, then the Parties shall be restored to their litigation positions as of March 1, 2018, and this
22 Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not
23 be referred to or used in this or any other action.

24 4.18. No Right to Object or Opt Out. Because this Settlement is not a class action
25 settlement, but rather a PAGA settlement involving claims on behalf of the State of California, no
26 person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out
27 from being covered by PAGA Released Claims at any time before or after the Approval Order is
28 made.

1 4.19. The Parties agree to work cooperatively to comply with the notice requirements to
2 the LWDA pursuant to Labor Code sections 2699(l)(2) and 2699(l)(3).

3 4.20. Miscellaneous Provisions.

4 4.20.1. Denial of Liability. Neither the acceptance nor the performance by
5 Defendant of the terms of this Agreement, nor any of the related negotiations or proceedings, is or
6 shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of
7 any of the allegations in the Actions, the appropriateness of the PAGA representative claims or
8 actions, the validity of any of the claims that were or could have been asserted by Plaintiffs and/or
9 any PAGA Settlement Employees in the action, or of any liability or wrongdoing of Defendant.
10 Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward each
11 and all of them. Each of the Parties has entered into this Agreement with the intention to avoid
12 further disputes and litigation with the attendant inconvenience, expenses, and contingencies.

13 4.20.2. Cooperation and Execution of Necessary Documents. The Parties agree to
14 cooperate fully with one another to accomplish and implement the terms of this Settlement. Such
15 cooperation shall include, but not be limited to, execution of such other documents and the taking
16 of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The
17 Parties to this Settlement shall exercise reasonable efforts, including all efforts contemplated by
18 this Settlement and any other efforts that may become necessary by court order, or otherwise, to
19 effectuate this Settlement and the terms set forth herein.

20 4.20.3. Enforcement and Continuing Jurisdiction of the Court. Pursuant to
21 California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction
22 over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the
23 terms and intent of the Settlement and this Agreement.

24 4.20.4. No Credit Toward Benefit Plans. Payments to PAGA Settlement
25 Employees as referenced herein will not be used to calculate any additional benefits under any
26 benefit plans to which any PAGA Settlement Employee may be eligible, including, but not
27 limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
28 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that

1 this Settlement Agreement will not affect any rights, contributions, or amounts to which any
2 PAGA Settlement Employee may be entitled under any benefit plans.

3 4.20.5. No Publicity. Plaintiffs and Plaintiffs' Counsel agree not to provide,
4 publish, or disseminate any information about these Actions or this Agreement or the Settlement,
5 except as otherwise required by applicable law, to or via (1) plaintiffs' attorneys' message boards,
6 the California Employment Lawyers Association, or the Consumer Attorneys of California; (2)
7 the media or press, including but not limited to Employment Law 360 (including in response to
8 any inquiries or requests for comment from the press/media); or (3) press releases, website
9 postings, and/or social media comments or postings, and Plaintiffs and Plaintiffs' Counsel
10 affirmatively represent that they have not done so prior to signing this Agreement. Nothing in
11 this paragraph shall prevent Plaintiffs' Counsel from communicating with the PAGA Settlement
12 Employees, the LWDA, the DLSE, or the courts in which the Actions are pending, as may be
13 required to carry out the terms of this Settlement and/or fulfill their ethical responsibilities under
14 the Settlement and to their respective clients.

15 4.20.6. Neither Plaintiffs' Counsel nor any other attorneys acting for, formerly
16 acting for, or purporting to act for, Plaintiffs or any of the PAGA Settlement Employees may
17 recover or seek to recover any amounts for attorneys' fees, costs, or disbursements from
18 Releasees or from the Maximum Settlement Amount for any of the Released Claims during the
19 PAGA Release Period, except as expressly provided herein.

20 4.20.7. Authorization to Enter into Settlement Agreement; Representation by
21 Counsel. Plaintiffs represent and warrant that they have the right and exclusive authority to
22 execute this Agreement and that they have carefully read and understand the full contents of this
23 Agreement and are voluntarily entering into this Agreement after having received legal advice
24 from Plaintiffs' Counsel with respect to the advisability of making the Settlement provided for
25 herein and the advisability of executing this Agreement.

26 4.20.8. Acknowledgement that the Settlement is Fair, Adequate and Reasonable.
27 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the
28 PAGA Released Claims and have arrived at this Settlement after significant and extensive

1 litigation and discovery and due diligence and arm's-length negotiations by experienced counsel
2 with the involvement of a neutral third-party mediator. The Parties further acknowledge that they
3 are each represented by competent counsel and that they have had an opportunity to consult with
4 their respective counsel regarding the fairness, adequacy, and reasonableness of this Settlement

5 4.20.9. No Prior Assignments. Plaintiffs represent and warrant that they have not
6 assigned or transferred or purported to assign or transfer to any person or entity, any claim or
7 portion thereof, or interest therein, which is or may be subject to this Agreement, and agree to
8 indemnify, defend, and hold Releasees harmless from and against any and all claims based on or
9 arising out of any such assignment or transfer, or purported assignment or transfer, of any claims
10 or any portion thereof or interest therein.

11 4.20.10. Entire Agreement. This Agreement sets forth the entire agreement
12 between the Parties hereto and fully supersedes any and all prior and/or supplemental
13 understandings, whether written or oral, between the Parties concerning the subject matter of this
14 Agreement. Any modification to this Agreement must be in writing and signed by all Plaintiffs
15 and Plaintiffs' Counsel and an authorized officer of 24 Hour Fitness and Defendant's Counsel.
16 This Agreement may not be changed, altered, or modified, except in writing signed by the Parties
17 hereto and approved by the Riverside County Superior Court.

18 4.20.11. Binding on Successors and Assigns. This Agreement shall be binding
19 upon and inure to the benefit of the Parties hereto, and their respective heirs, trustees, executors,
20 administrators, successors, and assigns.

21 4.20.12. Execution and Counterparts. This Agreement may be executed in
22 counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
23 scanned copies of the signature pages, will be deemed to be one and the same instrument and
24 shall have the same force and effect as if all signatories had signed the same instrument.

25 4.20.13. Captions. Paragraph titles or captions contained in the Agreement are
26 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
27 describe the scope of this Agreement, or any provision thereof.

1 4.20.14. Mutual Preparation. This Agreement shall be construed and interpreted
2 as if all of its language were prepared jointly by the Parties. No language in this Agreement shall
3 be construed against a Party on the ground that such Party drafted or proposed that language.

4 4.20.15. Except for the purposes of effectuating and enforcing the terms of this
5 Agreement, which includes but is not limited to barring and/or dismissing other claims that are
6 released by *res judicata* pursuant to this Agreement, neither this Agreement nor any of its terms
7 nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received
8 as, or deemed to be evidence for any purpose adverse to Defendant and/or any of the Releasees,
9 including but not limited to, evidence of a presumption, concession, indication, or admission by
10 any of the Releasees of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
11 disclosed, referred to, or offered in evidence against Defendant and/or any of the Releasees in any
12 other civil, criminal, or administrative action or proceeding.

13 4.20.16. Binding Agreement. The Parties warrant that they understand and have
14 full authority to enter into this Settlement, and further intend that this Settlement Agreement will
15 be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
16 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
17 provisions that otherwise might apply under federal or state law.

18 4.20.17. California Law Governs. The rights and obligations of the Parties under
19 this Agreement shall be construed and enforced in accordance with, and governed by, the laws of
20 the State of California. California law shall govern the interpretation of this Agreement even if a
21 choice of law analysis under state or federal law would dictate that another forum's law be
22 applied.

23 4.20.18. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
24 however, that Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the
25 amount they request from the Court, and any Party may appeal any court order that materially
26 alters the Settlement's terms.

27 4.20.19. Waiver. No waiver of any condition or covenant contained in this
28 Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be

1 considered to imply or constitute a further waiver by such party of the same or any other
2 condition, covenant, right or remedy.

3 4.20.20. Enforcement Action. In the event that one or more of the Parties
4 institutes any legal action or other proceeding against any other Party or Parties to enforce the
5 provisions of this Settlement or to declare rights and/or obligations under this Settlement, the
6 successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties
7 reasonable attorneys' fees and costs, including expert witness fees incurred in connection with
8 any enforcement actions.

9 4.20.21. Invalidity of Any Provision. Before declaring any provision of this
10 Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the
11 fullest extent possible consistent with applicable precedents so as to define all provisions of this
12 Settlement Agreement valid and enforceable. Except as provided below, if any provision of this
13 Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be
14 deemed severed and deleted from this Agreement, and neither that provision nor its severance and
15 deletion shall affect the validity of the remaining provisions. If the Court invalidates or amends a
16 provision that either of the Parties in good faith considers to be a material term of this Agreement,
17 then that Party shall have the option to send a written notice to the other Party no later than
18 fourteen (14) calendar days after the applicable Court order that it wishes to void the entire
19 Agreement and to restore the Parties to their litigation positions prior to the execution of this
20 Agreement. If the Parties are thereafter unable to resolve the issue by reasonable efforts, this
21 Agreement in its entirety shall be deemed null and void, shall be of no force or effect whatsoever,
22 and shall not be referred to or used for any purpose whatsoever. Notwithstanding the foregoing,
23 no portion of any release contained herein may be deemed severed or deleted from this
24 Agreement except upon express agreement in writing by the applicable Released Party(ies).

25 4.20.22. Destruction of PAGA Settlement Employee Contact Information.
26 Plaintiffs and Plaintiffs' Counsel agree that within ten (10) calendar days after the Effective Date,
27 they and each of them will either return to Defendant's counsel or destroy all lists, documents,
28 data, compilations and other records that contain any PAGA Settlement Employees' names and

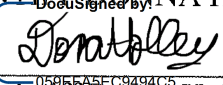
contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such records, then they must provide a written representation to Defendant's counsel expressly affirming that they have completed such destruction in its entirety.

IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties and their duly authorized attorneys, as of the date(s) and year herein set forth.

Dated: 6/4/2018, 2018

PLAINTIFF DONNA HOLLEY

By



Plaintiff Donna Holley

Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

By

Plaintiff Paul Williams

Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

By

Plaintiff Alyssa Madrigal

Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

By

Plaintiff Justin Vorise

Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

By

Name:
Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
 2 records, then they must provide a written representation to Defendant's counsel expressly
 3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
 5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6
 7 Dated: _____, 2018

PLAINTIFF DONNA HOLLEY

8 By _____
 Plaintiff Donna Holley

9
 10 Dated: 6/4/2018, 2018

PLAINTIFF PAUL WILLIAMS

11 By Paul Williams
 Plaintiff Paul Williams

12
 13 Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

14 By _____
 Plaintiff Alyssa Madrigal

15
 16 Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

17 By _____
 Plaintiff Justin Vorise

18
 19 Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

20 By _____
 Name:
 Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
2 records, then they must provide a written representation to Defendant's counsel expressly
3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6
7 Dated: _____, 2018

PLAINTIFF DONNA HOLLEY

8 By _____
9 Plaintiff Donna Holley

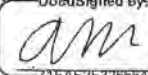
10 Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

11 By _____
12 Plaintiff Paul Williams

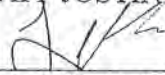
13 Dated: 6/5/2018 10:36:58 AM PDT
_____, 2018

PLAINTIFF ALYSSA MADRIGAL

14 By  _____
15 Plaintiff Alyssa Madrigal

16 Dated: 06/05/2018
_____, 2018

PLAINTIFF JUSTIN VORISE

17 By  _____
18 Plaintiff Justin Vorise

19 Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

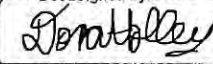
20 By _____
21 Name:
22 Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
 2 records, then they must provide a written representation to Defendant's counsel expressly
 3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
 5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6 Dated: 6/4/2018, 2018

PLAINTIFF DONNA HOLLEY

By 
 Plaintiff Donna Holley

7 Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

By _____
 Plaintiff Paul Williams

8 Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

By _____
 Plaintiff Alyssa Madrigal

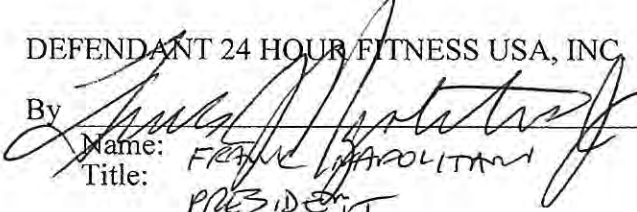
9 Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

By _____
 Plaintiff Justin Vorise

10 Dated: 6/9/, 2018

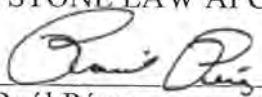
DEFENDANT 24 HOUR FITNESS USA, INC.

By 
 Name: FRANK CAROLITANI
 Title: PRESIDENT

APPROVED AS TO FORM AND CONTENT

Dated: June 5, 2018

CAPSTONE LAW APC

By: 

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: _____

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____

David Borgen

Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs

By: _____

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAILLAW FIRM, P.C.

By: Aashish Desai
Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: June 5, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: David Borgen Laura L. Ho

David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS

By: _____

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAILLAW.FIRM, P.C.

By: Aashish Desai

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____

David Borgen

Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: 6-5, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNIS

By: Carolyn H. Cottrell

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____
Raúl Pérez

Attorneys for Plaintiffs Donna Holley and Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: Aashish Desai
Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: 6-5, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYN

By: Carolyn H. Cottrell
Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: 6-11, 2018

EDGAR LAW FIRM LLC

By: John F. Edgar
John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____
Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: _____
Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS

By: _____
Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

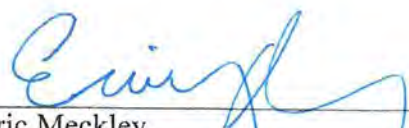
By: _____
John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: June 8, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 
Eric Meckley

Attorneys for Defendant
24 Hour Fitness USA, Inc.



EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. RIC1602246

**[PROPOSED] ORDER APPROVING
PAGA SETTLEMENT**

Judge: Hon. Craig G. Riemer
Dept: 5

The Parties have filed a Motion for Approval of PAGA Settlement. The Court has reviewed the materials and information submitted by the Parties and finds and orders as follows:

1. In February 2018, Defendant 24 Hour Fitness USA, Inc. participated in a joint mediation with the plaintiffs and their respective counsel in three (3) pending PAGA actions against Defendant: the present action, and two other pending actions entitled *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC) ("Madrigal Action"), and *Vorise v. 24 Hour Fitness USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051) ("Vorise Action") (collectively, the "Actions").

2. The plaintiffs in the Actions (Donna Holley, Paul Williams, Alyssa Madrigal,

1 and Justin Vorise, hereinafter collectively as “Plaintiffs”), on behalf of themselves and as the
2 authorized proxies/agents for the State of California, and Defendant 24 Hour Fitness USA,
3 Inc. (“Defendant” or “24 Hour Fitness”) (collectively, the “Parties”) have agreed to a
4 Settlement of the Actions.

5 3. The Court hereby grants approval of the Settlement based on the terms set
6 forth in the Parties’ Private Attorneys General Act Settlement Agreement and Release (the
7 “Settlement Agreement” or the “Settlement”). All defined terms contained herein shall have
8 the same meanings as set forth in the Settlement Agreement. The Settlement Agreement is
9 attached hereto as **Exhibit 1**.

10 4. The Settlement Agreement was executed by Plaintiffs, Plaintiffs’ counsel,
11 Defendant, and Defendant’s counsel. The Court finds that the Settlement is entitled to
12 judicial approval, and meets all of the requirements for approval of a settlement under the
13 PAGA, including that the Parties complied with Labor Code § 2699(l)(2) by submitting a
14 copy of the Settlement Agreement to the California LWDA.

15 5. Pursuant to Labor Code § 2699(l)(2), the Court has reviewed the settlement
16 and finds the Settlement of PAGA claims described therein to be fair, adequate and
17 reasonable. The Court also finds that the LWDA has not objected to the terms of the
18 Settlement. The Court further finds that no other objection to the Settlement has been
19 received by the Court.

20 6. The Court approves and confirms the release and waiver of claims as provided
21 for in the Settlement Agreement. Pursuant to the California Supreme Court decision in *Arias*
22 *v. Superior Court* (2009) 46 Cal.4th 969, 986, “with respect to the recovery of civil penalties,
23 nonparty employees as well as the government [i.e., the State of California] are bound by the
24 judgment in an action brought under the [PAGA]” As defined in the Settlement
25 Agreement, the non-party employees who are covered and bound by this Settlement and its
26 waiver and release provisions are: (i) all current and former Kids Club Attendants and Kids
27 Club Supervisors Defendant has employed in California at any time from June 19, 2013
28 through and including October 2, 2014; and (ii) all current and former non-exempt

1 employees, including Kids Club Attendants and Kids Club Supervisors, Defendant has
2 employed at fitness clubs in California at any time from October 3, 2014 through and
3 including the date of this Order.

4 7. The Court also finds that the requested attorneys' fees and costs, the named
5 Plaintiffs' individual settlement payments, and costs of administration as set forth in the
6 Settlement are reasonable and hereby are approved.

7 8. As provided for in the Settlement Agreement, the Settlement will not become
8 effective, binding, and enforceable—and Defendant will have no obligation whatsoever to
9 fund the Settlement—until and unless the following additional events occur (1) the *Madrigal*
10 Action and the *Vorise* Action are dismissed and (2) this Court enters a final Judgment. The
11 Parties shall promptly submit to this Court copies of the orders of dismissal obtained in the
12 Madrigal Action and the Vorise Action. Following receipt of those dismissals, it is the intent
13 of this Court to enter Judgment consistent with this Order.

14 9. In addition, if any objection is made or filed to the Settlement, the Settlement
15 will not become effective, binding, and enforceable—and Defendant will have no obligation
16 whatsoever to fund the Settlement—until and unless (a) the deadline for filing an appeal
17 expires without an appeal having been filed or (b) an appeal is filed but the appeal is resolved
18 resulting in a final court order approving the Settlement.

19 10. The Settlement is not an admission by Defendant, nor is this Order a finding
20 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the
21 Settlement Agreement, nor any document referred to herein, nor any action taken to carry out
22 the Settlement, may be construed as, or may be used as, an admission of any fault,
23 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

24 11. The Court shall retain continuing jurisdiction over the Parties to this action to
25 ensure effectuation of the Settlement in accordance with the terms of the Settlement and this
26 Order.

27 12. Plaintiffs shall submit a copy of this Order to the LWDA within ten (10) days
28 of entry of this Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: _____

Hon. Craig G. Riemer
Judge of the Superior Court

EXHIBIT B

1 MORGAN, LEWIS & BOCKIUS LLP
Eric Meckley, Bar No. 168181
2 eric.meckley@morganlewis.com
One Market, Spear Street Tower
3 San Francisco, California 94105-1596
Telephone: +1.415.442.1000
4 Facsimile: +1.415.442.1001

5 Attorneys for Defendant
24 HOUR FITNESS USA, INC.

6 DESAI LAW FIRM, P.C.
7 Aashish Y. Desai, Bar No. 187394
aashish@desai-law.com
8 Adrienne De Castro, Bar No. 238930
adrienne@desai-law.com
9 3200 Bristol St., Suite 650
Costa Mesa, CA 92626
10 Telephone: (949) 614-5830
Facsimile: (949) 271-4190

11 GOLDSTEIN, BORGEN, DARDARIAN & HO
12 David Borgen, Bar No. 99354
dborgen@gbdhlegal.com
13 Laura L. Ho, Bar No. 173179
lho@gbdhlegal.com
14 300 Lakeside Drive, Suite 1000
Oakland, CA 94612
15 Tel: (510) 763-9800
Fax: (510) 835-1417

16 Attorneys for Plaintiff
17 ALYSSA MADRIGAL

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ORANGE, CIVIL COMPLEX CENTER
20

21 ALYSSA MADRIGAL, on behalf of herself
22 and all others similarly situated, and on behalf
of all other "aggrieved" employees,

23 Plaintiffs,

24 vs.

25 24 HOUR FITNESS USA, INC., a California
26 Corporation dba 24 HOUR FITNESS; and
DOES 1-10, inclusive.

27 Defendants.
28

CASE NO.: 30-2014-00735568-CU-OE-CXC

Assigned For All Purposes To:
The Hon. William D. Claster, Dept CX-102

**STIPULATION AND [PROPOSED]
ORDER DISMISSING CASE WITHOUT
PREJUDICE**

Complaint Filed: July 22, 2014

1 Plaintiff Alyssa Madrigal ("Plaintiff"), on behalf of herself and as an authorized
2 proxy/agent for the State of California, and Defendant 24 Hour Fitness USA, Inc. ("Defendant")
3 (collectively, "the Parties") submit this Stipulation and [Proposed] Order dismissing the case
4 without prejudice:

5 WHEREAS, on July 22, 2014, Plaintiff, a former Kids' Club Attendant ("KCA") filed the
6 pending Private Attorney General Act ("PAGA") action in this Court. The original Complaint
7 alleged that Defendant failed to provide KCAs in California with rest periods and accurate wage
8 statements and failed to maintain accurate payroll records in compliance with California law.

9 WHEREAS, on January 5, 2015, Plaintiff filed a First Amended Complaint adding
10 allegations that Defendant failed to pay overtime compensation to KCAs. Plaintiff sought to
11 represent allegedly "aggrieved" current and former KCA employees from June 19, 2013 to the
12 present.

13 WHEREAS, on February 27, 2018, the Parties mediated this case with Jeffrey Ross, Esq.,
14 an experienced wage and hour mediator. The mediation was a joint mediation with two other
15 pending PAGA-only actions against Defendant, *Holley, et al. v. 24 Hour Fitness USA, Inc.*
16 (Riverside County, Case No. RIC1602246) ("the Holley Action") and *Vorise v. 24 Hour Fitness*
17 *USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051) ("the Vorise Action") (this
18 Action, the Holley Action, and the Vorise Action are collectively referred to as "the Actions"),
19 and the respective plaintiffs and counsel from those other actions participated in the mediation.

20 WHEREAS, on _____, 2018, the parties executed a Private Attorneys General Act
21 Settlement Agreement and Release resolving all claims in the Actions on a representative basis.

22 WHEREAS, the parties presented the global PAGA settlement for review and approval by
23 the court in the Riverside County Superior Court, where the Holley action is pending. On
24 _____, 2018, the Riverside County Superior Court in the Holley action approved the
25 PAGA settlement. Attached as **Exhibit A** is a true and correct copy of the Approval Order that
26 the Holley court issued, which includes a copy of the PAGA Settlement Agreement. Pursuant to
27 Labor Code § 2699(l)(2), the court in Holley reviewed the settlement and found the Settlement of
28 PAGA claims described therein to be fair, adequate and reasonable.

1 WHEREAS, the Riverside County Superior Court's approval of the PAGA settlement
2 fully resolves any and all claims pending in the Madrigal action.

3 WHEREAS, the Parties in the pending action agreed that within five (5) court days of the
4 Riverside County Superior Court's approval of the PAGA Settlement that Plaintiff would file a
5 stipulated dismissal without prejudice of this action.

6 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between
7 the undersigned that the Court dismiss this case without prejudice and close the case.

8 **IT IS SO STIPULATED.**

9
10 Dated: _____, 2018

DESAI LAW FIRM, P.C.

11
12 _____
Aashish Y. Desai
Adrianne De Castro

13 Attorneys for Plaintiff
14 ALYSSA MADRIGAL

15 Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

16
17 _____
David Borgen
Laura L. Ho

18 Attorneys for Plaintiff
19 ALYSSA MADRIGAL

20 Dated: _____, 2018

MORGAN LEWIS BOCKIUS, LLP

21
22 _____
Eric Meckley

23 Attorneys for Defendant
24 24 HOUR FITNESS USA, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Pursuant to the Stipulation of the Parties, the Court hereby dismisses the above-captioned case without prejudice and orders the court clerk to enter the dismissal without prejudice. The case is now closed.

IT IS SO ORDERED.

Dated: _____

Honorable William D. Claster
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105

Attorneys for Plaintiff

Eric Meckley (SBN 168181)
Andrew P. Frederick (SBN 284832)
Nicole Antonopoulos (SBN 306882)
MORGAN, LEWIS & BOCKIUS LLP
One Market Street, Spear Street Tower
San Francisco, CA 94105
Tel: 415.442.1000
Fax: 415.442.1001

Attorneys for Defendant

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

JUSTIN VORISE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

24 HOUR FITNESS USA, INC. (doing business
as 24 Hour Fitness), and DOES 1-50, inclusive,

Defendants.

Case No. C 15-02051

**STIPULATION AND [PROPOSED]
ORDER DISMISSING CASE WITHOUT
PREJUDICE**

Dept.: 17
Judge: Hon. Barry Goode

Complaint Filed: November 5, 2015
Trial Date: None Set

Plaintiff Justin Vorise ("Plaintiff") and Defendant 24 Hour Fitness USA, Inc. ("Defendant")
(collectively, "the Parties") submit this Stipulation and [Proposed] Order dismissing the case
without prejudice.

WHEREAS, on November 5, 2015, Plaintiff filed this action on behalf of himself and other
non-exempt employees of Defendant in California alleging that Defendant failed to provide meal

1 periods and rest periods and accurate itemized wage statements, and failed timely to pay wages
2 upon termination and maintain accurate payroll records. Plaintiff's original Complaint included
3 individual, class, and representative claims.

4 WHEREAS, on May 25, 2016, the Court entered an order compelling arbitration of
5 Plaintiff's individual claims, dismissing Plaintiff's putative class claims, severing Plaintiff's
6 representative Private Attorneys General Act ("PAGA") claims, and staying the action pending
7 arbitration.

8 WHEREAS, on June 17, 2016, Plaintiff requested dismissal of his individual claims without
9 prejudice and the Court entered the dismissal as requested. As a result, the remaining causes of
10 action pending before the Court are Plaintiff's Fifth and Sixth Causes of Action for civil penalties
11 under the PAGA.

12 WHEREAS, on February 27, 2018, the Parties mediated this case with Jeffrey Ross, Esq.,
13 an experienced wage and hour mediator. The mediation was a joint mediation with two other
14 pending PAGA-only actions against Defendant, *Holley, et al. v. 24 Hour Fitness USA, Inc.*
15 (Riverside County, Case No. RIC1602246) ("the Holley Action") and *Madrigal v. 24 Hour Fitness*
16 *USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC) ("the Madrigal Action")
17 (this Action, the Holley Action, and the Madrigal Action are collectively referred to as "the
18 Actions"), and the respective plaintiffs and counsel from those other actions participated in the
19 mediation.

20 WHEREAS, on _____, 2018, the parties executed a Private Attorneys General Act
21 Settlement Agreement and Release resolving all claims in the Actions on a representative basis.

22 WHEREAS, the parties presented the global PAGA settlement for review and approval by
23 the court in the Riverside County Superior Court, where the Holley action is pending. On
24 _____, 2018, the Riverside County Superior Court in the Holley action approved the PAGA
25 settlement. Attached as **Exhibit A** is a true and correct copy of the Approval Order that the Holley
26 court issued, which includes a copy of the PAGA Settlement Agreement. Pursuant to Labor Code §
27

1 2699(I)(2), the court in Holley reviewed the settlement and found the Settlement of PAGA claims
2 described therein to be fair, adequate and reasonable.

3 WHEREAS, the Riverside County Superior Court's approval of the PAGA settlement fully
4 resolves any and all claims pending in the Vorise action.

5 WHEREAS, the Parties in the pending action agreed that within five (5) court days of the
6 Riverside County Superior Court's approval of the PAGA Settlement that Plaintiff would file a
7 stipulated dismissal without prejudice of this action.

8 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
9 undersigned that the Court dismiss this case without prejudice and close the case.

10 **IT IS SO STIPULATED.**

11
12 Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs

13
14 By: _____

Carolyn H. Cottrell
David C. Leimbach
Attorneys for Plaintiff Justin Vorise

15
16 Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

17
18 By: _____

19 Eric Meckley
20 Andrew P. Frederick
21 Attorneys for Defendant 24 Hour Fitness USA,
22 Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Proposed] Order

Pursuant to the Stipulation of the Parties, the Court hereby dismisses the above-captioned case without prejudice and orders the court clerk to enter the dismissal without prejudice. The case is now closed.

IT IS SO ORDERED.

Dated: _____, 2018

HONORABLE BARRY GOODE
JUDGE OF THE SUPERIOR COURT

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. RIC1602246

[PROPOSED] JUDGMENT

Judge: Hon. Craig G. Riemer
Dept: 5

Pursuant to the Order Approving the PAGA Settlement (the "Order") entered in this
action on _____, 2018, and the subsequent dismissals of the actions against
Defendant entitled *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County, Case No. 30-
2014-00735568-CU-OE-CXC) ("Madrigal Action") and *Vorise v. 24 Hour Fitness USA, Inc.*
(Contra Costa County, Case No. CIV-MS15-02051) ("Vorise Action") (collectively, the
"Actions"), it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Judgment in this matter is hereby entered in accordance with the terms of the
Order and the Parties' PAGA Settlement Agreement ("Settlement Agreement"), which is
attached as **Exhibit 1** to the Order. Unless otherwise provided herein, all capitalized terms
used herein shall have the same meaning as defined in the Settlement Agreement.

1 2. This Judgment shall be binding on Plaintiffs and the PAGA Settlement
2 Employees and on the State of California, who collectively are hereby barred by the doctrine
3 of *res judicata* from initiating, litigating, or proceeding in any way with respect to the PAGA
4 Released Claims. Pursuant to the California Supreme Court decision in *Arias v. Superior*
5 *Court* (2009) 46 Cal.4th 969, 986, “with respect to the recovery of civil penalties, nonparty
6 employees as well as the government [i.e., the State of California] are bound by the judgment
7 in an action brought under the [PAGA]” As defined in the Settlement Agreement, the
8 non-party PAGA Settlement Employees who are covered and bound by this Settlement and
9 its waiver and release provisions and this Judgment are: (i) all current and former Kids Club
10 Attendants and Kids Club Supervisors Defendant has employed in California at any time
11 from June 19, 2013 through and including October 2, 2014; and (ii) all current and former
12 non-exempt employees, including Kids Club Attendants and Kids Club Supervisors,
13 Defendant has employed at fitness clubs in California at any time from October 3, 2014
14 through and including the date of the Order.

15 3. The Parties, their Counsel, and the Settlement Administrator shall take all
16 steps necessary to implement and consummate the Settlement according to its terms and
17 provisions.

18 4. Without affecting the finality of the Judgment or the Settlement, the Court
19 shall retain exclusive and continuing jurisdiction over the above-captioned action and the
20 parties for purposes of enforcing the terms of the Judgment entered herein.

21 5. Neither this Judgment, the Order, the Parties’ PAGA Settlement Agreement,
22 any document referred to herein, any exhibit to any document referred to herein, any action
23 taken to carry out the settlement, nor any negotiations or proceedings related to the
24 settlement are to be construed as, or deemed to be evidence of, or an admission or concession
25 with regard to, the denials or defenses of Defendant (or any settling party), and shall not be
26 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
27 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of
28 the Order and Judgment.

1 6. The Settlement is not an admission by Defendant, nor is this Judgment a
2 finding of the validity of any allegations or of any wrongdoing by Defendant. This Judgment
3 may not be construed, or be used, as an admission of any fault, wrongdoing, omission,
4 concession, or liability whatsoever by or against Defendant.

5 7. The claims of Plaintiffs Donna Holley and Paul Williams individually and the
6 representative claims brought on behalf of all of the PAGA Settlement Employees employed
7 at Defendant's fitness clubs in California as proxies/agents for the State of California and the
8 Labor Workforce and Development Agency are hereby DISMISSED WITH PREJUDICE.

9 8. Except as otherwise provided by the Settlement, each side shall bear their own
10 attorneys' fees and costs.

11 9. This document shall constitute a judgment.

12 10. Pursuant to Labor Code § 2699(l)(3), Plaintiffs shall submit a copy of this
13 Judgment to the LWDA within ten (10) days of entry of this Order.

14
15 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

16 DATED: _____

Hon. Craig G. Riemer
Judge of the Superior Court

EXHIBIT E

Exhibit E

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Settlement Payment From *Holley v. 24 Hour Fitness*, *Madrigal v. 24 Hour Fitness*, and *Vorise v. 24 Hour Fitness* Lawsuits

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your settlement payment from the settlement of the lawsuits entitled *Holley v. 24 Hour Fitness USA, Inc.*, No. RIC1602246 (Riverside County Superior Court); *Madrigal v. 24 Hour Fitness USA, Inc.*, No. 30-2014-00735568-CU-OE-CXC (Orange County Superior Court); and *Vorise v. 24 Hour Fitness USA, Inc.*, No. CIVMSC15-02051 (Contra Costa County Superior Court) (collectively, the "Actions").

The Actions were filed against 24 Hour Fitness USA, Inc. ("24 Hour Fitness") pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The Actions were brought on behalf of the State of California and all "aggrieved employees" of 24 Hour Fitness for civil penalties for alleged wage and hour violations, including but not limited to the alleged failure to pay minimum wages, straight time wages and overtime wages, provide compliant meal periods and rest breaks, pay meal and rest period premium payments, provide compliant itemized and accurate wage statements, timely and fully pay all wages during employment and upon termination, failure to pay split shift premiums, maintain accurate employment records, unlawfully make deductions, and reimburse necessary business expenses. In addition, through these Actions, the plaintiffs sought to recover alleged unpaid wages on behalf of themselves and other alleged "aggrieved employees" under Labor Code section 558.

24 Hour Fitness denies that it has done anything wrong or that it owes any wages or penalties. The parties in these Actions have agreed to resolve the cases, and as part of the settlement, 24 Hour Fitness agreed to pay a certain amount of money categorized as PAGA penalties and Section 558 underpaid wages. Under the PAGA statute, the penalties are divided between the State and the employees. As a result of this settlement, the State of California's and your ability to seek penalties recoverable under the PAGA, including alleged underpaid/unpaid wages under Labor Code Section 558, for all of the claims ordered released by the Court and summarized above have been released.

This settlement includes and applies to: (i) all current and former employees of 24 Hour Fitness who worked in the position(s) of Kids Club Attendant and/or Kids Club Supervisor in California at any time from June 19, 2013 through and including October 2, 2014; and (ii) all current and former non-exempt employees of 24 Hour Fitness, including but not limited to employees who worked in the position(s) of Kids Club Attendants and/or Kids Club Supervisors, who worked in clubs in California from October 3, 2014, through and including the _____ [insert Approval Date] _____, 2018. You have been identified as a current or former 24 Hour Fitness employee to whom this settlement applies and who is included in this settlement. Enclosed is a check made out to you. The check represents your share of the settlement for PAGA civil penalties and underpaid/unpaid wages under Labor Code section 558.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sincerely,

[Administrator]

Exhibit 2



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) :

297122-17

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your Full Name Firm Name (if Any) Your Email Address

Eduardo Santos Capstone Law APC eduardo.santos@capstonelawyers.com

Your Street Name, Number and Suite/Apt Your Mobile Phone Number

1000 3105564811

Your City Your Work Phone Number

Los Angeles 3105564811

Your State

California

Your Zip/Postal Code

90067

Plaintiff Information

Plaintiff Name

Donna Holley

Court and Hearing Information

Court Case Number

RIC1602246

Hearing Date (if any)

July 11, 2018

Hearing Time

8:30 a.m.

Hearing Location

4050 Main Street, Riverside, California 92501

Proposed Settlement and Other Documents

Proposed Settlement

2018 06-18 PAGA Settlement Agreement and Release (Holley).pdf

Other Attachment (if any)

2018 06-18 PLD-MPA Final Approval (Holley).pdf

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

Attached Files:

2018 06-18 PAGA Settlement Agreement and Release (Holley).pdf (3.62 MB)

2018 06-18 PLD-MPA Final Approval (Holley).pdf (282 KB)

Eduardo Santos

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Monday, June 18, 2018 12:35 PM
To: Eduardo Santos
Subject: Thank you for your Proposed Settlement Submission

06/18/2018 12:35:18 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 3

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With thirty seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers. The firm's accomplishments include:

- In February, 2015, three Capstone attorneys, Glenn A. Danas, Raul Perez, and Ryan H. Wu, were honored with the prestigious *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- In April 2017, Capstone achieved a major victory for consumers in *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court held that: (1) the right to seek public injunctive relief under the state's consumer protection laws cannot be waived; and (2) that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of nonexempt tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of non-exempt pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.).
- Capstone serves class counsel in a number of significant consumer actions, including *Falco v. Nissan N. Am. Inc.*, No. 13-00686 (C.D. Cal.) (certifying a class of owners/lessees of Nissan vehicles) and obtained final approval in *Vargas v. Ford Motor Co.*, No. 12-08388 (C.D. Cal.); *Chan v. Porsche Cars N.A., Inc.*, No. 15-2106 (D.N.J.); *Batista v. Nissan N.Am., Inc.*, No. 14-24728-RNS (S.D. Fla.); *Klee v. Nissan North America*, Case No. 12-08238 (C.D. Cal.); *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.); *Asghari v. Volkswagen Group of America*, No. 13-02529 (C.D. Cal.); *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.); *Fernandez v. Home Depot U.S.A.*, No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-677 (S.D. Cal.), that have conferred benefits to class members valued in the hundreds of millions.

SUMMARY OF SIGNIFICANT SETTLEMENTS

In the past four years, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers valued at well over \$30 million;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Danas and Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Matthew Theriault. Mr. Theriault is a partner at Capstone. An expert in wage-and-hour law and litigation strategy, Mr. Theriault currently manages and assists Capstone's class action certification efforts and trials. Recently, Mr. Theriault was lead trial counsel in a rarely-seen class action trial, representing a certified class of insurance salespersons alleging unpaid wages and break premiums in *Felix v. Auto Club of Southern Calif.*, Case No. 07CC01421 (Orange Cty. Super. Ct.). The parties ultimately reached a multi-million dollar settlement in the middle of trial.

Over the course of his career, he has successfully certified numerous employee classes for claims involving misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. Cases where Mr. Theriault was certified as class counsel include *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.), *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.), *In re: Taco Bell Wage And Hour*, 2013 U.S. Dist. LEXIS 380 (N.D. Cal.), *In Re: Autozone, Inc., Wage and Hour Employment Practices Litigation*, Case No.: 3:10-md-02159-CRB (E.D. Cal.), *Mansfield v. Brackenhoff Mgmt. Group, Inc.*, No. BC356188 (L.A. Super. Ct.), and *Blair v. Jo-Ann Stores, Inc.*, Case No. BC394795 (L.A. Super. Ct.).

Mr. Theriault graduated from the Western New England School of Law in Springfield, Massachusetts, and received his undergraduate degree with honors from the University of Connecticut. After graduation, Mr. Theriault practiced law in Connecticut starting in 2001. He litigated primarily consumer actions involving allegations of auto dealership fraud, loan financing, and unlawful debt collection practices. After moving to California, Mr. Theriault joined a large plaintiffs firm, where he litigated wage and hour class actions and was eventually made partner.

Glenn A. Danas. A partner at Capstone, Glenn A. Danas heads the complex motion and appeals practice group. A leading authority on arbitration law and PAGA actions, Mr. Danas was honored with 2015 CLAY award for his work as lead counsel in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014). Mr. Danas briefed and argued this landmark case before the California Supreme Court, which resulted in a landmark decision that preserved employees' right to pursue PAGA actions notwithstanding a waiver in an arbitration agreement. Mr. Danas was also recognized by The Daily Journal as one of California's Top 100 Lawyers for 2017, one of the Top 75 Labor & Employment Lawyers in California for 2017, and one of the Top 20 Lawyers Under 40 for 2013.

Mr. Danas has argued over twenty appeals in the California Court of Appeal, the California Supreme Court, and the Ninth Circuit Court of Appeals, and has served as lead appellate counsel in many more. While at Capstone, Mr. Danas argued before the California Supreme Court in three major victories for the plaintiffs: *Iskanian, McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), and *Williams v. Superior Court*, 2017 WL 2980258 (2017). He also argued in the Ninth Circuit in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), *Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916 (2013), which held that arbitration agreements may not be enforced if found unconscionable under general state contract law, and *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. 2015), which made law on judicial scrutiny of class action settlements. Prior to joining Capstone, Mr. Danas successfully briefed and argued the precedent-setting appeal in *Brown v. Ralph's Grocery Co.*, 197 Cal. App. 4th 489 (2011), regarding the unenforceability of PAGA waivers. Mr. Danas also successfully defeated an appeal of a motion to remand under the CAFA "local controversy exception" in *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011), establishing a new standard on when the circuit court may grant review in a discretionary appeal under CAFA.

Mr. Danas graduated from Emory University School of Law in 2001 with honors and authored *The Interstate Class Action Jurisdiction Act of 1999: Another Congressional Attempt to Federalize State Law*, 49 EMORY L.J. 1305

(2000), which was selected by the ABA as one of the top three student-written law journal articles in its annual nationwide competition. He received his undergraduate degree in Industrial and Labor Relations from Cornell University. After law school, he clerked for the Honorable U.W. Clemon, Chief U.S. District Judge for the Northern District of Alabama and began his career at an international law firm in New York City, where he primarily focused on antitrust and securities litigation.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshalls of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Danas and Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective?*" and "*Iskanian v. CLS Transportation: Employees' Perspective,*" both published in the *California Labor & Employment Law Review*.

Of Counsel

Jordan Lurie. A renowned class action litigator, Jordan Lurie heads the automotive defect litigation practice group at Capstone, prosecuting cases involving violations of state and federal consumer protection laws, the Fair Credit Reporting Act, federal and state privacy laws, and federal securities law. Mr. Lurie has prosecuted class actions against major car manufacturers, and is serving (or has served as) class counsel in: *Falco v. Nissan N. Am. Inc.*; *Vargas v. Ford Motor. Co.*, *Batista v. Nissan N.Am., Inc.*; and *Chan v. Porsche Cars N.A., Inc.* Mr. Lurie helped negotiate class benefits valued in the tens of millions in *Batista v. Nissan N.Am., Inc.*; *Klee v. Nissan N. Am.*; *Asghari v. Volkswagen Group of America*; and *Aarons v. BMW of N. Am.*.

Over his distinguished career, Mr. Lurie also has obtained settlements in excess of \$100 million in actions where he was lead or co-lead counsel. Notable cases where Jordan served as lead counsel include: *In re: Apria Healthcare Group Secs. Litig.*, where Jordan settled on behalf of investors for \$42 million in a securities fraud class action; *Morganstein v. Aura Systems*, where he settled claims for \$18 million in a securities fraud class action; *In re Quintus Secs. Litig.*, a securities fraud class action which settled for \$10.1 million; and *In re Southern Pacific Funding Corp., Sec. Litig.*, Case No. Civ. 98-1239-MA, (D. Or.), where he settled a class action for \$19.5 million. Mr. Lurie has been selected as one of Southern California's "Super Lawyers" every year from 2012 through 2016.

Prior to joining Capstone, Mr. Lurie spent most his career at a national plaintiffs' law firm specializing in corporate securities and consumer class actions, where he was the managing partner of the firm's Los Angeles office. Mr. Lurie graduated from the University of Southern California Gould School of Law in 1987, where he was Notes Editor of the University of Southern California Law Review. He received his undergraduate degree with honors from Yale University. When not litigating, Mr. Lurie is an active educator and community leader. Jordan participated in the first Wexner Heritage Foundation leadership program in Los Angeles and holds leadership and executive positions in various organizations in the Los Angeles community. He has also been the featured speaker at California MCLE seminars regarding securities fraud and class actions, and has authored several publications for the California Continuing Education of the Bar.

Senior Counsel

Jennifer Bagosy. Jennifer Bagosy is senior counsel with Capstone Law, specializing in employment and consumer class action litigation, with an emphasis on trial preparation. She began her career as a litigation associate with Howrey LLP, first in Washington, D.C., and then in Irvine, California. At Howrey, she participated in two trials and two appeals in *Fifth Third Bank v. United States*, a breach of contract case arising from the S&L crisis of the 1980s, winning and upholding on appeal a \$76.5 million verdict for the client. She also participated in trial in *Imageexpo v. Microsoft*, a patent infringement case, which resulted in a \$62 million verdict for the client. Ms. Bagosy joined the firm of Morgan, Lewis & Bockius in 2011, where she specialized in securities litigation, D&O liability litigation, bank-failure related litigation, and professional liability. Jennifer graduated from Georgetown University Law Center in 2002. She received her undergraduate degree in Political Science from Bradley University, where she graduated summa cum laude.

Ms. Bagosy is admitted to practice law in California and before the United States District Court for the Eastern, Central, and Southern Districts of California, as well as the Ninth Circuit Court of Appeals, the Federal Circuit Court of Appeals, and the United States Supreme Court. She is actively involved in the Orange County Bar Association, where she is a member of the Professionalism & Ethics Committee.

Arnab Banerjee. Arnab Banerjee is a senior counsel with Capstone Law, where he leads one of the firm's litigation teams prosecuting employment and consumer class actions. Mr. Banerjee has spent the past eight years focused on complex employment law cases, assisting in obtaining millions of dollars in recovery for employees. He focuses primarily on wage-and-hour class action litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations. Arnab has successfully certified several classes for claims meal and rest breaks, and off-the-clock work.

Arnab began his career at Latham & Watkins LLP where he handled a wide variety of business litigation matters ranging from white collar defense to environmental litigation. Arnab has also had experience representing employers and litigating on behalf of individual plaintiffs, focusing primarily on discrimination, wrongful termination, and sexual harassment cases. Arnab graduated from the University of Southern California Gould School of Law, where he served as an editor on the Interdisciplinary Law Journal. During law school, he also interned for the Department of Homeland Security. He received his undergraduate degrees from the University of California, Irvine, where he graduated cum laude and Phi Beta Kappa. Arnab is admitted to practice in California, before the United States District Court for the Northern, Eastern, and Central Districts of California, and before the United States Court of Appeals for the Ninth Circuit. He has been selected as one of Southern California's "Super Lawyers – Rising Star" since 2016.

Liana Carter. Liana Carter is senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Along with Mr. Danas, Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Robert Drexler. Robert Drexler is senior counsel with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2015.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored Defective Prosthetic Devices: Strict Tort Liability for the Hospital? 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he

graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal. Mr. Drexler was named a "Super Lawyer" in 2017.

Robert Friedl. Robert Friedl is senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Jamie Greene. Jamie Greene is senior counsel at Capstone where she evaluates potential new cases, develops new claims, and manages client relations. Well-versed in wage and hour law and federal and state consumer protection statutes, Ms. Greene supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation. Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. She is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California. She is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, concentrating his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement. He is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

Tarek Zohdy. An associate with Capstone, Tarek Zohdy litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class action settlements that have provided significant relief to thousands of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Ari Bassar. Ari Bassar is an associate with Capstone Law, where his practice focuses on litigating complex wage-and-hour class actions and PAGA representative actions. Prior to joining Capstone, Mr. Bassar litigated consumer fraud, antitrust, product defect, securities, and employment class actions at several prominent plaintiffs' firms. Mr. Bassar earned his Juris Doctor from Santa Clara University School of Law, where he spent his summers as a Bar Certified Law Clerk in the Economic Crimes Unit of the Santa Clara County Office of the District Attorney. He received dual-degrees in Economics and Psychology from the University of California, San Diego. He is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California and is a contributing author to the Competition Law Journal, the official publication of the Antitrust, UCL, and Privacy Section of the State Bar of California. His publications have examined trends in employment and antitrust litigation and the regulatory authority of the Federal Trade Commission.

Brandon Brouillette. Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. His entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, Mr. Brouillette served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California and is admitted to practice in California and before the United States District Court for the Northern and Central Districts of California. In 2016, Mr. Brouillette was selected as one of Super Lawyers' "Rising Stars" in Southern California.

Jordan Carlson. Jordan Carlson is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Mr. Carlson began his career as an associate at a civil litigation firm where he handled a wide variety of matters including environmental contamination defense, bad faith insurance litigation, wrongful death, employment, real estate, and business litigation. He graduated from Whittier Law School in 2013. While attending law school, he served as a Summer Associate for the California Department of Justice. Mr. Carlson earned his bachelor's degree from Boston University where he graduated cum laude and is admitted to practice law in California and before the United States District Court for the Central District of California.

Anthony Castillo. Anthony Castillo is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues. Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Ruhandy Glezakos. Ruhandy Glezakos is an associate with Capstone Law. He works on behalf of employees, focusing primarily on wage-and-hour class action litigation for failure to pay overtime and minimum wages, failure to provide meal and rest breaks, and other Fair Labor Standards Act and California Labor Code violations. Mr. Glezakos advocates passionately for those in need and has extensive experience working in public interest, particularly for low-wage workers and undocumented communities. Ruhandy graduated from UCLA School of Law. During law school, he served as a judicial extern for the Honorable Harry Pregerson, Ninth Circuit Court of Appeals. He received his undergraduate degree from the University of California, Los Angeles where he graduated cum laude.

Robin Hall. Robin Hall is an associate with Capstone Law, where she heads the firm's research department. Ms. Hall assists in pre-litigation investigation of employment and consumer statutory claims, and handles complex research projects. A founding editor of the Impact Litigation Journal (ILJ), Ms. Hall has authored numerous articles on emerging legal issues published on ILJ. Ms. Hall began her career and received her training as an associate at Baker & Hostetler LLP, where she represented Fortune 500 companies in labor and employment litigation, including class actions. She attended Indiana University's Maurer School of Law, where she graduated *cum laude* in 2007. During law school, Ms. Hall served as Editor-in-Chief of the Indiana Journal of Global Legal Studies and Director of the Inmate Legal Assistance Clinic. She received her undergraduate degree from the University of Missouri and is admitted to practice law in California.

Jonathan Lee. An associate with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California. Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Suzy E. Lee. Suzy Lee, an associate with Capstone, litigates complex matters with a focus on wage-and-hour class actions. Ms. Lee has successfully litigated wage and hour class actions and single plaintiff cases in other practice areas, including consumer fraud, commercial litigation, personal injury, and employment discrimination. Prior to joining Capstone, Ms. Lee was an associate at several prominent plaintiff firms, where she litigated complex wage and hour and consumer class actions in state and federal courts. Ms. Lee also has experience defending businesses in cases involving contract disputes and other business litigation matters. Ms. Lee graduated from the Indiana University Maurer School of Law, where she served as the President of the Asian Pacific American Association. She received her undergraduate degree from the University of California, Irvine, where she graduated *cum laude*. Ms. Lee is proficient in Korean.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Trisha graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations. Trisha is admitted to practice law in California and before the United States District Court for the Northern, Eastern, and Central Districts of California.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Mao Shiokura. Mao Shiokura is an associate with Capstone. Her practice focuses on identifying, analyzing, and developing new wage-and-hour and consumer claims, including violations of the Fair Credit Reporting Act, Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships. Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Tel: (310) 556-4811
Fax: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

[Counsel for Additional Plaintiffs Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1602246

**DECLARATION OF CAROLYN HUNT
COTTRELL IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT OF
2004**

Date: July 11, 2018

Time: 8:30 a.m.

Judge: Craig G. Riemer

Dept.: 5

1 Carolyn H. Cottrell (SBN 166977)
2 David C. Leimbach (SBN 265409)
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100
8 Fax: (415) 421-7105

9 John F. Edgar (*pro hac vice* to be submitted)
10 EDGAR LAW FIRM LLC
11 1032 Pennsylvania Avenue
12 Kansas City, Missouri 64105
13 Tel: (816) 531-0033
14 Fax: (816) 531-3322

15 Attorneys for Plaintiff Justin Vorise

16 David Borgen
17 Laura Ho
18 GOLDSTEIN BORGEN DARDARIAN & HO
19 300 Lakeside Drive, Suite 100
20 Oakland, CA 94612

21 Aashish Desai
22 Adrienne De Castro
23 DESAI LAW FIRM, P.C.
24 3200 Bristol Street, Suite 650
25 Costa Mesa, CA 92626

26 Attorneys for Plaintiff Alyssa Madrigal
27
28
29
30
31
32

DECLARATION OF CAROLYN HUNT COTTRELL

I, Carolyn Hunt Cottrell, hereby declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California, I am admitted to the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.

2. I am a partner at Schneider Wallace Cottrell Konecky Wotkyns LLP ("SWCKW"). SWCKW specializes in representative and class action litigation in state and federal court.

3. I submit this declaration in support of the Motion to Approve Settlement Pursuant to Private Attorneys General Act of 2004 in the above-captioned case.

4. Over the last several years Defendant 24 Hour Fitness USA, Inc. ("Defendant" or "24 Hour") has been sued in multiple Private Attorneys General Act of 2004 ("PAGA") actions for alleged Labor Code violations experienced by employees at its health club facilities throughout California. These actions include the instant *Holley, et al. v. 24 Hour Fitness USA, Inc.* ("Holley"), pending in Riverside County Superior Court; *Madrigal v. 24 Hour Fitness USA, Inc.* ("Madrigal"), pending in Orange County Superior Court; and *Vorise v. 24 Hour Fitness USA, Inc.* ("Vorise"), pending in Contra Costa County Superior Court. Together, these actions seek penalties for 24 Hour's alleged failure to: (1) pay minimum wages, (2) pay overtime, (3) provide compliant meal periods, (4) permit and/or authorize compliant rest breaks, (5) pay wages for rest break time to employees paid on a piece-rate basis, (6) furnish complete and accurate wage statements, (7) furnish accurate records, (8) timely pay wages owed during employment, (9) timely pay final wages, and (10) reimburse for all necessary business expenses.

5. SWCKW represents Plaintiff Justin Vorise and has prosecuted the *Vorise* action. SWCKW represents Plaintiff Vorise with Edgar Law Firm LLC.

6. I have been actively involved in the prosecution of Plaintiff Vorise's claims since prior to filing the complaint. I am familiar with the file, the documents, and the history related to *Vorise*. I am also familiar with the history of and certain documents related to *Holley* and *Madrigal*. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

7. The Private Attorneys General Act Settlement Agreement and Release (the "Settlement") that is the subject of this motion resolves all of these actions. The parties in *Holley*, *Madrigal*, and *Vorise* participated in a global mediation, from which the Settlement resulted.

PROCEDURAL HISTORY OF VORISE

8. Plaintiff Vorise filed his action in Contra Costa County Superior Court on November 5, 2015. He worked for Defendant in San Diego from approximately November 2012 until October 2014.

9. In his complaint, Plaintiff Vorise alleged various Labor Code violations against Defendant on behalf of himself and a putative class of non-exempt employees, including (1) failure to authorize, permit, and make available meal and rest periods, (2) waiting time penalties, (3) failure to provide accurate, itemized wage statements, and (4) unfair competition pursuant to California's Business and Professions Code. Plaintiff Vorise also brought PAGA claims predicated on the above violations.

10. Prior to filing his complaint, Plaintiff Vorise provided the LWDA with a notice letter on September 22, 2015, advising it of the alleged Labor Code violations pursuant to Labor Code section 2699.3(a)(1). Plaintiff Vorise received no response from the LWDA.

11. On May 25, 2016, the Court entered an order compelling arbitration of Plaintiff Vorise's individual claims, dismissing his putative class claims, severing his representative PAGA claims, and staying the action pending arbitration.

12. On June 17, 2016, Plaintiff Vorise requested dismissal of his individual claims without prejudice and the Court entered the dismissal as requested. Defendant moved to vacate the dismissal, and the Court denied the motion on July 22, 2016. Plaintiff Vorise's PAGA claims remain in *Vorise*.

13. Defendant next filed a demurrer challenging the sufficiency of Plaintiff Vorise's PAGA Notice. The Court issued its order overruling Defendant's demurrer on December 21, 2016. Following the Court's certifying its denial for interlocutory review, Defendant filed a Petition for Writ of Mandate seeking review of that order, which the Court of Appeal denied on January 12, 2017. Defendant filed a Petition for Review of the Court of Appeal's Order with the California Supreme Court. Plaintiff Vorise opposed the petition, and the California Supreme Court denied it on March 15, 2017.

14. Significant discovery disputes followed. Plaintiff Vorise was required to litigate two motions to compel—both of which successfully compelled Defendant to produce substantial informational, documentary, and data-based evidence.

15. As a result of these motions, and in addition to other common documentary evidence (policies, handbooks, job descriptions, training modules, etc.) Defendant has produced, or was in the process of producing, the following:

- The names, addresses, telephone numbers, timekeeping data, and meal period premium data for employees at the four clubs where Plaintiff Vorise worked, as well as four other club locations Plaintiff Vorise unilaterally selected;

- The names, addresses, and telephone numbers for a 40% random sample of all non-exempt, hourly employees who worked at any other clubs in California from October 3, 2014 to the present. This sample provides the complete contact information for in excess of 14,000 aggrieved employees;
- For these 14,000-plus employees, the timekeeping data, meal/rest period premium data, and final payroll data for a 60% random sample of this group – in other words, relevant data for over 8,000 aggrieved employees;
- All meal period waivers and on-duty meal period agreements electronically maintained by Defendant, for all aggrieved employees; and
- The location, square footage, quarterly customer check-in data, quarterly average of employees, club amenities, and job titles and classifications for every club in the State of California.

16. After receiving contact information for other aggrieved employees, SWCKW completed interviews with approximately 70 of Defendant's employees in an intensive outreach effort.

17. In total, Plaintiff Vorise served three sets of requests for production of documents and one set of special interrogatories. Plaintiff Vorise responded to two sets of requests for production of documents and one set of special interrogatories, and was deposed by Defendant for a full day on February 13, 2018.

18. Plaintiff Vorise's extensive investigations confirmed that many non-exempt employees are denied reasonable opportunities to take meal and rest breaks, providing a foundation for developing a detailed damages model to analyze Defendant's exposure.

19. On January 31, 2018, at the strong urging of the courts overseeing the actions, the Parties agreed to participate in a joint mediation of the three cases.

20. The mediation took place on February 27, 2018 in Oakland, California before Jeffrey Ross, Esq., an experienced and respected wage and hour mediator. The mediation involved serious and intensive arms-length negotiations. At the conclusion of mediation, Mr. Ross presented the Parties with a "mediator's proposal," which outlined the principal terms of a global settlement of all three cases.

21. The Parties later accepted the settlement terms, subject to certain conditions, including approval of the Settlement by Defendant's Board of Directors.

22. On March 20, 2018, Defendant's Board of Directors approved the terms of the Settlement. The Parties then executed the long-form Settlement on June 11, 2018.

TERMS OF THE PROPOSED PAGA SETTLEMENT

23. The basic terms of the Settlement are as follows. The Maximum Settlement Amount is \$11 million, and no portion of it will revert to Defendant. A Net Settlement Amount of approximately \$7,103,333.00 will be available for distribution to the State of California and the aggrieved employees

(the “PAGA Settlement Employees”). The Net Settlement Amount will be allocated between a General PAGA Penalties Fund (63.5% of the Net Settlement Amount) and a 558 Civil Penalties Fund for PAGA penalties under Labor Code § 558 (36.5% of the Net Settlement Amount). 75% of the General PAGA Penalties Fund will be paid to the State of California, and 25% will be paid to the PAGA Settlement Employees; on the other hand, 100% of the 558 Civil Penalties Fund will be paid to the PAGA Settlement Employees. General Release Payments of \$15,000.00, each, will be paid to the four Named Plaintiffs in these actions for their release of all claims against Defendant. The actual costs and expenses of the Settlement Administrator, CPT Group, Inc. (“CPT Group”), currently estimated to be \$70,000.00, will be paid from the Maximum Settlement Amount. 33 1/3% (thirty-three and one-third percent) of the Maximum Settlement Amount for attorneys’ fees will be split among the respective Plaintiffs’ counsel in the three actions, and actual costs will be reimbursed to the respective Plaintiffs’ counsel in an amount not to exceed \$100,000.00 in total.

24. The PAGA Settlement Employees encompassed by the proposed Settlement include (i) all current and former employees of Defendant who worked as Kids Club Attendants (“KCAs”) and/or Kids Club Supervisors in California at any time from June 19, 2013 through October 2, 2014; and (ii) all current and former non-exempt employees of Defendant, including but not limited to KCAs and/or Kids Club Supervisors, who worked in clubs in California from October 3, 2014 through the Approval Date of the Settlement. Thus, in addition to KCAs and Kids Club Supervisors, the PAGA Settlement Employees include Service Representatives, Night Service Representatives, Club Attendants, Personal Trainers, Group Exercise Instructors, Facilities Technicians, Juice Bar Attendants and Managers, Athletic Monitors, Fitness Managers, Sales Managers, and Sales Advisors.

25. Because this is a PAGA settlement, there is no claims procedure or “opt out” process and notice will not be provided to the PAGA Settlement Employees in advance of the payments.

THE PAGA SETTLEMENT IS FAIR AND REASONABLE

26. Plaintiffs’ counsel have conducted large amounts of discovery and extensive outreach to the PAGA Settlement Employees. They used this information and data to perform in-depth analyses of the claims and Defendant’s exposure, a summary of which is provided below.

Summary of Plaintiffs’ Claims

27. Plaintiffs allege three core sets of claims in the actions: meal and rest break claims, unpaid wage claims, and failure to reimburse claims. Each of these claims expose Defendant to PAGA penalties.

28. The principal claim in all three actions is that 24 Hour systematically failed to provide

1 legally compliant meal periods and rest breaks to non-exempt employees during the PAGA period,
2 through understaffing, not providing proper break coverage, failing to schedule meal and rest periods,
3 and requiring certain employees to work through their meal breaks while off the clock. Plaintiffs allege
4 that Defendant's practices uniformly prevented the PAGA Settlement Employees from taking legally
5 compliant breaks, and its managers discouraged workers from taking their breaks. Plaintiffs claim that
6 Defendant did not pay the required premium payments for missed breaks.

7 29. Plaintiffs contend that Service Representatives, like Plaintiff Vorise, had insufficient
8 coverage from co-workers to take compliant meal periods and rest breaks. As a result, they remained at
9 the front desk of the club locations for lengthy periods without relief. Even if they did receive some sort
10 of break, it was often short and did not provide relief from all duties.

11 30. Night Service Representatives, who often work alone during the graveyard shifts at
12 Defendant's clubs, are often the only worker on site, and could not be relieved of all duties to take a
13 break. Night Service Representatives typically executed "on-duty" meal period agreements at or near the
14 time of hire. Plaintiffs challenge the validity of these "on-duty" meal agreements because the nature of
15 the work performed by employees did not necessitate an "on-duty" meal period under California law, but
16 Defendant stands by the agreements and the issue would be vigorously disputed.

17 31. As to Personal Trainers, 24 Hour puts the onus on its employees to schedule their own
18 breaks; however, fitness training sessions are often scheduled for four one-hour long sessions in a row
19 with mandatory team meetings and other required non-session time before and after fitness training
20 sessions. The mere ten minutes between each session is needed for fitness trainers to prepare routines,
21 complete paperwork, meet and greet club members, clean and wipe down the facility, and stock towels
22 and soap dispensers. Moreover, 24 Hour puts hard caps on the amount of non-session time employees
23 are able to use each month and requires that non-session time be reserved for only specific tasks such as
24 team meetings, one-on-one meetings with management, and fitness orientations. Thus, if Personal
25 Trainers had additional time between two scheduled fitness sessions, they were instructed to clock out
26 and not use non-session hours because every non-session hour had to be approved.

27 32. KCAs experienced meal and rest break issues because only certified employees could
28 provide their break relief. All employees who supervised children were required to have special
29 certification (including a background check), and there are strict employee to children ratios required
30 under state regulations. Plaintiffs allege that with insufficient staffing to provide break relief, the KCAs
31 remained on duty, as they could not leave the children under their care unattended.

32 33. Group Exercise Instructors ("GXIs") experienced rest break issues because they are paid

1 on a piece-rate basis for the number of classes that they teach. Defendant only started compensating its
2 GXIs, such as Plaintiff Holley, for rest period time effective January 1, 2016. Labor Code Section 226.2
3 provides that employers must separately compensate such employees for rest periods and other
4 nonproductive time at or above specified minimum hourly rates. Section 226.2 further requires
5 employers to provide these employees with itemized statements stating the hours and pay rates for
6 compensable rest periods.

7 34. Plaintiffs also allege PAGA violations for off-the-clock work performed by Personal
8 Trainers and GXIs. Plaintiffs allege that 24 Hour's policies and mandatory job requirements for Personal
9 Trainers necessitated that they off-the-clock to complete all the tasks required of them. For example,
10 Plaintiff Holley, who worked as a Personal Trainer and GXI, was sometimes required to clock out at the
11 end of her scheduled shift and complete paperwork for her clients. In addition to actually training clients,
12 Personal Trainers design comprehensive fitness programs, create, maintain, and regularly update folders
13 for personal training clients, schedule all personal training sessions, and perform general tasks such as
14 restocking towels and soap dispensers, re-racking weights, and wiping down equipment. Because
15 Personal Trainers are scheduled to complete 50-minute training sessions back to back, Plaintiffs allege
16 that 24 Hour impossibly expects them to complete all of these tasks in the 10-minute time frame between
17 sessions. Plaintiffs allege that, unable to do so, the Personal Trainers have no choice but to finish the
18 leftover tasks off-the-clock. Plaintiffs also maintain that Defendant had a company-wide practice of
19 requiring its Personal Trainers and GXIs to communicate with managers and personal training/group
20 instruction clients via their own personal cellular phones, including on their days off and outside of their
21 scheduled shifts. This created additional off-the-clock work.

22 35. Plaintiffs also allege that Defendant improperly paid required overtime to KCAs. This
23 results in additional PAGA violations for these workers.

24 36. Plaintiffs allege that 24 Hour expected Personal Trainers to use their personal cell
25 phones to keep in contact with clients during non-work hours to provide fitness counseling and schedule
26 fitness training sessions, but did not reimburse them. This also results in PAGA violations. Until January
27 23, 2016, the Defendant did not reimburse Personal Trainers for their personal cell phone costs, when
28 required. Effective January 23, 2016, 24 Hour implemented its "Eligible Team Member Mobile Device
29 Reimbursement Policy" which reimburses certain managers and fitness trainers \$2.08 per pay period.
30 Plaintiffs allege that this amount fails to fairly compensate employees who are expected to use their
31 cellular phones for work related purposes.
32

Number of Alleged Violations and Total Potential PAGA Penalties

37. Based on a comprehensive analysis of Defendant's discovery productions and data, information provided by employees during interviews with Plaintiffs' Counsel in these actions, and a review of employee payroll records, Plaintiffs' counsel were able to calculate Defendant's maximum potential exposure for the violations that have been identified.

38. Plaintiffs' counsel estimates that there are approximately 36,500 PAGA Settlement Employees, and they worked approximately 1,008,810 pay periods. The non-KCA employees worked approximately 861,240 pay periods.

39. Plaintiffs analyzed the meal and rest break claims by categories of workers. For meal period violations for all non-exempt employees excluding Night Service Representatives and KCAs, Plaintiffs' counsel estimates that there were 27,213 of these workers, and they worked 823,345 pay periods. Plaintiffs' counsel retained an expert to determine the potential violation rate for these employees based on the payroll records Defendant produced. The expert determined that potential meal period violations occurred in 22% of pay periods. Thus, there are approximately 181,000 potential PAGA violations for meal breaks for all non-exempt employees excluding Night Service Representatives and KCAs (22% of the pay periods for these workers). However, these potential violations do not factor in meal period waivers, which Defendant required many of its employees to execute. Though the validity of the agreement is in question, there is a reasonable chance that the Court will honor the agreements. Defendant also contends that, despite the timekeeping records, many of these employees were actually permitted to take a valid meal break. Additionally, outreach with dozens of employees has shown that some positions have higher levels of potential meal break violations, such as Service Representatives (who work for extended periods at the front desk) and managers. On the other hand, Personal Trainers and GXIs report a lesser amounts of meal period violations. To account for meal period waivers, issues of proof, and variability by position, Plaintiffs' counsel estimate that one meal period violation occurred for every four potential violations shown by Defendant's timekeeping records. Thus, a reasonable estimate for the number of PAGA violations for failure to provide meal breaks to all non-exempt employees excluding Night Service Representatives and KCAs is approximately 45,000. Defendant's estimated exposure for these meal break violations is approximately \$6,345,450.00. However, Plaintiffs' ability to litigate these violations on a representative basis would be hotly contested by Defendant.

40. For the Night Service Representatives, Plaintiffs' counsel estimate that there were approximately 3,024 of these workers, and they worked a total of approximately 37,895 pay periods.

1 Approximately 32,000, or 85%, of the pay periods include at least one shift that is long enough for a
2 meal period. However, most of these workers executed an on-duty meal period agreement as a part of
3 their new hire paperwork. Assuming that 95% of the Night Service Representatives executed the meal
4 period agreement, there are approximately 1,600 pay periods with violations for these workers.
5 Plaintiffs' counsel assess the PAGA violations for the meal break claim for the Night Service
6 Representatives at approximately \$306,000.00.

7 41. Plaintiffs have a stronger claim with respect to rest break violations for the Night Service
8 Representatives. Defendant rarely provided the necessary relief for these workers to take off-duty rest
9 breaks, because in many instances, there were no other workers in the club to do so. A relatively
10 straightforward analysis can be made by looking at the number of pay periods that Night Service
11 Representatives worked. Again, there were 3,024 of these workers, with approximately 37,895 pay
12 periods. Even assuming that 20% of Night Service Representatives worked in large locations with other
13 personnel on site during graveyard shifts, PAGA violations occurred in approximately 30,277 pay
14 periods. Defendant's exposure on the rest break claim for the Night Service Representatives is
15 approximately \$5,813,440.00.

16 42. Plaintiffs' claim with respect to rest breaks for the GXIs is limited by the short shifts that
17 they tend to work. Defendant failed to provide rest breaks to GXI employees, when necessary, before
18 January 1, 2016. This time period accounts for approximately 35% of the PAGA period. Though GXIs
19 comprise approximately 20.5% of the PAGA Settlement Employees, they worked approximately
20 275,597 pay periods—32% of the total. This is indicative that GXIs work for longer tenures and shorter
21 hours. Approximately 96,458 of the GXI pay periods occurred within the period when Defendant failed
22 to provide or account for rest break time. Given that many GXIs work on a part-time basis, a substantial
23 portion of these pay periods will not include a workday long enough for a rest break. Through outreach
24 analysis, Plaintiffs' counsel estimates that the average GXI teaches two to three classes a week, and their
25 shifts are just over an hour in length. Thus, only a small percentage of the pay periods included at least
26 one workday that qualified for a rest period. Assuming that 5% of pay periods included at least one
27 workday that was eligible for a rest period, there are approximately 4,823 PAGA violations. Based on
28 this number of violations, the total exposure for the rest break claim for GXIs is approximately
29 \$933,465.00.

30 43. To determine the number of alleged violations for off-the-clock work for Personal
31 Trainers and GXIs, Plaintiffs' counsel estimate that there these workers accounted for approximately
32 420,000 pay periods during the PAGA period—49% of the total (GXI worked 32% of the total pay

periods, while Personal Trainers worked 17% of the total pay periods). Through discovery and outreach analysis, Plaintiffs' counsel estimate that 10% of these workers performed significant amounts of off-the-clock work. Thus, Plaintiffs estimate that there were off-the-clock violations in approximately 42,000 pay periods. Each one of these pay periods constitutes a PAGA violation. Plaintiffs' counsel assess the PAGA violations for the unpaid wage claim at approximately \$8,275,990.00.

44. Plaintiffs' counsel also assessed the number of PAGA violations for Defendant's failure to reimburse Personal Trainers for business expenses for cell phone usage. These workers accounted for approximately 146,410 pay periods. However, many of these workers report that they did not significantly use their personal cell phones for work calls. Defendant has also produced evidence that telephones were available onsite for these workers to make work-related calls while they were at the club locations. Assuming that 10% of Personal Trainers and GXIs used their cell phones for work calls, and that these employees paid their cell phone bills once per month (i.e., every other pay period), there are approximately 14,641 PAGA violations for failure to reimburse these employees. Defendant's PAGA exposure for these violations is approximately \$2,310,600.00.

45. Plaintiffs' counsel in these actions also analyzed the number of violations and exposure for PAGA violations for the KCAs. These workers experienced thousands of rest break and overtime violations.

46. The total PAGA violations and exposure for all PAGA Settlement Employees is summarized in the chart below.

Total Number of Affected Employees		36,500
Total Number of Pay Periods At Issue		1,008,810
Claim	Total No. of Pay Periods with Violations	Maximum Potential Penalties
Meal Period Claim	46,924	\$6,652,020.00
Rest Period Claim	128,281	\$23,783,105.00
Off-the-Clock/Overtime Claim	64,168	\$12,709,590.00
Business Expense Claim	14,641	\$3,210,600.00
Total	264,032	\$ 45,455,315.00

47. Adding together the above violations, Plaintiffs' counsel estimate that Defendant committed approximately 264,000 PAGA violations for all PAGA Settlement Employees during the PAGA period. The total exposure for the core claims is approximately \$45.5 million.

Defendant's Defenses

48. Defendant has vigorously defended these actions, denying that it violated any section of

1 the Labor Code or Wage Order. Specifically, Defendant maintains that its approximately 230 health and
2 fitness clubs in California vary significantly based on size, employee population, and the types of
3 amenities and services available to club members. Defendant has six different types of clubs, some of
4 which are small and offer few amenities, while others are sprawling and provide a wide array of facilities
5 and amenities. The larger clubs feature employee positions like lifeguard and juice bar attendant that do
6 not exist at the smaller clubs.

7 49. Defendant argues that its policies, procedures, and training are facially compliant with
8 California labor law. Defendant has produced evidence that new employees go through onboarding and
9 new hire orientation on 24 Hour's employment policies, including the Team Member Handbook. The
10 Team Member Handbook includes facially compliant provisions for meal periods, rest breaks, recording
11 all hours worked, logging time spent working outside of club locations (e.g., for personal trainer
12 responses to client communications outside of normal work hours), travel time, and expense
13 reimbursement. 24 Hour employees are also required to complete compliance trainings, including
14 courses on Time & Labor Practices (i.e., time recording) and Wage and Hour practices. Each employee
15 must certify at the end of each pay period that they have reviewed their hours recorded, including meal
16 periods and any manager edits, and that their hours are accurately recorded. The employee is given the
17 option to disagree with the accuracy of their recorded hours, and they will still be paid for the recorded
18 time but the disagreement will be escalated. Employees continue training throughout their employment
19 via online learning courses that address compliance with applicable wage and hour requirements.

20 50. In sum, Defendant argues that its wage and hour policies that applied to Plaintiffs during
21 the relevant time period complied with California law. Defendant claims that none of the Plaintiffs can
22 prove that he or she is actually an "aggrieved employee." On this basis, and in light of the numerous
23 different positions, compensation methods, scheduling practices, and club locations, Defendant argues
24 that Plaintiffs should not be able to prosecute these actions on a representative basis. Defendant contends
25 that to do so would be unmanageable and would impinge upon its due process rights.

26 **Factors Supporting a Reduction in Total Penalty Amount**

27 51. PAGA gives the Court latitude to reduce the amount of civil penalties "based on the
28 facts and circumstances of a particular case" when "to do otherwise would result in an award that is
29 unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(h). In reducing PAGA
30 penalties, Courts have considered issues including whether the employees suffered actual injury from the
31 violations, whether Defendant was aware of the violations, and the employer's willingness to fix the
32 violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*, 2011

1 WL 7563047, at *4 (C.D. Cal. 2011).

2 52. Plaintiffs recognize that the Court could credit Defendant for maintaining facially
3 compliant policies and requiring training on wage and hour issues for all employees. Defendant
4 maintained copious records to document employee completion of the training, including for the Named
5 Plaintiffs here.

6 53. Defendant has implemented changes to its wage and hour practices since the filing of
7 these actions. Plaintiffs' counsel are informed that Defendant implemented an online payroll system in
8 October 2016 that allows employees to input and edit their time at any location where they have internet
9 access (i.e., outside of 24 Hour clubs); employees no longer have to complete manual time adjustment
10 forms. Thus, for example, if a Personal Trainer has to take a client call at home, he or she can input this
11 time more easily. Plaintiffs' counsel are informed that Defendant also implemented a mobile device
12 reimbursement policy in February 2016. Additionally, Plaintiffs' counsel are informed that Defendant
13 began providing rest break compensation to piece-rate employees (i.e., GXIs) effective January 2016.
14 These measures reflect a recognition of the importance of wage and hour laws, and there is a significant
15 chance that the Court will credit these efforts by reducing the penalties for Plaintiffs' claims for meal and
16 rest breaks, off-the-clock work, and failure to reimburse business expenses.

17 54. Plaintiffs recognize that there is a significant chance that the Court would decline to
18 stack penalties. The potential exposure described here incorporates the possibility that multiple violations
19 can be assessed for a particular pay period for a particular employee. Even without stacking derivative
20 violations, a given employee may present multiple PAGA violations (e.g., for meal and rest violations,
21 off-the-clock work, and failure to reimburse) for a particular pay period. There is a chance that the Court
22 would decline to assess multiple violations per pay period per employee in this manner.

23 55. And indeed, there is a significant chance that the Court would decline to stack on
24 derivative violations for an employer that maintains comprehensive, facially compliant policies and
25 training and made voluntary changes to improve its wage and hour practices.

26 56. With respect to derivative penalties under Labor Code section 203 as incorporated into
27 the PAGA, Defendant would have argued that no waiting-time penalties can be awarded unless the
28 failure to pay wages is "willful," an element that Plaintiffs acknowledge would have been difficult to
29 prove.

30 57. Plaintiffs also recognize that some courts have interpreted Labor Code section
31 2699(f)(2) to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an
32 employer has been notified that its conduct violates the Labor Code.

Maximum Potential PAGA Penalties at Trial

58. Applying all defenses and risks of litigation discussed above, including the likelihood of prevailing on a representative basis for all employees, and factoring in the Court's discretion to reduce the civil penalties, Plaintiffs assess a realistic trial value as follows:

- Plaintiffs' claims for meal break violations are worth approximately \$2.50 million
- Plaintiffs' claims for rest break violations are worth approximately \$9.8 million
- Plaintiffs' claims for off-the-clock work and unpaid overtime is worth approximately \$5.7 million
- Plaintiffs' claim for failure to reimburse Personal Trainers for business expenses is worth approximately \$866,000

59. Additionally, Plaintiffs also allege derivative PAGA violations for failure to timely pay wages and failure to provide accurate, itemized wage statements stemming from the above violations. Though there is a significant chance that the Court would decline to stack on derivative violations, these claims nonetheless contribute to the overall valuation. Plaintiffs assess a realistic trial value of \$3.8 million.

60. In view of the above defenses and risks of continued litigation, the total, realistic trial value of Plaintiffs' claims, and the amount that might actually be awarded at trial, is approximately \$22.6 million. Considering the issues, defenses, and the risks, an \$11 million settlement is an excellent result.

REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS

61. For their efforts and the substantial risk they undertook in obtaining a large common fund settlement to benefit the LWDA and the PAGA Settlement Employees, the Parties allocated one-third of the Maximum Settlement Amount to Plaintiffs' counsel for reasonable attorneys' fees, plus actual litigation costs in an amount not to exceed \$100,000.00. The fee award is to be split between the respective counsel for Plaintiffs in *Holley*, *Madrigal*, and *Vorise*. These fees are warranted under the law and within the range commonly awarded in similar cases.

62. Plaintiffs' counsel are experienced representative action litigators. This experience and expertise, combined with the high quality of work performed in this case by Plaintiffs' counsel, resulted in the Settlement achieved.

63. SWCKW is regarded as one of the leading private plaintiff's firms in representative wage and hour and employment actions. In November 2012, the Recorder listed the firm as one of the "top 10 go-to plaintiffs' employment firms in Northern California." The partners and attorneys have litigated major wage and hour actions, have won several prestigious awards, and sit on important boards

1 and committees in the legal community. SWCKW was founded by Todd Schneider in 1993, and I have
2 been a member of the firm since 1995.

3 64. Nearly my entire legal career has been devoted to advocating for the rights of individuals
4 who have been subjected to illegal pay policies, discrimination, harassment and retaliation and
5 representing employees in wage and hour and discrimination class actions. I have litigated hundreds of
6 wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's
7 current cases in these areas. I am a member of the State Bar of California, and have had memberships
8 with Public Justice, the National Employment Lawyers Association, the California Employment
9 Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for
10 the San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of
11 the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman Trial
12 Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer
13 every year since 2014. I earned my Bachelor's degree from the University of California, and I am a
14 graduate of the University of the Pacific, McGeorge School of Law.

15 65. A partial list of SWCKW's successful representative actions includes: *Harmon, et al. v.*
16 *Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of
17 a class and PAGA settlement for failure to pay wages free and clear, failure to pay overtime and
18 minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to
19 adhere to California record keeping requirements, and failure to provide adequate seating, under
20 California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern
21 County Superior Court) (final approval of a class and PAGA settlement for failure to provide meal and
22 rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages,
23 waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted
24 wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-
25 EMC) (Northern District of California) (final approval of a class, collective, and PAGA settlement for
26 failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-*
27 *Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California)
28 (final approval of a class and PAGA settlement for failure to provide meal and rest periods, failure to
29 compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time
30 penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case
31 No. 15-cv-01889-TEH) (Northern District of California) (final approval of class, collective, and PAGA
32 settlement for failure to compensate for all hours worked, including overtime, under federal and

1 California law, failure to provide meal and rest breaks, failure to reimburse for necessary business
2 uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage
3 statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento
4 Superior Court) (final approval of a class and PAGA settlement for failure to provide meal and rest
5 breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp.*
6 *et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class,
7 collective, and PAGA settlement for failure to compensate for all hours worked, including overtime,
8 failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to
9 pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et*
10 *al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final
11 approval of a class and PAGA settlement for failure to provide meal and rest breaks, unpaid wages,
12 unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to
13 provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-
14 cv-01659) (Northern District of California) (final approval of FLSA settlement); *Barrera v. Radix Cable*
15 *Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class
16 action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide
17 overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon
18 termination to, and failure to provide accurate itemized wage statements to retention specialists working
19 for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588)
20 (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary
21 duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-
22 052222) (Northern District of California) (settlement of claims that rental car company misclassified
23 non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal
24 periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco
25 County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work,
26 unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz,*
27 *et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission
28 Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on
29 targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior
30 Court) (final approval of class action settlement on behalf of a class of individuals with mobility
31 disabilities denied access to various facilities owned, operated, and/or maintained by the County of
32 Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona)

(final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (final approval of class and PAGA settlement in certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105)

(Alameda County Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours worked); among many others.

66. I have reviewed a summary of SWCKW's billing records, which are maintained during the regular course of business and billed contemporaneously. The following charts sets forth the billable hourly rate and the hours billed by each attorney, and the total amounts billed for the major tasks/phases of the litigation.

///

Lawyer	Title	Rate	Hours	Fees
Carolyn Hunt Cottrell	Partner	\$835	209.9	\$175,266.50
Guy B. Wallace	Partner	\$835	49.6	\$41,416.00
Nicole N. Coon	Associate	\$675	40.9	\$27,607.50
Scott L. Gordon ¹	Associate	\$400	101.5	\$40,600.00
Moises Jrade	Associate	\$600	13.1	\$7,860.00
Mira P. Karageorge	Associate	\$675	17.8	\$12,015.00
Keenan L. Klein	Associate	\$675	400.2	\$270,135.00
Christine K. Knowles	Associate	\$550	7.4	\$4,070.00
Abigail Laudick	Associate	\$625	4.5	\$2,812.50
David C. Leimbach	Associate	\$750	188.4	\$141,300.00
Michelle S. Lim	Associate	\$625	119.4	\$74,625.00
Nathan B. Piller	Associate	\$675	21.9	\$14,782.50
Melissa Raffalow	Associate	\$600	2.5	\$1,500.00
Sintia S. Saenz	Associate	\$675	0.9	\$607.50
Justin B. Schultz	Associate	\$600	3	\$1,800.00
Law Clerks, Paralegals, and Clerical Staff		\$214.66 (average rate)	331.49	\$71,157.00
TOTAL			1512.49	\$887,554.50

Major Tasks/Phases	Hours	Fees
Case Assessment, Development and Administration	137.7	\$61,400.50
Fact Investigation/Development	302.2	\$137,236.00
Pleadings	174.3	\$93,475.50
Other Written Motions and Submissions	466.6	\$324,438.00
Written Discovery	139.3	\$89,443.50
Depositions	117.5	\$78,221.50
Settlement/Non-Binding ADR	157.4	\$85,590.00

67. While adjusting our rates to track market increases, SWCKW's rates have steadily remained reasonable and competitive, and have been consistently approved by many federal and state courts over the past several years. See, e.g., *Harmon, et al. v. Diamond Wireless, LLC* (Case No. 34-2012-00118898) (Sacramento Superior Court, Feb. 14, 2018) (approving class settlement and cross-checking fee in part using \$835 rate for Carolyn Hunt Cottrell and \$350-\$750 rate for other attorneys); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court, Apr. 28, 2016) (approving class settlement and cross-checking fee in part using \$795 rate for

¹ A 2010 law school graduate, Mr. Gordon started as a law clerk for SWCKW in January 2014, and became an associate in January 2018 after he obtained his California law license. He has worked on *Vorise* in both capacities. All of his time is billed at a \$400 per hour rate.

Carolyn Hunt Cottrell and \$350-\$500 rate for other attorneys); *Willits, et al. v. City of Los Angeles* (Case No. 2:10-cv-05782-CBM-MRW) (C.D. Cal., Aug. 25. 2016) (awarding fees on lodestar basis and specifically approving \$750 rate for partners and \$300-\$700 rates for other attorneys).

68. In this case, there was no guarantee of compensation or reimbursement. Rather, SWCKW undertook all the risks of this litigation on a completely contingent fee basis. The inherent risk of proving liability and penalties across the aggrieved employees and Defendant's representation by skillful counsel confront SWCKW with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case.

69. Nevertheless, Plaintiff and SWCKW committed themselves to developing and pressing Plaintiff's legal claims to enforce the State of California's and the employees' interests and maximize the recovery. During the litigation, counsel had to turn away other, less risky cases to remain sufficiently resourced for this one. The challenges that SWCKW had to confront and the risks they had to fully absorb on behalf of the State and the employees here are precisely the reasons for multipliers in contingency fee cases.² As PAGA Settlement Employees and the State will receive significant payments if the Settlement is approved, SWCKW seek a reasonable fee award for their efforts and the risk they have assumed.

70. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

71. To date, SWCKW's costs and expenses—costs that would be normally billed to a fee-paying client—consist of the following:

² (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed... because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans".))

Cost & Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$1,333.19
Court Fees, Courier Fees, Filings & Service of Process	\$6,258.81
Court Reporters, Transcripts & Depositions	\$8,279.60
Delivery & Messenger	\$1,679.51
Expert & Consulting Services	\$0.00
Investigation Services	\$0.00
Mediation Fees	\$0.00
Postage & Mailings	\$155.30
Research Services/Document Retrieval	\$4,937.73
Telephone (Long distance, conference calls, etc.)	\$0.00
Travel-Related Costs and Expenses	\$3,116.68
TOTAL	\$25,760.82

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of June, 2018, at Emeryville, California.



Carolyn Hunt Cottrell

1 CAPSTONE LAW APC
Raúl Pérez (SBN 174687)
2 Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
3 Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
4 Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
5 Ruhandy.Glezakos@capstonelawyers.com
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Tel: (310) 556-4811
7 Fax: (310) 943-0396

8 Attorneys for Plaintiffs
Donna Holley and Paul Williams
9

10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**
13

14 DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
15 Attorneys General Act ("PAGA"),

16 Plaintiffs,

17 vs.

24 HOUR FITNESS USA, INC. a California
corporation, and DOES 1 through 10, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. RIC1602246

**DECLARATION OF LAURA L. HO IN
SUPPORT OF IN SUPPORT OF MOTION
TO APPROVE SETTLEMENT PURSUANT
TO PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: 5

1 I, Laura L. Ho, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and a shareholder
3 at the law firm of Goldstein, Borgen, Dardarian & Ho (“GBDH”), in Oakland, California. I am
4 counsel for Plaintiff Alyssa Madrigal. I have personal knowledge of the facts set forth in this
5 declaration and could and would testify competently to them if called upon to do so.

6 2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of
7 Class Action Settlement. I recommend approval of the proposed Settlement, which I consider to be
8 an excellent result in light of the potential exposure and significant risks of continued litigation, set
9 out in detail in the Declarations of Raul Perez and Aashish Desai, submitted herewith.

10 **QUALIFICATIONS**

11 3. Goldstein, Borgen, Dardarian & Ho (“GBDH”) is a plaintiffs’ complex and class
12 action firm that was founded in 1972, in Oakland, California. GBDH has a national practice. We
13 have litigated class actions over the last forty plus years in Arizona, Florida, Georgia, Illinois, Iowa,
14 Missouri, Minnesota, Maryland, Nebraska, New Jersey, New York, Pennsylvania, Tennessee, and
15 Texas, as well as California. GBDH has successfully prosecuted scores of class, collective, and
16 complex actions in state and federal courts nationally, in the areas of employment discrimination,
17 wage and hour, disability access, public accommodations, consumer rights, environmental justice,
18 and voting rights. A copy of the firm’s resume is attached as Exhibit A.

19 4. I have been with GBDH since October 1998, became a partner in January 2005, and a
20 named partner in 2014. A copy of my resume is attached as Exhibit B. The resume of Of Counsel to
21 GBDH, David Borgen, is attached as Exhibit C.

22 5. Based on GBDH’s own independent investigation and evaluation, and taking into
23 account the views of experienced mediator Jeffrey Ross, I am of the opinion that the proposed
24 Settlement is fair, reasonable, and adequate. The Settlement represents an outstanding result for the
25 aggrieved employees in light of all known facts and circumstances, including the extensive risks of
26 continued litigation, as described more fully in the Perez and Desai declarations.

27 6. GBDH has a uniform set of current hourly rates which are based on prevailing market
28 rates for attorneys and paralegals of comparable levels of experience at law firms of comparable

1 reputation and experience. GBDH examines its hourly rate structure annually and, in doing so,
2 consults with attorneys who handle complex and class action litigation. In addition, through the
3 many fee litigation matters in which GBDH has participated, my firm has obtained extensive
4 information regarding billing rates and practices of both plaintiff and defense-side attorneys and law
5 firms who handle complex and class action litigation.

6 7. The applied hourly rates are commensurate with the rates of practitioners with similar
7 experience within the California legal market. My firm's hourly rates have been previously approved
8 by numerous courts. *See, e.g., Willey v. Techtronic Indus. N. Am.*, No. RG 16806307 (Alameda
9 Super. Ct.) (finding that GBDH's "2017 hourly rates are reasonable and commensurate with the
10 prevailing rates for class actions."); *Carrillo-Hueso v. Ply Gem Indus. Inc.*, Case No. 34-2016-
11 00195734-CU-OE-GDS (Sac. Super. Ct., June 29, 2017) (in final approval order, finding that
12 GBDH's "2017 hourly rates are reasonable and commensurate with the prevailing rates for wage and
13 hour class actions."); *Barnes v. Sprig, Inc.*, No. CGC-15-548154 (S.F. Cnty. Super. Ct. Dec. 20,
14 2016) (in final approval order, finding "that [GBDH's] 2016 hourly rates are reasonable and
15 commensurate with the prevailing rates for wage and hour class actions"); *Willits v. City of Los*
16 *Angeles*, No. 2:10-cv-05782-CBM-MRW (C.D. Cal. Aug. 25, 2016) (ECF No. 418) (approving
17 GBDH's 2015 rates); *Mayton, et al. v. Konica Minolta Business Solutions, U.S.A., Inc.*, No.
18 RG12657116 (Alameda Cnty. Super. Ct. June 22, 2015). GBDH has also been paid at prevailing
19 hourly rates for work done on a non-contingent basis for work outside of this matter. GBDH will
20 provide updated and more precise lodestar information to the Court in its fees and costs application.

21 8. GBDH's rates for individuals who have billed on this case, as well as the amount of
22 time spent on each task is as follows:

Lawyer	Title	CA Bar Adm.	Rate	Hours	Fees
David Borgen	Of Counsel	Dec. 1981	875	50.2	\$43,925
Scott Grimes	Senior Paralegal/Statistician	N/A	300	64.5	\$19,350
Laura Ho	Partner	Dec. 1994	860	45.4	\$39,044
Stuart Kirkpatrick	Paralegal	N/A	250	4.4	\$1,100

Lawyer	Title	CA Bar Adm.	Rate	Hours	Fees
Jacqueline Thompson	Senior Paralegal	N/A	295	2.7	\$796.5
Adrianne De Castro	Associate	Dec. 2005	550	200.1	\$110,055
Aashish Desai	Partner	Jan. 1997	850	1015.1	\$862,835
Sonia Nava	Paralegal	N/A	250	154	\$38,500
				1,536.4	\$1,115,606

9. When combined with the records provided by co-counsel on the *Madrigal* case, we have spent the following hours and lodestar in prosecuting the *Madrigal* action in the following task categories:

Major Tasks/Phases	Hours	Fees
Case Assessment, Development and Administration	701.3	\$514,447
Court Conferences	131.8	\$72,564
Depositions	93.6	\$78,960
Experts	6.7	\$5,423
Fact Investigation/Development	147.1	\$107,386.50
Other Written Motions and Submissions	237.6	\$161,763.50
Pleadings	5.8	\$3,261
Settlement/Non-Binding ADR	119.4	\$98,645.50
Written Discovery	93.1	\$73,155
Grand Total	1536.4	\$1,115,606

10. GBDH's incurred costs are attached as Exhibit D.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed June 15, 2018, in Oakland, CA.


 Laura L. Ho

Exhibit A

GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000 ♦ Oakland, CA 94612
(510) 763-9800 ♦ (510) 835-1417 (fax)
www.gbdhlegal.com

Goldstein, Borgen, Dardarian & Ho (“GBDH”) concentrates on complex and class action litigation on the plaintiff side, including wage and hour, employment discrimination, disability access, environmental, voting rights, and other public interest litigation. GBDH, founded in 1972, is one of the most successful private plaintiffs’ public interest firms in the country. The firm has a national practice and regularly litigates class action lawsuits in California, and has also litigated class actions in Arizona, Florida, Georgia, Iowa, Illinois, Missouri, Michigan, Minnesota, Maryland, New York, Pennsylvania, Tennessee, and Texas.

GBDH is one of the leading plaintiffs’ firms litigating wage and hour class and collective actions in California and nationally. The firm has successfully litigated cases on behalf of workers improperly denied overtime and other compensation in numerous wage and hour class and collective actions, including *Garcia v. Oracle* (\$35 million settlement), *Rosenberg v. IBM* (\$65 million settlement), *Butler v. Countrywide* (\$30 million settlement), *Lin v. Siebel* (\$27.5 million settlement), *Bullock v. Automobile Club* (\$19.5 million in settlement), *Contreras v. Bank of America* (\$16.65 million settlement), and *Mousai v. E-Loan* (\$13.6 million settlement). The firm has also played a part in strengthening the wage and hour laws for workers by submitting friends of the court briefs in several California Supreme Court cases and advocating for workers before the state administrative body that formulates the orders governing wages, hours and working conditions. The firm’s comments to the U.S. Department of Labor (DOL) opposing the proposed March 31, 2003 “white collar” overtime exemption regulations resulted in significant improvements in the final regulations as noted by the DOL in the *Federal Reporter* on April 23, 2004.

In the largest monetary recovery ever recovered against a private-sector company in a gender discrimination case brought under Title VII of the Civil Rights Act of 1964, GBDH obtained \$250 million for a class of women who were denied or deterred from positions as State Farm insurance sales agents (*Kraszewski v. State Farm General Ins., Co.*). As part of the settlement agreement in *Kraszewski*, which followed a successful trial, State Farm was required to fill 50 percent of its California sales position vacancies with women and to hire three female recruiters to find qualified women applicants. GBDH also obtained the largest monetary recovery at the time in a Title VII race discrimination case (*Haynes v. Shoney’s, Inc.*) in which \$132.5 million and broad injunctive relief was obtained on behalf of a class of African American employees and applicants. GBDH also negotiated an \$87.5 million settlement on behalf of women employees and applicants for sales positions at Home Depot stores in its Western Division (*Butler, et al. v. Home Depot, Inc.*). The settlement established new job selection procedures that created thousands of job opportunities in sales and management positions for women. GBDH also recovered \$80 million in a sex discrimination class action against Lucky Stores, Inc. (*Stender v. Lucky Stores, Inc.*). The settlement followed a three-month trial and two appeals to the Ninth Circuit Court of Appeals. Subsequently, the firm obtained similar relief in gender discrimination class action against Publix Super Markets, Florida’s largest private employer (*Shores v. Publix Super Markets, Inc.*). The Publix settlement included significantly increased job opportunities for women and \$81.5 million in monetary relief.

GBDH also successfully resolved a race discrimination class action against Southern California Edison that challenged compensation and promotion inequities of African American employees (*Rice v. Southern California Edison*). The settlement resulted in extensive injunctive relief and a settlement fund of \$18.25 million. GBDH also co-counseled and negotiated a class action settlement in a gender discrimination case against MetLife (*Mitchell v. Metropolitan Life Ins. Co., dba MetLife*). The settlement provides for a payment of \$13.4 million and extensive nationwide injunctive relief affecting sales agents and sales managers. Most recently, the firm successfully tried a race discrimination class action against Lufkin Industries, Inc. (*McClain v. Lufkin Industries, Inc.*) in the Eastern District of Texas and successfully defended the trial court judgment against two appeals to the Fifth Circuit Court of Appeals.

GBDH also litigated the largest public accommodations case to date under Title II of the 1964 Civil Rights Act (*Ridgeway v. Denny's*). This class action brought on behalf of African American customers of Denny's Restaurants in California resulted in a \$34.8 million settlement and established a monitoring system, training and other injunctive relief measures to assure that African American customers of Denny's nationwide receive non-discriminatory service in the future.

GBDH also has successfully litigated Clean Water Act cases challenging excessive discharges of selenium into San Francisco Bay by Unocal, Tosco and Exxon Oil Companies, and a case brought against Dow Chemical Co., under California's Proposition 65 (prohibiting the discharge of carcinogens and other toxics into drinking water sources) resulting in injunctive relief, civil penalties and attorneys' fees in a combined total of more than \$12 million.

GBDH also has an active docket of disability access cases. The firm has been instrumental in negotiating landmark agreements on behalf of persons with vision impairments resulting in the installation of "talking ATMs" at thousands of Bank of America, Wells Fargo, Bank One, Wachovia, 7-11 and Citibank locations across the country and ensuring that persons with vision impairments receive banking materials in alternative formats, such as Braille and large print. The firm has also successfully litigated other cases involving access to public accommodations on behalf of persons with disabilities, including a class action against Macy's Department stores brought on behalf of persons with mobility disabilities. In addition, the firm has successfully litigated cases involving access to public pedestrian facilities, including a recently approved class action settlement in *Willits v. City of Los Angeles*. The landmark settlement requires the City of Los Angeles to pay \$1.4 billion to make its sidewalks, curb ramps, crosswalks, and other walkways accessible to individuals with mobility disabilities.

GBDH has long been recognized as one of the top plaintiffs' firms in the country. In 2011 and 2012, the Recorder recognized the firm as one of the top ten "Leading Employment Practices" for plaintiffs in the Bay Area. The firm's partners are regularly recognized as "Superlawyers." As early as July 1992, *The National Law Journal* ("A National Who's Who of the Top Lawyers in Employment Litigation") stated that GBDH was, "In a league of their own on the plaintiffs' side, handling the largest class actions nationwide." A 1995 *Business Week* article called GBDH "the SWAT team of bias litigation," noting that in the prior three years, the firm "ha[d] collected more than \$600 million in damages and legal fees from companies its clients have sued for discrimination." In March 2004, *The Recorder*, San Francisco's daily legal newspaper, listed all of the firm's partners as among the "top attorneys" in employment law in the San Francisco Bay Area. GBDH partners have been awarded the "CLAY" (California

Lawyer Attorneys of the Year) in 2000, 2008, and 2014 (by *California Lawyer* magazine), for “extraordinary achievement.”

Exhibit B

LAURA L. HO
GOLDSTEIN, BORGEN, DARDARIAN & HO

300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 763-9800
(510) 835-1417 (fax)
lho@gbdhlegal.com
www.gbdhlegal.com

LEGAL EXPERIENCE

Goldstein, Borgen, Dardarian & Ho, Oakland, CA, Partner, January 2005 – present; Associate, October 1998 – December 2004. Plaintiffs' federal and state court employment class action litigation. 2009 California Lawyer of the Year Award Winner for employment law. 2006, 2010-2018 Super Lawyer. Top Attorney In Northern California, San Francisco Magazine August 2011. Best Lawyer's 2014 Lawyer of the Year for Oakland in Litigation-Labor and Employment.

The Honorable John C. Coughenour, Chief Judge of the Federal District Court of the Western District of Washington, Seattle, WA; Judicial Law Clerk, September 1997 – September 1998.

ACLU Foundation National Immigrants' Rights Project, San Francisco, CA; Staff Counsel, November 1996 to September 1997. Federal court litigation on behalf of immigrants.

Asian Law Caucus, Inc., San Francisco, CA; Attorney (NAPIL Equal Justice Fellow), September 1994 to October 1996; Legal Intern, June to August 1993. Conducted wide-ranging advocacy on behalf of low-wage immigrant workers, including litigation and policy work; established workers' rights clinic for Asian immigrant workers; supervised law students.

EDUCATION

Yale Law School, New Haven, CT; J.D., June 1994

Honors: Connecticut Bar Fellowship, 1993-94; Raphael Lemkin Human Rights Fellowship, 1992-93; Stephen J. Massey Prize, 1992-93

Activities: Lowenstein International Human Rights Project, Director, 1992-93; Pacific Islander, Asian and Native American Law Student Association, Executive Board Member and Coordinator for Minority Recruitment, 1992-93; Yale Journal of International Law, Editor, 1991-92.

University of Washington, Seattle, WA; B.A. in History, B.A. in International Studies, June 1991

Honors: *Cum Laude*, yearly High Scholarship all four years.

BAR ADMISSION

1994; California, U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit; 1995, U.S. District Court, Central District of California; 1997, U.S. Court of Appeals, 10th Circuit

PROFESSIONAL AFFILIATIONS

Asian Law Caucus, Board Member, 2005 – 2014

San Francisco Bar Association, Labor and Employment Committee, Executive Member 2006-2008

NELA, elected Executive Board Member 2016 – current, Wage and Hour practice group chair (former)

ABA, Labor & Employment Law Section, Diversity and Inclusion in the Legal Profession, Plaintiff Co-Chair

ABA, Labor & Employment Law Section, FLSL subcommittee, Midwinter Report Co-Editor in Chief, State Law Midwinter Report Senior Editor

LITIGATION EXPERIENCE

(partial listing)

Willey v. TTI, RG16806307 (Superior Court, Alameda County) (final approval of \$3.5 million settlement for 350 California class members approved in August 2017)

In re Uber FCRA, 14-CV-05200-EMC (N.D. Cal.) (final approval of nationwide FCRA class action settlement granted in 2018)

Talamantes v. PPG Indus., Inc., 13-cv-4062-WHO (N.D. Cal.) (final approval of \$5 million settlement on behalf of 109 class and collective action members nationwide granted in December 2015)

Vasquez v. USM, Inc., C13-05449 WHA (N.D. Cal.) (final approval of California class action on behalf of janitors alleging granted in 2015)

Willner v. Manpower Inc., 11-cv-2846 (final approval of \$8.75 million settlement for temporary employees granted in 2015)

Bennett v. SimplexGrinnell, 11-CV-01854-JST (N.D. Cal.) (final approval of \$4.9 class settlement on behalf of employees who perform testing and inspection of fire and sprinkler systems for prevailing wages granted in 2015)

Welch v. Genentech, Case No. CIV 524550 (Superior Court, San Mateo County) (final approval of \$2.95 million class settlement granted in December 2014)

Lange v. Ricoh, Case No. RG13682710 (Superior Court, Alameda County) (final approval granted in December 2014 of class settlement for 250 account executives for expense reimbursements)

Melliz v. Bellflower, Case No. BC551555 (Superior Court, Los Angeles County) (California Voting Rights Act case brought on behalf of Latino voters settled in January 2015)

Moreno v. Anaheim, Case No. 30-2012-00579998-CU-CR-CXCA (Superior Court, Orange County) (California Voting Rights Act case brought on behalf of Latino voters settled in January 2014)

Rios v. ABC Unified School District, BC505510 (Superior Court, Los Angeles County) (California Voting Rights Act case brought on behalf of Latino voters settled in November 2013)

Macey v. Wells Fargo, JCCP 4654 (Superior Court, San Francisco County) (final approval of \$3 million class settlement granted in March 2014)

Morazan v. Aramark, No. 13-CV-00936-YGR (N.D. Cal.) (final approval of \$2.75 million class settlement granted in November 2013)

Vemulapati v. Siebel Systems Inc., No. RG 13662755 (Superior Court, Alameda County final approval of class action settlement granted in September 2013)

Zamora v. Countrywide, BC 360026 (Superior Court, Los Angeles County) (class settlement for over 10,000 hourly employees for meal and rest and other claims given final approval in March 2013)

Garcia v. Oracle, RG 07321026 (Superior Court, Alameda County) (certified class action regarding misclassification and related claims for 1,700 computer and technical employees; final approval of \$35 million class settlement granted in March 2012)

Galu v. Genentech, Inc., No. CIV505266 (Superior Court, San Mateo County) (lead counsel for \$2.1 million settlement for approximately 100 people; final approval granted in 2012)

Myart v. Autozone, Case No. 05CC03219 (Superior Court, Orange County) (Class counsel in certified class action for over 30,000 hourly workers for off the clock claims; final approval granted in November 2011)

Contreras v. Bank of America, Case No. CGC-07-467749 (Superior Court, San Francisco County) (\$16.65 million class settlement for California mortgage loan officers finally approved in 2010)

Meyn v. Peet's, No. RG08398070 (Superior Court, Alameda County) (\$2.6 million class settlement for California Store Managers finally approved in 2010)

Mousai v. E-Loan, Inc., No. 06-01993 SI (N.D. Cal.) (\$13.6 million settlement in overtime class action for mortgage salespeople approved in May 2007)

Lin v. Siebel Systems, Inc., No. CIV 435601 (Superior Court, San Mateo County) (\$27.5 million class action settlement in overtime case for certified class of over 800 software engineers approved in 2007)

Butler v. Countrywide, No. BC 268250 (Superior Court, Los Angeles County) (\$30 million class settlement for certified class of over 450 misclassified account executives approved in 2005)

Bullock v. Automobile Club of Southern California, No. SACV01-731GLT (C.D. Cal.) (FLSA collective action certified for over 500 opt-in Sales Agent plaintiffs; \$19 million settlement approved in 2004)

Cruz, et al. v. Estados Unidos Mexicanos, et al., No. C01-00892 CRB (N.D. Cal.) (counsel for settlement class of WWII era braceros for return of "savings fund" wages)

Gentry v. Superior Court (Circuit City Stores), No. S141502 (Cal. 2007) (counsel for amici curiae in overtime case involving class action waiver in arbitration agreement)

Sav-on Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319 (2004) (counsel for amici curiae in case involving class certification standards in California)

Morillion v. Royal Packing Co., 22 Cal. 4th 575 (2000) (counsel for amici curiae in case involving definition of "hours worked" under California Labor Code)

Earley v. Superior Court, 79 Cal. App. 4th 1420 (2000) (counsel for amici curiae in case involving California's one-wage fee shifting statute for overtime wage claims)

Cuadra v Millan, 17 Cal. 4th 855 (1998) (writ proceeding successfully challenging DLSE's practice of calculating back wages from date of hearing rather than date of filing of claim)

Bureerong v. Uvawas, 922 F. Supp. 1450 (C.D. Cal. 1996) (group action for wages and other damages for Thai sweatshop workers held in virtual "slave" sweatshop)

Sale v. HCC, 509 U.S. 155 (1993) (challenge to U.S. policy of interdicting on the high seas Haitians fleeing from Haiti and returning them to Haiti without determining whether those returned are refugees as defined under international law)

HCC v. Sale, 823 F. Supp. 1028 (E.D.N.Y. 1993) (successfully challenging U.S. policy of indefinite detention of Haitian refugees who tested positive for HIV)

CONFERENCE PRESENTATIONS AND PUBLICATIONS (partial listing)

PLI's Cutting Edge Employment Law Issues 2018: The California Difference, San Francisco, CA (Sept. 2018) (program co-chair and panelist)

National Employment Lawyers Association, Litigating Wage & Hour Cases: Challenges & Opportunities, Silver Spring, MD (April 2017)

9th Annual ABA Section of Labor and Employment Law Conference, "Revisions to the White Collar Exemptions," Philadelphia, PA (Nov. 2015)

PLI's Cutting Edge Employment Law Issues 2015: The California Difference, San Francisco, CA (Sept. 2015)

National Employment Lawyers Association, Protecting Pay: Representing Workers with Wage and Hour Claims, "Facing Arbitration—Arbitration Process & Strategies," Washington, D.C. (April 24-25, 2015)

8th Annual ABA Section of Labor and Employment Law Conference, "Litigating Hybrids Under FRCP 23 and Section 216: How Do You Certify a Class and a Collective Action?" Los Angeles, CA (Nov. 2014)

27th Annual California Employment Lawyers Association Employment Law Conference, "Wage and Hour Litigation: Impact of Recent Blockbuster Supreme Court Decisions," San Diego, CA (Oct. 10, 2014)

National Employment Lawyers Association, 2014 Annual Convention, "Keeping the Heat on Employers in FLSA Cases," Boston, MA (June 26, 2014)

7th Annual ABA Section of Labor and Employment Law Conference, "Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations," New Orleans, LA (Nov. 2013)

PUBLICATIONS

(partial)

Contributing Editor, The Fair Labor Standards Act, Cumulative Supplement, Bureau of National Affairs, Inc.

Chapter and Senior Editor, Wage and Hour Laws, A State-by-State Survey, Main Volume and Supplements, ABA Section of Labor and Employment Law

Practising Law Institute Employment Law Yearbook, Co-Editor for Chapter 6 “EEO Class Actions” 2015-18.

Articles:

Collective Action Basics, 10 Emp. Rts. and Emp. Pol’y J. 427 (2006)

Litigation of Wage and Hour Collective Actions Under the Fair Labor Standards Act, 7 Emp. Rts. and Emp. Pol’y J. 129 (2003) (with David Borgen)

(Dis)assembling Rights of Women Workers on the Global Assemblyline: Human Rights and Garment Industry, 31 Harv. C.R.-C.L. L. Rev. 383 (1996) (with Cathy Powell and Leti Volpp).

Worker Protection Compromised: The Fair Standards Act Meets the Bankruptcy Code, 2 Asian Pac. Am. L.J. 38 (1994) (with Lora Jo Foo and Thomas M. Kim).

Litigating as Law Students: An Inside Look at Haitian Centers Council, 103 Yale L.J. 2337 (1994) (with Victoria Clawson and Elizabeth Detweiler).

Exhibit C

DAVID BORGEN
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417
dborgen@gbdhlegal.com
www.gbdhlegal.com

David Borgen is Of Counsel with Goldstein, Borgen, Dardarian & Ho, PC, "GBDH." The firm is located in Oakland, California, and represents plaintiffs and employees in complex and class action litigation, including employment discrimination, wage and hour, environmental, consumer and other public interest class actions and attorneys' fees litigation. The law firm, formerly Saperstein, Goldstein, Demchak & Baller, was founded in 1972 and has a national practice. Goldstein, Borgen has litigated class action lawsuits in Texas, New York, Florida, Nebraska, Iowa, Georgia, Missouri, Illinois, Washington, Michigan, Maryland, and Minnesota, as well as California, including the class action on behalf of women who were denied or deterred from positions as State Farm insurance sales agents, Kraszewski v. State Farm General Ins. Co., 30 FEP 197 (N.D.Cal. 1985), and the retail store gender discrimination class action, Butler, et al. v. Home Depot, Inc., 70 FEP 51 (N.D. Cal. 1996) (class action on behalf of women employees in and applicants to Home Depot Stores in its Western Division). He was lead counsel in Harrison v. Enterprise Rent-A-Car, 1998 WL 422169 (M.D. Fla. 1998) (certified as a nationwide FLSA collective action) and numerous state wage and hour class actions brought under California law. He is the Secretary of the College of Labor and Employment Lawyers, a national honorary society. He was a member of the Board of Editors of the Bloomberg BNA Fair Labor Standards Act treatise (Third Edition, 2015). He was the first Employee Co-Chair of the ABA's Federal Labor Standards Legislation Committee. He was also a Senior Editor of the Bloomberg BNA treatise Wage and Hour Laws: A State by State Survey (Second Edition 2011). He is a graduate of University of California – Hastings College of the Law (1981) (Order of the Coif). He was a Shareholder at the firm from 1998 through 2015. Prior to joining the Goldstein firm in 1990, he was counsel for the Communications Workers of America, AFL-CIO.

BAR MEMBERSHIP

State Bar of California (Since December 1981)
United States District Courts for Northern (12/1/1981), Southern (12/17/2007), Central (11/2/1989), and Eastern (3/20/1984) Districts of California
United States Court of Appeal for the Third (10/2/2006), Fifth (2/17/2010), Seventh (12/31/2014), Ninth (12/1/1981), Tenth (10/18/2010) and Eleventh (11/14/2002) Circuits

LITIGATION EXPERIENCE

(partial listing)

Godfrey v. City of Chicago, 973 F. Supp. 2d 883 (N.D. Ill. 2013), Class Counsel for African-American female applicants claiming gender discrimination in injunctive relief provided to race

discrimination class; class settlement provided for new opportunities for instatement relief with make whole seniority relief; final approval was granted on March 26, 2015.

Vasich v. City of Chicago, 2013 WL 6730106 (N.D. Ill.), Class Counsel for female applicants challenging Chicago Fire Department's physical ability test that had an adverse impact on women; class settlement provided for a new less discriminatory test, hiring of class members who passed the new test and over \$3.3 million in payments; final approval was granted on December 20, 2013.

Ernst v. City of Chicago, --F.3d--, 2016 WL 497877 (Seventh Circuit, U.S. Court of Appeals) (trial and appellate counsel for successful Title VII claims of female applicants for Fire Department paramedic positions challenging physical ability test). Remedies trial counsel (August 2017), decision pending.

Rulli v. Nielsen Company, No. 3:14-CV-01835 VC (N.D. Cal.) (Co-Lead Counsel for statewide class of Field Representatives claiming unpaid compensable travel time and penalties; \$950,000 class settlement granted preliminary approval on January 12, 2015).

Schoenfeld v. SF Navigatour, No. CGC-13-527914 (Superior Court, San Francisco), Class Counsel for class of city tour guides for overtime wages and meal/rest break violations; final approval of \$350,000 class settlement granted November 12, 2013.

Morazon v. Aramark, No. 13-CV-936 YGR (N.D. Cal.) (Co-Lead Counsel for laundry personnel and drivers with wage/hour claims; class action settlement of \$2,750,000 granted final approval on November 15, 2013).

Roussell v. Brinker, Int'l, 2011 WL 4067171 (Fifth Circuit, U.S. Court of Appeals) (affirming \$1.8 million trial verdict for unlawful tip pool September 14, 2011).

Dent v. Cox Communications Las Vegas, Inc., 502 F.3d 1141, 2007 WL 2580754, 12 WH Cases 2d 1537 (9th Cir., Sept. 10, 2007) (Lead appellate counsel; obtained reversal of district court dismissal of FLSA overtime claims due to inadequate DOL WH-58 Release form).

Parks v. Eastwood Ins. Svc., Inc., 2007 WL 1430289 (9th Cir. 2007) (affirming attorneys fees award in overtime case).

Garcia v. Oracle, No. RG 07321026 (Superior Court, Alameda County) (co-counsel for three sub-classes of IT support employees seeking overtime pay under state law; class certified by Order dated October 15, 2010; final approval of \$35 million class action settlement granted on March 8, 2012).

Hallissey v. America Online, Inc., No. 99-CV-03785 KTD (S.D.N.Y.) (class counsel for settlement class in class and collective action for chatroom coordinators for back wages while misclassified as volunteers; final approval of \$15 million settlement granted May 20, 2010).

Applegate-Walton v. Olan Mills, No. 3-10-CV-00224 (M.D. Tenn.) (class counsel for settlement class of studio photographers for pre-shift work; final approval of \$3 million settlement granted on August 2, 2010).

Signorelli v. Utiliquest, LLC, No. 5:08-CV-38 (M.D. Fla.) (class and collective action settlement resolving compensable time claims (federal and state) of utility locators for \$10 million granted on July 25, 2008).

Stahl v. Mastec, Inc., No. 8:05-CV-1265-T-27 TGW (M.D. Fla.) (class and collective action settlement resolving compensable time claims of satellite dish installers nationwide for \$13,137,365 granted in May 2008).

Mousai v. E-Loan, Inc., No. C-06-1993-SI (N.D. Cal.) (Plaintiff Class Settlement Counsel for class of mortgage loan officers seeking overtime; final approval of \$13.6 million settlement granted May 30, 2007).

Lipnick et al. v. Sprint/United Management Company, No. CIV 463110 (San Mateo County Superior Court) (Co-Counsel for putative Class of call center employees seeking back pay under the FLSA and state law, filed May 21, 2007; subsequently transferred to D. Kansas for review of proposed consolidated settlement; final approval of \$2 million class action settlement granted on August 25, 2009).

Vasquez v. Bank of America, No. 1168845 (Superior Court, Santa Barbara County) (Co-Lead Counsel for statewide class of Liability Risk Analysts seeking overtime pay; final approval granted on February 1, 2007, as to \$2,500,000 class settlement).

Rosenberg v. IBM, No. 06-00430 PJH (N.D. Cal.) (Co-Counsel for putative nationwide FLSA and multi-state class of technical services workers), filed January 24, 2006; final approval of nationwide \$65 million settlement granted July 11, 2007).

Chou v. Starbucks Corp., No. GIC 836925 (Superior Court, San Diego County) (Co-Lead Class Counsel for certified class action on behalf of baristas challenging unlawful tip pool in California stores; judgment for \$105 million after bench trial – June 3, 2008).

Rankin v. Longs Drug Stores, No. GIC 837068 (Superior Court, San Diego County) (Lead Class Counsel for certified class of applicants for employment in California stores seeking statutory penalties for unlawful inquiry into misdemeanor marijuana convictions more than two years old).

Levy v. Verizon Information Services, Inc., 2007 WL 1747104 (E.D.N.Y.) (Co-Counsel for multi-state collective action for “yellow book” sales personnel; collective action notice approved, June 11, 2007).

Pearman v. California State Automobile Association (CSAA), No. R05227458 (Superior Court, Alameda County) (Co-lead counsel for multistate class and collective action for overtime pay for insurance sales agents; final approval granted on January 24, 2006, for \$11,230,000 settlement).

Grazier v. Walgreens Co., No. RG05-0228473 (Superior Court, Alameda County) (Co-lead counsel for “MGT Assistant Managers” seeking relief for missed meal periods under state law; final approval granted on November 14, 2005, for \$3,800,000 class settlement).

Nitzberg v. Citicorp, No. 604423-06 (Supreme Court, New York) (Co-Counsel for class of investment brokers seeking overtime pay; final approval of \$2.5 million class action settlement granted on March 12, 2009).

Zheng v. Siebel Systems, Inc., No. CIV 435601 (Superior Court, San Mateo County) (Counsel with Dickson-Ross LLP for software engineers; final approval granted on April 27, 2007, for \$27.5 million class settlement of overtime claims).

Dunwiddie, et al. v. Central Locating Services, No. 5:04-CV-315-OC-106 (M.D. Fla.) (Co-counsel in certified nation-wide collective action under FLSA and in related actions in New York and Washington; global settlement in excess of \$8 million in 2006).

Bullock v. Automobile Club of Southern California, No. SACV01-731GLT, 2002 WL 432003 (C.D. Cal.) (Lead counsel in FLSA collective action certified for over 500 opt-in Sales Agent plaintiffs and settled in conjunction with Rule 23 class for a total of 1,300 claims in the amount of \$19.5 million; final approval granted December 6, 2004).

Angione v. PSS World Medical, Inc., No. 3:02-CV-854-J-25TJC (M.D. Fla.) (Co-lead counsel; nationwide FLSA collective action notice ordered February 21, 2003; final approval of \$3 million settlement ordered on November 5, 2004).

Ramirez v. Labor Ready, Inc., No. 836186-2, 2002 WL 1997037 (Superior Court, Alameda County) (Lead counsel for class of 300,000 temporary day laborers seeking unpaid wages and reimbursement of expenses; certified on July 12, 2002; final approval of \$1.9 million class settlement granted on August 2, 2004).

Cowan v. GEICO, No. GIC 810166 (Superior Court, San Diego County) (Co-lead counsel for proposed class of over 3,000 telephone center workers seeking overtime pay; filed May 5, 2003; final approval of \$3.3 million settlement granted on July 9, 2004).

Marroquin v. Bed Bath & Beyond of California, No. RG04145918 (Superior Court, Alameda County) (Lead counsel for statewide class of salaried department managers; final approval of \$2,980,000 settlement granted on June 22, 2004).

Mitchell v. Metropolitan Life Ins. Co., No. 01-CIV-2112 (WHP) (S.D.N.Y.) (Co-lead counsel for nationwide class of 3,600 female insurance sales agents and managers; final approval of \$13.4 million class settlement granted on November 6, 2003).

Miskell v. Automobile Club of Southern California, No. 01CC09035 (Superior Court, Orange County) (Co-lead counsel in class action stating overtime claims for insurance claims adjusters; final approval granted in May 2003 for \$2.5 million settlement).

Thomas v. CSAA, No. CH217752-0 (Superior Court, Alameda County) (Class counsel for class of 1200 insurance claims adjusters; final approval of \$8 million settlement for overtime claims, granted in May 2002).

Weddle v. Frito-Lay, Inc., No. C 99-05272 PJH (N.D. Cal.) (Co-lead counsel in litigation seeking class relief statewide for overtime claims; final approval of \$11.9 million class settlement granted February 2001).

D'Imperio v. Nation's Foodservice, Inc., No. C-00309 PJH (N.D. Cal.) (Lead counsel in overtime class action for 90 restaurant managers; final approval granted in 2001 to \$950,000 settlement).

Davis v. The Money Store, No. 99A501716 (Superior Court, Sacramento) (Lead counsel in litigation seeking class relief statewide for overtime claims; \$6 million class settlement approved December 2000).

Otero v. Rent-A-Center, No. BC 217038 (Superior Court, Los Angeles) (Lead counsel in litigation seeking class relief statewide for overtime claims resulting in \$3 million settlement in 2000).

Babbitt v. Alberson's, Inc., No. C-92-1883-SBA (N.D. Cal.) (Statewide Title VII class action resulting in injunctive relief and \$29 million monetary settlement).

Butler v. Home Depot, 70 FEP Cases 51 (N.D. Cal.) (Gender discrimination class action that resulted in monetary relief of \$87 million and injunctive relief covering the western region of Home Depot).

Byrd v. Sprint Corp., No. CV 92-18979 (Sup. Ct. Missouri) (Common law tort and contract class action on behalf of persons who sold long-distance service that resulted in a recovery of \$62.5 million).

DeSoto v. Sears Roebuck & Co., No. RG 03096692 (Superior Court, Alameda County) (Co-lead counsel for statewide class of 2,700 home repair technicians certified on September 21, 2004); class and collective action nationwide settlement (\$15 million) approved over objections in Lenahan v. Sears, Roebuck and Co., 266 Fed. Appx. 114 (3d Cir. 2008)).

Elmer v. Enterprise Rent-A-Car, No. C-98-01571 VRW (N.D. Cal.) (Lead counsel in statewide class action overtime compensation case; the two Enterprise cases resulted in \$6 million in monetary relief).

Hogan v. Allstate Ins. Co., 210 F. Supp. 2d 1312 (M.D. Fla.) (Lead counsel in FLSA action; nationwide collective action notice ordered to 8,500 sales agents in May 2001).

Harrison v. Enterprise Rent-A-Car, 1998WL 422169 (M.D. Fla. 1998) (Lead counsel in nationwide collective action under Fair Labor Standards Act).

Herring v. SaveMart, No. C-90-3571 BAC (N.D. Cal.) (Title VII class resulting in injunctive relief and \$6.3 million monetary settlement).

CONFERENCE PRESENTATIONS AND PUBLICATIONS

Alameda County Bar Association (ACBA), 8th Annual Employment Law Symposium,
“Openings/Closings” (November 3, 2017), Oakland, CA.

American Bar Association – Section of Labor & Employment Law, 10th Annual Conference,
“Who Is An Employee? Expansive Considerations of Coverage,” Chicago, IL (November 10, 2016).

National Employment Lawyers Association (NELA), “Hot Topics in Wage & Hour Law,” Sixteenth Annual Convention, Los Angeles, CA (June 24, 2016).

American Bar Association – Section of Labor & Employment Law, 9th Annual Conference, Panelist, “Compensable Time Under the FLSA in the Wake of Integrated Staffing Solutions v. Burk,” Philadelphia, PA (November 5, 2015).

American Bar Association – Section of Labor & Employment Law, “Tyson Foods and Other Threats to Employment Class Actions,” (Fall 2015, Vol. 44, No. 1)

American Bar Association – Section of Labor & Employment Law, a book review of Just Mercy (by author Bryan Stevenson) (Spring 2015, Vol. 43, No. 2)

National Employment Lawyers Association (NELA), “A Conversation With the Solicitor of Labor” (Moderator for discussion with USDOL SOL Patricia M. Smith), at Protecting Pay: Representing Workers With Wage & Hour Claims MCLE Seminar, Washington, DC (April 24, 2015).

American Bar Association (ABA) Labor and Employment Law Section, Federal Labor Standards Legislation Committee Mid-Winter Meeting, “Litigating Attorneys’ Fees in Fee Shifting Cases,” Puerto Vallarta, MX (February 27, 2015)

Colorado Bar Association, National CLE Conference, “Wage and Hour Law: 2014 Developments,” Vail, CO (January 8, 2015)

State Bar of California Fourth Annual Advanced Wage & Hour Conference, Panelist, “Wage & Hour Update: The Year in Review,” Los Angeles, CA (July 30, 2014)

National Employment Lawyers Association (NELA), “Trying Wage and Hour Class and Collective Actions: Duran and the Challenges Ahead,” Chicago, IL (March 9, 2013)

Bridgeport Continuing Education, 11th Annual Wage & Hour Litigation & Management Conference, “Settlement Preparations, Strategies & Management,” Los Angeles, CA (December 14, 2012).

American Bar Association (ABA) Labor and Employment Law Section 6th Annual Conference, “Compliance Issues,” Atlanta, GA (November 2, 2012).

Bloomberg BNA, FLSA Litigation Tracker, “David Borgen Discusses Supreme Court’s Christopher v. GlaxoSmithKline Ruling, Implications on FLSA Litigation,” October 1, 2012.

American Conference Institute’s 16th National Forum on Wage/Hour Claims and Class Actions, Panelist, “Plaintiffs’ Bar Session,” San Francisco, CA (September 28, 2012).

State Bar of California, Labor & Employment law Section, 2nd Annual Advanced Wage and Hour Conference, “Wage and Hour Update,” Los Angeles, CA (July 25, 2012)

National Employment Lawyers Association (NELA), Annual Convention, "Cutting Edge Issues in Winning Section 216(b) Collective Actions," San Diego, CA (June 22, 2012)

Colorado Bar Association, National CLE Conference, "Wage and Hour Law Update," Aspen, CO (January 5, 2012)

American Bar Association (ABA), Labor and Employment Law Section, 5th Annual Conference, "Trying Wage and Hour Collective/Class Actions," Seattle, WA (November 3, 2011).

National Employment Lawyers Association, "Significant Legal Developments In Wage and Hour Law," Washington, D.C. (October 21, 2011).

Bridgeport, 7th Annual Wage & Hour Litigation Conference, Co-Chair, San Francisco, CA (October 13-14, 2011).

American Conference Institute's 13th National Forum on Wage Hour Claims and Class Actions, Panelist, "View from Plaintiffs' Bar," San Francisco, CA (September 20, 2011).

State Bar of California, Labor and Employment Law Section, Wage & Hour Class Actions After AT&T Mobility v. Concepcion, "Case Law Update," Los Angeles, CA (August 17, 2011).

Colorado Bar Association, National CLE Conference, Vail, Colorado (January 6, 2011) "Wage and Hour Law Overview and Update."

Bridgeport Continuing Education, Eighth Annual Wage & Hour Litigation Conference, Los Angeles, CA (December 15, 2010), "Litigating Hybrid FLSA/State Law Collective and Class Actions."

American Bar Association (ABA), Labor and Employment Law Section and ABA Center for CLE, "Potpourri of 'Hot Topics': Wage and Hour Litigation," (November 17, 2010), live audiocast.

State Bar of California, Labor and Employment Law Section, "Litigating Wage and Hour Class Actions," San Francisco, CA (November 16, 2010).

American Bar Association, Labor and Employment Law Section, 4th Annual Conference, "Get into the Game: The Latest News and Developments in Wage and Hour Litigation," Chicago, IL (November 5, 2010).

American Bar Association, Annual Meeting, "Wage and Hour Basics," San Francisco, CA (August 7, 2010).

California Employment Lawyers Association (CELA), Sixth Annual Wage and Hour Seminar, Oakland, CA (April 30, 2010), "Latest Defense Tactics and How to Counteract Them."

Daily Labor Report (BNA), “Clash of the Titans: IQBAL and Wage and Hour Class/Collective Actions,” with Lin Chan, Esq., 80 DLR L-1 (April 28, 2010).

Colorado Bar Association, National CLE Conference, Vail, Colorado (January 7, 2010), “Wage and Hour Law Overview and Update.”

American Bar Association, Labor and Employment Law Section, 3rd Annual CLE Conference, Moderator, “Litigating Wage and Hour Class Actions,” Washington, D.C. (November 6, 2009).

American Conference Institute’s 8th National Advanced Forum on Wage & Hour Claims and Class Actions, Panelist, “View from the Plaintiff’s Bar: Adapting Your Litigation Strategies in Light of New and Innovative Claims,” San Francisco, CA (October 29, 2009).

Colorado Bar Association, National CLE Conference, Vail, Colorado (January 4, 2009), “Wage and Hour Law Overview and Update.”

The National Farmworker Law Conference, Panelist, “Expert Witnesses in Farmworker Litigation,” Washington, D.C. (November 21, 2008).

American Conference Institute’s 6th National Institute on Wage & Hour Claims and Class Actions, Panelist, “Wage and Hour Class Actions: Winning the Certification Battle,” San Francisco, CA (October 28, 2008).

The Federal Judicial Center, Fair Labor Standards Act (5065-v108), DVD training program for Federal Judicial Law Clerks, Washington, D.C. (October 2008).

American Bar Association, Labor and Employment Law Section, 2nd Annual CLE Conference, Moderator, “White Collar Exemptions,” Denver, CO (September 12, 2008).

National Employment Lawyers Association (NELA), Annual Convention, Moderator for Panel – “Wage & Hour Trials, Tribulations, and Triumphs,” Atlanta, GA (June 26, 2008).

Minnesota State Bar Association, Upper Midwest Employment Law Institute, “Advanced Trial Practice: How to Bring and Defend the FLSA Case,” St. Paul, MN (May 30, 2008).

Minnesota NELA, Annual Spring Dinner, Keynote Address, St. Paul, MN (May 29, 2008).

California Employment Lawyers Association 4th Annual Advanced Wage and Hour Seminar, Panelist, “Pre-certification Conduct and Communications,” Oakland, CA (May 9, 2008).

American Bar Association, Section of Labor and Employment Law, Equal Employment Opportunity (EEO) Committee National Conference on EEO Law, "The FLSA At the Frontier: Overtime Exemptions After the New Regs" (with Jinny Kim), March 28, 2008 (Tucson, AZ).

American Bar Association, Section of Labor and Employment Law and ABA Center for CLE Teleconference, "Fair Labor Standards Act Hot Topics," (February 6, 2008), live audiocast.

Colorado Bar Association, National CLE Conference, Vail, Colorado (January 6, 2008), "Major Areas of Liability in Wage and Hour Law."

American Bar Association, Labor and Employment Law Section, Annual CLE Conference, Moderator, "Litigating Wage and Hour Class Cases from A to Z," Philadelphia, PA (November 8, 2007).

National Employment Lawyers Association, Representing Workers in Individual and Collective Actions Under the FLSA, Program Committee Co-Chair and Moderator, New Orleans, LA (October 19-20, 2007).

American Conference Institute's 5th National Forum on Wage & Hour Litigation, Panelist, "Dispositive Motions: Attacking Wage and Hour Claims or Defenses," San Francisco, CA (October 3, 2007).

Employee Rights and Employment Policy Journal (Chicago-Kent College of Law), "Advanced Issues in FLSA Collective Actions: Joint Employment," Vol. 10, No. 2 (2006).

National Employment Lawyers Association Annual Convention, Moderator/Panelist, "The New Era of Enforcing Workers' Rights Under the FLSA," San Juan, Puerto Rico (June 28, 2007).

California Employment Lawyers Association, Advanced Seminar on Getting To and Through a Class Action Trial, Panelist, "Class Action Trial Plans," El Segundo, CA (May 11, 2007).

American Conference Institute's 4th National Forum on Wage & Hour Claims and Class Actions, Panelist, "Achieving or Defeating Class Certification in Wage & Hour Cases," New York, New York (April 26, 2007).

University of California, Boalt Law School (Berkeley), Guest Lecturer, "Examining a Class Action on Behalf of Temporary Workers," Representing Low Wage Workers Seminar, Law 283 (January 30, 2007.)

Colorado Bar Association, National CLE Conference, Aspen, Colorado (January 7, 2007), "Major Areas of Liability in Wage & Hour Law."

Practicing Law Institute (PLI), 35th Annual Institute on Employment Law, San Francisco, California and Live Webcast, October 31, 2006, Panelist: "Compensation and State Law Wage Claims."

The Labor and Employment Law Section of the State Bar of California, Annual Meeting, General Session re "Top Ten Wage and Hour Developments," San Jose, California, October 27, 2006.

American Conference Institute, National Forum on Wage & Hour Claims and Class Actions, Panelist: "Wage and Hour Class Certification: Strategies and Winning Arguments," San Francisco, California, October 26, 2006.

California Labor & Employment Law Review, State Bar of California and Employment Law Section, Volume 20, No. 2 (Spring 2006), "Book Review: Getting Even: Why Women Don't Get Paid Like Men – And What To Do About It."

Colorado Bar Association, National CLE Conference: Labor & Employment Law, Aspen, Colorado, January 4, 2006, "Major Areas of Liability in Wage and Hour Law."

American Bar Association, Section of Labor and Employment Law and ABA Center for CLE Teleconference and Live Audio Webcast, "The Supreme Court Speaks: Compensable Time as a Result of IBP, Inc. v. Alvarez" (December 14, 2005).

National Employment Lawyers Association (NELA), Impact Litigation Seminar (Program Committee), Cambridge, MA (October 14-15, 2005); Panelist: "Advanced Issues in Collective Actions."

American Bar Association, Section of Labor and Employment Law, Mid-Winter Meeting of the Equal Employment Opportunity Committee, April 7, 2005 (Naples, Florida): "The FLSA Trajectory: Challenges on the Horizon," Panelist regarding FLSA representative actions.

American Bar Association, Labor and Employment Law Teleconference, "The Wave Continues ... 1500 New FLSA Class Actions Filed in 2004 ... More Expected in 2005," (March 2, 2005), Panelist on national MCLE teleconference program.

American Bar Association, Federal Labor Standards Legislation Mid-Winter Meeting, Cancun, Mexico, February 17, 2005, FLSA Panel: Discussion of Current Issues.

Law Education Institute, National CLE Conference (Colorado State Bar Association), Aspen, Colorado (January 5, 2005), "How Long Can You Go? Current Issues in Wage and Hour Law."

American Bar Association, Section of Labor and Employment Law, and Bar Association of San Francisco, "Fair Labor Standards Act/Family Medical Leave Act Basic Law and Procedures," Program Chair and Moderator (December 9, 2004).

American Bar Association Annual Convention, Atlanta, GA, August 10, 2004, Moderator, "Wage and Hour Update: The New FLSA Regulations and Litigation Issues."

American Bar Association Annual Convention, Atlanta, GA, August 9, 2004, Panelist "In-House v. Outside Counsel – What We Want From Each Other."

National Employment Lawyers Association (NELA), Annual Convention Speaker, "Advanced FLSA Collective Actions Panel," San Antonio, TX (June 24, 2004).

Minnesota State Bar Association, Labor and Employment Section, Annual Upper Midwest Employment Law Institute, St. Paul, MN (May 26, 2004), Plenary Speaker, "The New FLSA Wage and Hour Regulations."

Placer County Bar Association, Continuing Education Conference, Lake Tahoe, California (April 24, 2004), "Wage/Hour Litigation."

American Bar Association, Section of Labor and Employment Law, Mid-Winter Meeting of the Federal Labor Standards Legislation Committee, February 19-20, 2004 (St. Thomas, USVI): Annual Report on FLSA Developments.

Law Education Institute, National CLE Conference, Aspen, Colorado (January 6, 2004), "Class Certification and Decertification: Advocacy, Strategy, and Tactics."

Employee Rights and Employment Policy Journal (Chicago-Kent College of Law), "Litigation of Wage and Hour Collective Action Under the Fair Labor Standards Act," with Laura L. Ho, Vol. 7, No. 1 (2003).

National Employment Law Project, et al. Representing Workers and Low-Income Plaintiffs: Tax Consequences in Administration of Settlements and Resolving I.R.S. Controversies, Oakland, CA, October 24, 2003.

State Bar of California, Labor and Employment Law Section Annual Meeting, San Diego, CA, October 10, 2003, "Wage and Hour Law – Reloaded."

California State Bar Law and Employment Law Section, California Labor & Employment Law Review, Vol. 17, No. 5 (September 2003), "Can We Talk?" (regarding communications in state class actions).

National Employment Lawyers Association (NELA), Program Committee and Panelist, "Protecting Employee Rights Under the FLSA, FMLA and Equal Pay Act," San Francisco, CA (March 7-8, 2003).

American Bar Association, Section of Labor and Employment Law, Mid-Winter Meeting of the Federal Labor Standards Legislation Committee, February 19-21, 2003 (Puerto Vallarta, Mexico): Annual Report on FLSA Developments.

Contra Costa County Bar Association, MCLE Spectacular, Panelist, New Developments in Wage & Hour Law and Use of California's Unfair Competition Law, Walnut Creek, CA (November 22, 2002).

State Bar of California, Labor and Employment Section, Annual Meeting, Wage & Hour Update: Where Are We Two Years After AB60? (San Jose, CA), November 15, 2002.

Practicing Law Institute, Annual Institutes on Employment Law (New York, NY and/or San Francisco, CA) November 1, 2005; November 2, 2004; November 4, 2003; October 2002; October 2001; October 2000; October 1999; October 1998: Major Developments in Employment Law: Plaintiffs' Perspective; Wage/Hour Developments.

BNA Wage Hour & Leave Report, "Production Dichotomy Test for FLSA's Administrative Exemption Still Useful," Vol. 1, No. 18, September 13, 2002, pp. 465-466.

American Bar Association Annual Convention, Washington, D.C., August 12, 2002, Moderator, "Litigation of FLSA Collective Actions: Strategies for Plaintiffs' and Defendant's Counsel."

California State Bar Labor and Employment Section, California Labor and Employment Law Quarterly, Vol. 16, No. 3 (May 2002), "Yarbrough v. Labor Ready: Class Action to Enforce California Wage Laws."

Pacific Coast Labor & Employment Law Conference (Seattle, WA), May 2, 2002, Wage & Hour Litigation – The New Wave of Class Actions: Substantive Developments and Litigation Strategies.

BNA Wage Hour & Leave Report, "Questions Arise Over Rules for Collective Actions Under FLSA," Vol. 1, No. 3, February 1, 2002, pp. 77-79.

ABA Section of Labor and Employment Law Mid-Winter Meeting of the Federal Labor Standards Legislation Committee, February 2002 (Miami Beach, FL): Annual Report on FLSA Developments.

Associate Editor, The Fair Labor Standards Act, 2001 and 2002 Cumulative Supplements, Bureau of National Affairs, Inc.

California Employment Law Council, Guest Speaker, Annual Meeting, November 8, 2001, "A Plaintiff's Perspective on Wage/Hour Issues."

American Bar Association Annual Convention, Chicago, August 5, 2001, "The Basics: Fair Labor Standards Act."

National Employment Lawyers Association Annual Convention, Seattle, June 28, 2001, "Selected Issues Under the FLSA and Equal Pay Act".

American Bar Association, Section of Labor and Employment Law and Golden Gate University School of Law, Institute on the Fair Labor Standards Act and the Family Medical Leave Act, Moderator, San Francisco, California (June 6, 2001).

Organization Resources Counselor, Inc., Employment Law and Litigation Group, Guest Speaker, Employment Law From Plaintiffs' Perspective, New York, New York (May 31, 2001).

The Recorder Roundtable: Employment Law Developments, May 8, 2001 (San Francisco).

ABA Section of Labor and Employment Law Mid-Winter Meeting of the EEO Committee, February 2001 (Sanibel Harbor, FL): An Introduction to Litigating FLSA Collective Actions for the EEO Lawyer.

ABA Section of Labor and Employment Law Mid-Winter Meeting of the Federal Labor Standards Legislation Committee, February 2001 (La Romana, Dominican Republic): Annual Report on FLSA Developments.

California State Bar Labor and Employment Section, California Labor & Employment Law Quarterly (Winter 2000), "Overtime Pay – Who's Eligible, Who's Not?" (with Aaron Kaufmann).

National Employment Law Institute July 2000 (San Francisco): Recent Developments in Equal Employment Law from the Perspective of Plaintiffs' Attorneys.

ABA Labor and Employment Law Section Annual Meeting July 8-11, 2000 New York: Federal Labor Standards Legislation Committee Program. Unique aspects of litigation and settling opt-in class actions under the Fair Labor Standards Act, The Age Discrimination in Employment Law Act and the Equal Pay Act.

Lawcast: Employment and Labor, Vol. VI, No. 7 (April 24, 2000), audiocassette re wage/hour developments.

National Public Radio (KALW) April 12, 2000: "Know Your Legal Rights," on wage and hour issues.

ABA Section of Labor and Employment Law
Mid-Winter Meeting of the Federal Labor Standards Legislation Committee February 2000 (Key West, FL): Panel Discussion: Unique Aspects of Litigating and Settling FLSA Cases.

Organization Resources Counselors, Inc. Workforce Opportunity Network
February 2000 (Los Angeles, CA): What's Hot in 2000: A Plaintiffs' Attorney's View of Discrimination.

National Lawyers Guild, Annual Convention
October 1999 (San Francisco): The Future of Employment Law Practice (Workshop Moderator).

ABA Labor and Employment Law Section

August 1999 Annual Meeting (Atlanta, GA): Class Actions in Employment Law.

National Employment Lawyers Association, Annual Convention, June 1999 (New Orleans):
Collective and Class Action Strategies in Overtime Litigation.

National Employment Lawyers Association, Annual Convention 1997 (Toronto): Maximizing
Recoveries Under the Damages Caps of the Civil Rights Act of 1991; Attorneys Fees:
The Basics.

Los Angeles County Bar Association Labor and Employment Law Section Symposium 1998
(Los Angeles): Affirmative Reactions: The Future of Race-Conscious Remedies for
Employment Discrimination.

State Bar of California Labor and Employment Law Section (San Francisco 1997): Legal Ethics
for Employment Lawyers.

National Lawyers Guild (San Francisco 1992): How to Use Experts to Prove Damages –
Employment, Tort and Discrimination Cases.

ABA Labor and Employment Law Section

1992 Mock Trial Program (San Francisco, CA and Washington, D.C.): Presenting and
Defending an Americans with Disabilities Act Lawsuit.

PROFESSIONAL ASSOCIATIONS

Fair Labor Standards Act Protocols Committee, a project of the Federal Judicial Center (“FJC”) and the Institute for the Advancement of the American Legal System (U. of Denver) (“IAALS”) to draft initial discovery rules for FLSA cases. See Daily Legal Report (January 29, 2018).

Editor, ABA’s Section of Labor and Employment Law Newsletter (2014 – 2016)

College of Labor and Employment Lawyers (Fellow; Board of Governors: Treasurer (2016-2017); Secretary (2017-2018).

American Bar Association (ABA), Labor and Employment Law Section, Council Member (2016-); Co-Chair (7th Annual Conference, 2013); Vice-Chair (6th Annual Conference, 2012); Co-chair, Committee on CLE/Institutes and meetings (2008-2011); Co-chair, Committee on Federal Labor Standards Legislation (2004 – 2007); Co-chair, Fair Labor Standards Act Sub-Committee (2000 – 2004); National Programs Subcommittee, Co-chair (2007-2008).

Labor and Employment Section – State Bar of California.

National Employment Law Project’s (NELP), National Wage and Hour Clearinghouse Advisory Board (former).

National Employment Lawyers Association (NELA) – Wage and Hour Practice Group Co-Chair (former).

Bureau of National Affairs (BNA), Wage Hour & Leave Report Advisory Board (2001-2003).

National Lawyers Guild (NLG), received San Francisco Chapter’s “Champion of Justice” award (April 5, 2008).

AFL-CIO Wage-Hour Working Group (2008)

PRESS

Martindale-Hubbell 2013 Top Rated Lawyer in Labor & Employment

Selected to “The Top 100” Northern California Superlawyers (2012)

California Lawyer, November 2011, “Labor and Employment Roundtable.”

Featured as one of the San Francisco Bay Area’s “top attorneys” in employment law, in The Recorder Special Report (March 15, 2004).

Listed in Oakland magazine March-April 2006 and March 2007 articles on “The Best Lawyers in the East Bay.”

Listed in The Best Lawyers in America (Wood/Whyte).

San Francisco Daily Journal, April 2, 2008, profile, p. 3.

Selected as “SuperLawyer” in the Northern California Super Lawyers Magazine (2006-2017).

Listed in San Francisco Business Times, 2009 The Best Lawyers in the Bay Area, February 6, 2009.

Selected for The Best Lawyers in America in the specialty of Labor and Employment Law.

Exhibit D

GDBBD Rate & Hours Summary for a Matter

costs matter id='660' and not on hold and not hidden

<u>Description</u>	<u>Cost</u>
Matter ID: 660	
Description: Madrigal v. 24 Hour Fitness	
Meals	69.66
Research - Online	169.95
In-House Postage	0.46
Court Fees/Filing Fees/Service Fees	92.92
Telephone	204.21
In-house printing	33.10
Expert Witness/Consultant	2,500.00
Total For this Matter and Date Range in Query:	3,070.30

1 Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Tel: (310) 556-4811
7 Fax: (310) 943-0396

8 Attorneys for Plaintiffs Donna Holley and Paul Williams

9 *[Counsel for Additional Plaintiffs Listed on Next Page]*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF RIVERSIDE
12

13 DONNA HOLLEY, and PAUL WILLIAMS, as
14 aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

15 Plaintiff,

16 v.

17 24 HOUR FITNESS USA, INC., a California
18 corporation; and DOES 1 through 10, inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No.: RIC1602246

**DECLARATION OF AASHISH Y. DESAI
IN SUPPORT OF MOTION TO APPROVE
SETTLEMENT PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Craig G. Riemer
Dept.: 5

1 Carolyn H. Cottrell (SBN 166977)
2 David C. Leimbach (SBN 265409)
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100
8 Fax: (415) 421-7105

9 John F. Edgar (*pro hac vice* to be submitted)
10 EDGAR LAW FIRM LLC
11 1032 Pennsylvania Avenue
12 Kansas City, Missouri 64105
13 Tel: (816) 531-0033
14 Fax: (816) 531-3322

15 Attorneys for Plaintiff Justin Vorise

16 David Borgen
17 Laura Ho
18 GOLDSTEIN BORGEN DARDARIAN & HO
19 300 Lakeside Drive, Suite 100
20 Oakland, CA 94612

21 Aashish Desai
22 Adrienne De Castro
23 DESAI LAW FIRM, P.C.
24 3200 Bristol Street, Suite 650
25 Costa Mesa, CA 92626

26 Attorneys for Plaintiff Alyssa Madrigal
27
28

1 I, Aashish Y. Desai, declare as follows:

2 1. I am the managing partner at Desai Law Firm, P.C., lead counsel of record for
3 Plaintiffs. I am admitted to practice before all state courts in California and Texas. I am admitted
4 to practice before numerous federal courts throughout the nation including California, Texas,
5 District of Colorado, Florida, and New York. I am also admitted to practice before SCOTUS. I
6 have personal knowledge of the facts set forth herein, and could, and would, competently testify
7 thereto if called upon as a witness.

8 2. My firm has been vigorously litigating *Madrigal v. 24 Hour Fitness*, Case No. 30-
9 2014-00735568-CU-OE-CXC, for **over four (4) years** since before July 2014. In support of the
10 Plaintiff's proposed settlement, I submit the following background to the Court.

11 **LODESTAR**

12 3. My firm maintains a practice of keeping contemporaneous time records. The case
13 against the Defendant was taken on a contingency basis. My firm has **1,369** attorney and
14 paralegal hours for a total lodestar of **\$1,011,390.00**. Additionally, my firm used considerable
15 billing judgment throughout our litigation against the Defendant. For example, I did not record
16 time for many conversations and meetings that I had with the class members asking for "status
17 reports" and information throughout the years. Nor did I record each and every email and phone
18 call I had with opposing and co-counsel working out and finalizing this global settlement. Nor
19 did I record the numerous conversations I had with my paralegal and associate discussing
20 litigation and certification strategy. In fact, I anticipate that many more hours will be required to
21 respond to communications from the class members, monitor the settlement administration, and
22 monitor the Defendants' compliance with the terms and conditions of the Settlement and Release
23 Agreement. A true and correct copy of my law firm's summary of lodestar are attached as
24 **Exhibit A**. My firm's litigation costs is \$6,004.03 and attached as **Exhibit B**. All costs are
25 reasonable and were necessary for this litigation.

1 QUALIFICATIONS OF COUNSEL

2 4. Although I am a 1996 graduate, I have been practicing class action litigation since
3 1997. I have served as lead class counsel in countless actions, written extensively on class
4 actions, spoken at dozens of CLE seminars on wage and hour/consumer class actions, served as
5 an Adjunct Law Professor at Chapman Law School, served as an expert witness on attorney's
6 fees, class action partnership splits, fee disputes, and standard of care for wage and hour class
7 action lawyers, argued and participated in numerous MDL cases throughout the nation, and
8 argued twice before the Ninth Circuit Court of Appeals. I have filed amicus briefs before the
9 California Supreme Court, and I have filed a brief, appeared (but did not argue) a case before the
10 United States Supreme Court. I have also tried numerous cases to verdict – both class actions and
11 related matters. In fact, I am one of the few trial lawyers to have tried a PAGA case to verdict:
12 My firm tried *Aguirre et al. v. Genesis Logistics, et al*, 12-CV-00687 (C.D. Cal. 2017) before the
13 Honorable James Selna on August 23, 2016. We won that case and eventually resolved the
14 matter for \$7,000,000.00. This case was reported on the front page of the Los Angeles Daily
15 Journal on October 4, 2017. We also tried *Shook v. Indian River Transport, Inc.*, USDC Eastern
16 District of California, Case No. 1:14-CV-1415-WBS before Judge William Shubb on February 7,
17 2017. We lost this case, but filed another action against Indian River Transport, which we hope
18 to go to trial this year. *Cooley v. Indian River Transport, Inc.*, USDC Eastern District of
19 California, Case No. 1:18-CV-00491-WBS-BAM.

20 I have litigated numerous class and collective actions throughout the last twenty-two (22)
21 years. Some examples follow:

- 22
- 23 • *Ellmore v. DiTech Funding*, case number SACV-01-93. Filed in 1993, this was
24 **one of the first class and FLSA collective actions** in federal court in the Central
25 District of California on behalf of loan officers and processors who were denied
26 overtime wages under both the UCL and FLSA. We were co-lead counsel in this
27 prosecution with Saperstein, Goldstein, Demchak & Baller. After a year of
28 litigation, during which the case split into two parts, a global, combined settlement
was reached for approximately **\$9.65 million**. Judge David O Carter of the U.S.
District Court of California issued final approval and the case is now over.

- 1 • *Toothman v. Pre-Paid Cellular*, District Court, City and County of Denver
2 Colorado, case number 01-CA-1142. This was a nationwide securities fraud class
3 action on behalf of approximately 5,000 investors who were separated from **\$53**
4 **million** as a result of a sophisticated con game involving a major, silk-stocking
5 Chicago law firm. The case was resolved and finally approved in Colorado
6 District Court after the Denver Court of Appeals reversed a ruling denying class
7 certification.
- 8 • *United States of America, ex rel Monique Gipson v. Pathway Genomics*
9 *Corporation*, 3:14-cv-01919-LAB-JLB (Jan. 4, 2016). We alleged that a major
10 genomics company conspired to pay kickbacks to physicians for referring patients
11 to Pathway Genomics for genetic testing in violation of the False Claims Act, the
12 Anti-Kickback Statute. The reimbursement program was actually pretext to
13 reward doctors for referrals on so-called “genetic test kits,” which Pathway
14 doubled-billed for with medical clinics – particularly for specimen collection. The
15 result was a **\$4 million** settlement in which the states of California, Colorado,
16 Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa,
17 Louisiana, North Carolina, Texas, Virginia, Washington, Wisconsin, and the
18 District of Columbia joined. I served as lead counsel, discovered the kickback
19 scheme, developed the litigation strategy, and coordinated with the many U.S.
20 Attorneys, particularly in the San Diego office.
- 21 • *Parks v. Eastwood Insurance Services, Inc.*, Case No. SACV 02-0507. This was a
22 collective class action under the FLSA for unpaid overtime wages on behalf of
23 sales agents who were employed by Eastwood Insurance. After three and one-half
24 years of vigorous litigation, and several published rulings on ex parte
25 communications with absent class members, this action resolved for **\$1.2**
26 **million** for the class members. The defendants, however, would not agree to our
27 fee application, thereby forcing comprehensive law and motion work on this issue.
28 On July 2005, the Honorable Gary L. Taylor (Ret.) issued a ruling awarding my
 firm approximately **\$2.1 million** in attorneys’ fees, in addition to the \$1.2 million
 obtained on behalf of the class members. The Ninth Circuit Court of Appeals
 affirmed this ruling. *Parks v. Eastwood Insurance, Inc.*, 240 Fed. Appx. 172 (9th
 Cir. 2007).
- *Dzierlatka v. Bristol-Meyer Squibb*, case number BC076039. This was a
 nationwide antitrust action charging Bristol-Meyer Squibb of illegal efforts to
 block generic rivals to its cancer treatment drug Taxol. “Pay for delay.” This case
 resulted in a nationwide settlement for third-party payors of approximately **\$115**
 million. I served as coordinating counsel for the California class members. The
 case was given final approval several years ago.
- *Cardenas et al v. McLane Food Service Inc.*, SACV 10-0473. This was an
 employment class action on behalf of 450 truck drivers who were deprived
 adequate wages. The issues were novel and the result was precedent for many
 trucking cases in California. Indeed, after almost two years of contentious
 litigation, and several published opinions in my favor, Defendants agreed to a

global settlement of **\$5.5 million**. Judge David O. Carter granted final approval and approved my request for fees and costs in full. This case has been the subject of several “case studies” and seminars on how to litigate PAGA and trucking cases. *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (C.D. Cal. 2011) (granting piece-rate truck drivers’ MSJ of pre and post-shift claims for failing to “separately pay” for such time). This was likely the **one of the first published decisions** on the requirement to separately pay piece rate workers for non-productive time and rest breaks -- that are now-known as “*Bluford* claims.” Indeed, *Bluford* cites approvingly to *Cardenas* in the body of its analysis.

- *Burnham et al. Ruan Transportation*, SACV-12-0068. This was an employment class action on behalf of 431 truck drivers. Plaintiffs asserted claims for violation of Labor Code Section 2699, unfair competition under Business and Professions Code Section 17200, and waiting time penalties under Labor Code Sections 201-203. The parties reached a **\$3.5 million** settlement, which includes an award of \$5,000 to each named plaintiff, \$980,000 in attorney fees, and \$18,411.25 in costs. Judge Guilford granted final Approval of the settlement on Feb. 4, 2016.
- *Aguirre et al. v. Genesis Logistics, et al*, 12-CV-00687 (C.D. Cal., filed May 2, 2012). This was a wage and hour class action on behalf of 665 truck drivers. A complicated case involving several trips to the Ninth Circuit Court of Appeals and attempts by the defense to use FAAAA to pre-empt California labor laws by sending the case to federal court, where a district judge reversed himself, and a victory in **one of the first PAGA trials** resulted in a global mediated settlement. Genesis Logistics agreed to a global settlement of **\$7 million**, including **\$2.3 million** in attorney fees and \$1 million in PAGA penalties after 5 years of litigation and a trip to the 9th Circuit Court of Appeals.

5. Simply put, my firm and I have successfully prosecuted a host of class and collective actions, including cases against Tuesday Morning, Sensa Products, FirstPlus Financial, Platinum Capital Group, Centerpoint Mortgage, IndyMac Bank and Pacific Coast Funding. Currently, we maintain a number of wage and hour and consumer cases in both state and federal court.

Legal Articles in Peer-Reviewed Publications

6. I have written extensively on the subject of California overtime class and collective actions, including Class Clout – Attorneys Should Not Overlook Federal Overtime Law, *Los Angeles Daily Journal* (November 8, 2001); Revenge of the Wage Slave – Class Action Overtime Cases *Orange County Lawyer Magazine*, Volume 43, No. 11 (November 2001); Wage & Hour Compendium of Overtime Pleadings and Documents (2001); Analysis & Perspective –

1 Class Action Overtime Cases, *Class Action Litigation Report*, Bureau of National Affairs, Inc.,
2 Volume 03, No. 04 (February 22, 2002); Analysis & Perspective – The Discovery Conundrum in
3 Fair Labor Standards Act Collective Actions, *Class Action Litigation Report*, Bureau of National
4 Affairs, Inc., Volume 03, No. 13 (July 12, 2002); Discovery in Overtime Class Actions Often is
5 Prevented Before Certification, *Los Angeles Daily Journal* (July 25, 2002); The Discovery
6 Problem, *Orange County Lawyer Magazine*, Volume 44, No. 8 (August 2002); Fee-Shifting in
7 Overtime Wage Statute Trumps Contract’s Attorney-Fee Clause, *Los Angeles Daily Journal*,
8 (October 21, 2002); Legislative Attorney’s Fees Under the FLSA – The Trump Card, *Orange*
9 *County Lawyer Magazine*, Volume 44, No. 11 (November 2002); Analysis & Perspective –
10 Employment Class and Collective Actions, *Class Action Litigation Report*, Bureau of National
11 Affairs, Inc., Volume 4, No. 1 (Jan. 10, 2003); Analysis & Perspective – Fees in Class Actions,
12 *Wage Hour & Leave Report*, Bureau of National Affairs, Inc., Volume 2, No. 1 (Jan. 17, 2003);
13 Federal Class Action Overtime Cases – Can You Really Get Double Damages?, *Class Action*
14 *Litigation Report*, Bureau of National Affairs, Inc., Volume 4, No. 17 (Sept. 12 2003); Bazzle
15 Confounds Arbitration Agreements and Class Actions, *Los Angeles Daily Journal* (Feb. 20,
16 2004); Master of the Complaint – The Role of Class Counsel, *Orange County Lawyer Magazine*,
17 Volume 46, No. 8 (August 2004); A Solution in Search of a Problem – The Class Action Fairness
18 Act of 2005, *Texas Business Litigation*, Business Torts (Spring 2005); Striking the Answer in
19 Class Actions is Easier Than You Think!, *Orange County Lawyer Magazine*, Volume 48, No. 6
20 (June 2006); Late to Class – What to Do With “Untimely” Opt-In Forms in Collective Class
21 Actions?, *Orange County Lawyer Magazine*, Volume 48, No. 12 (December 2006); and
22 Defendants Bear A Heavy Burden To Prove The Amount In Controversy Under The Class Action
23 Fairness Act of 2005, *Orange County Lawyer Magazine*, Volume 49, No. 11 (Nov. 2007); Class
24 Confirmation – Settlement Issues (MCLE Feature Article), *Los Angeles Lawyer Magazine*
25 (July/August 2008); Class Confusion, *The Los Angeles Daily Journal* (Aug. 25, 2009); Pickoff
26 Moves, *Los Angeles Lawyer Magazine* (Cover Story) (Sept. 2009).

27 ///

1 **Adjunct Professor of Law at Chapman University School of Law**

2 7. I also served as an Adjunct Professor at Chapman University School of Law,
3 teaching legal research and writing from 2004-2006. Furthermore, I have been invited to, and do,
4 speak at numerous legal seminars on class action litigation for National Business Institute, the
5 Orange County Employment Litigation Section Bar, Los Angeles Bar Association, Bridgeport
6 Seminars, National Association of Attorney Fee Litigators, California Employment Lawyers
7 Association, and the California Bar Association. Many of my peers consider me an expert in the
8 field of class action litigation, particularly in federal and state wage and hour cases.

9 **Recognized Distinctions and Awards**

10 8. I was selected as a “Rising Star” in Class Action Litigation by *SuperLawyers*
11 *Magazine* in 2005, 2006 and 2007 – a privilege reserved for only 5% of the “Best Young Lawyers
12 in Southern California.” I have been selected as a “Super Lawyer” every year from 2009 to
13 present. I consider my focus to be wage and hour class action law, which I have practiced in
14 California since 1997. I am also a member of the Million Dollar Advocate Club and voted one of
15 the Best Lawyers in Los Angeles in 2016 as published in The Wall Street Journal. I have been
16 selected as one of the top five employment lawyers in Orange County by AVVO in 2010 and
17 again in 2012. I have been quoted on legal issues in the Wall Street Journal, Law 360, Lawyers
18 and Settlements, Automotive Digest, Los Angeles Daily Journal, Orange County Register, Los
19 Angeles Times, among others.

20 **Books and Legal Treatises**

21 9. I co-authored the leading CEB practice manual on wage and hour law, entitled
22 *California Wage and Hour Law and Litigation*, published by The Regents of the University of
23 California (2018). I am also a Chapter Editor for *The Fair Labor Standards Act* (Kearns), a
24 preeminent labor treatise published by BNA (2017) (Cumulative Supplement).

25 **Billing Rates**

26 10. Each year I informally review and survey the hourly rates charged in the legal
27 community for attorneys of comparable skill, reputation and experience.
28

1 11. In addition, I have obtained extensive information regarding billing rates and
2 practices through the fees litigation in which I have participated. I have established hourly rates
3 ranging from \$450/hour to \$850/hour. My 2018 hourly rate is \$850/hour. Adrienne De Castro is
4 a Senior Associate, who is a 2005 graduate from University of California, Berkley School of
5 Law. Her rate is \$550/hour. Our hourly rate for paralegals is \$250 hour.

6 a. Some of the cases in which my firm's rates have been approved: *See, e.g.,*
7 *Aguirre v. Genesis Logistics*, SACV 12-00687 (C.D. Cal. April 7, 2014) (Judge Selna on *disputed*
8 *Motion* formally ruled that Mr. Desai's \$750/hr rate is reasonable for the southern California
9 market); *Mutch v. AYCO Company*, Case No. 30-2012-00587900 (Orange County Superior Court
10 May 12, 2014) (Judge Andler *specifically approving* Mr. Desai's \$750/hr rate at final approval);
11 *Correa v. Sensa Products, LLC*, Case No. BC476808 (LA Superior Court Nov. 7, 2013) (Judge
12 Mohr approving class settlement and cross-checking fee using in part \$750/hr rate for Mr. Desai);
13 *Cardenas v. McLane Foodservice, Inc.*, SACV 10-473 (C.D. Cal. Jan. 30, 2012) (Judge Carter
14 approving class settlement and cross-checking fees using in part \$750/hr rate for Mr. Desai);
15 *Bravo De Rueda v. Alta Home Care*, Case No. 30-2011-00506932 (Orange County Superior
16 Court Sept. 7, 2013) (Judge Perk approving class settlement and cross-checking fee using in part
17 \$750/hr rate for Mr. Desai); *Gharamsini v. Smile Brands, Inc.*, Case No. 30-2012-0061-9560
18 (Orange County Superior Court May 28, 2013) (Judge Wieben Stock approving class settlement
19 and cross-checking fee using in part \$750/hr rate for Mr. Desai); *In re Indymac Litigation*, Case
20 No. CV 08-0457 (C.D. Cal. Dec. 2010) (Judge Pregerson approving class settlement and using in
21 part \$600/hr rate for Mr. Desai in 2010).

22 b. I have been asked to speak on the issue of disputed attorney's fees in class
23 action proceedings for the National Institute of Attorney Fee Litigation for five years, and
24 presented for this organization on June 16, 2011 on a panel with Hon. Carl J. West of the
25 Complex Litigation Department at Los Angeles Superior Court. In 2013, I spoke for NALFA on
26 a panel with Hon. Richard A. Kramer in San Francisco. My qualifications are more fully detailed
27 below and even more specific information can be found at www.desai-law.com.
28

1 c. I have provided expert fee declarations for class action lawyers in many
2 cases. For example, I filed an expert fee declaration in *Jones v. Canon Business Solutions*, Case
3 No. 2:12-cv-07195-JAK (C.D. Cal. September 8, 2014); *J. Paul Charlebois v. Angeles Baseball*,
4 LP, SACV 10-0853 DOC (C.D. Cal. April 2012); *Boyd v. Bank of America*, 13-CV-00561 (C.D.
5 Cal. Nov. 10, 2014). All were well received.

6 **BACKGROUND FACTS OF THIS CASE**

7 12. General Background on the *Madrigal* case: Plaintiff Madrigal filed the KCA
8 PAGA case in July 2014 alleging a single cause of action: violation of the Private Attorney
9 General Act (“PAGA”) for Defendant’s failure to provide rest breaks to its Kids Club Attendants
10 (“KCAs”). KCAs are employed by Defendant to watch its clients’ children while they exercise.
11 Plaintiff’s theory of the case has been born out by the evidence that she and other KCAs
12 consistently missed their rest breaks because of Defendant’s uniform policies and practices that
13 prevented the KCAs from taking a rest break. These uniform policies and practices include
14 Defendant’s failure to staff the Kids Clubs adequately due to its strict compliance with
15 California’s uniform state-mandated (i) staffing ratios and (ii) certification rules which govern
16 employees who care for minor children. The evidence shows that while Defendant complied with
17 the state’s ratio and certification requirements, it did not appropriately staff its facilities, getting
18 by on the bare minimum. This produced the unlawful wage practices – i.e., failing to relieve
19 KCAs for mandatory rest breaks, failing to provide a realistic procedure for actually taking rest
20 breaks, failing to pay even one penalty for the multitude of missed rest breaks for any aggrieved
21 employee, requiring that KCAs work even when no children were present in the Kids Club, and
22 preventing KCAs from taking a rest break in the Kids Club. There is no question that this
23 litigation has been hard fought from the beginning. Below is a brief procedural history of the
24 case which illustrates the work done thus far.

25
26
27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7

8
9
10
11
12
13
14
15

16
17
18
19
20
21
22
23

24
25
26
27

1 2016. Because this was only a partial win, Plaintiff continued to seek Court intervention to obtain
2 the contact information of all the aggrieved employees and time records for data for these
3 individuals.

4 17. As a result of Plaintiff's efforts, we successfully obtained *all* the names and last
5 known contact information of all Kids' Club Attendants ("KCAs") employed at a club in
6 California for the liability period. More critically, Defendant produced time data and Kids Club
7 swipe records for twenty percent (20%) of the KCAs employed at a club in California since July
8 22, 2013 (approximately 956 individuals). This information proved to be crucial to the case.
9 Based on Plaintiff's preliminary assessment of the data for the sample of over 900 individual
10 KCAs, Plaintiff has determined that nearly all KCAs worked more than 3.5 hours within
11 Defendant's Kids Clubs without being provided any rest breaks. In other words, through
12 Defendant's own records, Plaintiff has established liability for at least 20% of the aggrieved
13 employees. This is an absolute game-changer.

14 18. In response to this information and in an effort to create a manageable trial plan,
15 Plaintiff proposed that Defendant stipulate that the 20% sample of time data and Kids Club swipe
16 records is representative of the time data and swipe records for all 4,787 KCAs. Defendant did
17 not agree, and thus Plaintiff proposed to the Court additional data production to confirm liability
18 for all the other aggrieved employees.

19 19. In December 2017, based in part on Plaintiff's initial analysis, the Court was
20 inclined to compel Defendant to produce additional swipe data of all the KCAs, as well as
21 information regarding Defendant's staffing of the Kids Club, and the staffing of Trust-Line
22 certified employees were available to relieve KCAs for rest breaks. The Court steadfastly ignored
23 Defendant's manageability arguments raised in its conference statement. Instead, it ordered the
24 parties to meet and confer about the production of this additional data so the parties could proceed
25 with crafting a trial plan.

26 20. Thus, there is no question that discovery in this case has been hotly contested. And
27 the Plaintiff has expended significant time and resources. Plaintiff Madrigal has been deposed
28

1 twice. Plaintiff has also taken six (6) depositions: two (2) Person Most Knowledgeable witnesses,
2 and four (4) Operations Managers who worked at locations where Plaintiff had worked as a KCA.
3 Plaintiff has served two (2) sets of special interrogatories and document requests, and as
4 explained above, engaged in numerous meet and confers, appeals, and writs related to discovery.

5 21. Prior to the mediation in this lawsuit, Judge Cluster ordered Defendant to provide
6 additional extensive data relevant to its defenses, initially limited to the first 20% data sample.

7 **Plaintiff Defeated Defendant's Motion for Summary Judgment**

8 22. In addition to these intensive discovery battles, Plaintiff also successfully opposed
9 a Motion for Summary Judgment in May 2016. After the Court denied the Motion, Defendant
10 filed a writ to appeal the ruling. Plaintiff had to oppose the writ. The writ was denied, and
11 Defendant then filed a petition for review to the Supreme Court. This too was denied.

12 In denying the summary judgment motion, the Court also confirmed that Plaintiff made a
13 prima facie showing that her paystubs were inaccurate because they showed the wrong overtime
14 rate, i.e. 0.5 instead of 1.5. The Court itself confirmed the confusing nature of these paystubs
15 during the hearing on Defendant's Motion for Summary Adjudication:

16 The statute says the employees must be able to promptly and easily be able to
17 determine the rate. And I would bet if we called in ten 24 hour fitness employees
18 and showed them this, nine and half would not be able to figure it out; probably
ten couldn't be able to figure it out.

19 Reporters Transcript of Hearing on Defendant's Motion for Summary Adjudication,
20 22:23-28. In other words, prior to the mediation and settlement of this lawsuit, Plaintiff was in a
21 strong position to file an affirmative summary judgment motion on this claim.

22 **The Evidence Marshalled Thus Far Supports Plaintiff's Theory of the Case**

23 23. Plaintiff has gathered significant evidence to support her claims. As explained
24 above, analysis of Defendant's 20% sample confirms Plaintiff's theory of the case: that
25 Defendant's uniform policies and practices prevented KCAs from taking breaks. Additional
26 evidence obtained from the Plaintiff, other KCAs, and Defendant's corporate witnesses and
27 managers only strengthens this theory.

1 **Plaintiff Madrigal and Other KCAs Did Not Take Rest Breaks and Were Discouraged from**
2 **Taking Rest Breaks**

3 24. Plaintiff Madrigal provided clear and convincing testimony that she did not and
4 could not take rest breaks. The following testimony is unequivocal:

- 5 • “I never took a break ever at 24.” (Deposition of Alyssa Madrigal¹, 97:20)
- 6 • “I never took a break there.” (*Id.*, at 99:14-18)
- 7 • “I have never taken a break.” (*Id.* at 99:21)
- 8 • Q: I’m sorry. Since you were focused on rest room breaks, that’s what I was
9 limiting my questions to right now. So your testimony is you never took a break,
10 just a break; is that your testimony?”
- 11 A: Right. (*Id.* at 99:22-100:1).

12 In addition, Plaintiff provided testimony that she was consistently discouraged from
13 taking rest breaks. Her testimony on this issue was as follows:

14 Q: To your knowledge were you ever told you couldn’t take a break when
15 there was actually somebody available to relieve you?

16 A: I wasn’t sure of the breaks we were allowed to have. I just – even if I knew
17 about them, it would pretty much be difficult to take them because of the fact I was
18 hardly allowed to use the rest room. I was discouraged, so if I knew that were
19 allowed to take breaks, it would be very difficult because of, you know, the
20 coverage they had, the people that are certified, which was mostly one. (Madrigal
21 depo, 92:7-21)

22 The culture was so repressive and discouraging, Plaintiff -- as an adult -- suffered several highly
23 embarrassing bathroom accidents while working at 24 Hour because of 24 Hour’s KCA
24 understaffing policy:

25 **The iPhone Videos:**

- 26 • Indeed, while Defendant intimates that Plaintiff is lying about a corporate culture
27 that permitted multiple episodes of Plaintiff actually urinating on herself, there is
28 actual videotape here. The iPhone video (that was taken by Plaintiff) shows a
desperate young girl asking over and over again to use the restroom because of the
understaffing problem: “so no one can cover me for a little bit?” “Oh, okay he
can’t come in either ...” “Can I ... umm ... can I use the restroom? I need a
restroom break.” Plaintiff even produced an iPhone, time-stamped photo showing
her soiled underwear to prove that she was being truthful.

¹ Attached as **Exhibit D**.

- 1 • Plaintiff, on another video, says: “I called Keenan ... can’t use the restroom yet
2 again. I want to say I called him about five minutes ago. He said whenever Sahar
3 [Manager] gets in. Supposedly it was supposed to be nine to five but ... not in. [4
4 second pause] I’ll see what time she actually does get here ... and what time I
5 actually get to use the restroom.”²

6 Although not necessary to prove her prima facie case, Plaintiff Madrigal has also gathered
7 evidence that 24 Hour Fitness’ culture of discouraging rest breaks was not limited to the clubs she
8 worked. In fact, other KCAs provided sworn affidavits confirming negative treatment when they
9 requested rest breaks, and managers “dragging their feet” and being unresponsive to requests for
10 rest breaks. See Declaration of Melissa Francis (submitted in opposition to Motion for Summary
11 Judgment) ¶¶ 6-7 (discouraged from breaks because managers treated her badly when she
12 requested even a restroom break), Declaration of Justine Finch, ¶¶ 6-9 (nothing was done when
13 complained about rest breaks and felt intimidated by management not to request breaks);
14 Declaration of Greta Andrade, ¶ 5 (nothing done when there was a request for a rest break). This
15 culture of discouraging rest breaks created an understanding that KCAs should not even request a
16 bathroom break, much less a ten-minute rest break. As a result, many KCAs made a point to use
17 the restroom before their shifts understanding they would not be able to do so throughout the
18 duration of their shift.

19 **Plaintiff and Other KCAs Testified that Understaffing was A Consistent Problem**

20 25. Defendant is required to adhere to strict staffing and certification requirements in
21 the Kids Club. Specifically, pursuant to 24Hour policy, any individual who works in the Kids
22 Club must be Trust-Line certified (i.e. registered with the State of California and subject to a
23 background check). (See Depo. Of Marla Loar, 25:22-26:18.) This policy and the required
24 registration applies to all KCAs, across all of Defendant’s facilities. (*Id.* At 80:3-18).
25 Additionally, strict ratio rules applying to all Kids Club facilities dictate how many Trust-Line
26 certified employees must be in the Kids Club depending on the age and number of children in the
27 Kids Club. (DEF-AM 00597). While Defendant may have adhered to these requirements, it was
28 woefully inadequate in staffing the Kids Club in order to comply with California’s wage and hour

² These videos have been transcribed and attached as **Exh. E**.

1 laws. Plaintiff and other KCAs testified that Defendant consistently failed to adequately staff the
2 Kids Club to ensure that another trust-line certified employee could relieve a KCA to take a
3 break. Plaintiff testified that she was “discouraged from using the rest room” and taking a break
4 because there was no other Trust-Line certified employee to relieve her. (Madrigal Depo., 92:1-
5 17, 97:1-14.) Plaintiff has produced several written complaints from Kids Club attendants
6 throughout California (including Irvine, Newport Beach, Corona del Mar, and Moreno Valley)
7 confirming that they did not receive their meal and rest breaks because the Kids Club is
8 understaffed. (DEF-AM 00250 – 00272). Employees at **several** facilities made the following
9 complaints:

- 10 • “employees not being given lunch or rest breaks.”
- 11 • “Employees are being denied lunch breaks due to being understaffed...and are
12 being required to take a lunch break [after] the fifth hour, during the sixth or
13 seventh of a shift.”
- 14 • “No rest breaks are provided. Occasionally a rest break will be provided during a
15 weekday shift when there is a manage on duty, but on the weekend, we don't get a
16 rest break, and sometimes don't get a lunch. And if we do get a lunch, it's after
17 the fifth hour pretty much every time.”
- 18 • “Kids Club attendants are made to work alone with no one to cover them to use the
19 restroom. Only a hand full of front desk are Trustline certified and aren't always
20 made available to cover their break, or restroom break.”
- 21 • “continuing problem of not scheduling enough people for kid's club in the
22 morning.... therefore leaving us with a wait list as well as no breaks for 5 hours.
23 There have been many times when we have to go to the restroom but are not able
24 to leave to have a break.

25 Moreover, Plaintiff Madrigal worked at several 24Hour Fitness locations and called several Kids
26 Club Attendants throughout the state in cities including Irvine, Costa Mesa, West Hollywood,
27 Bakersfield, and Elk Grove. These individuals informed her that they took no breaks because
28 there was no coverage. (See Plaintiffs' Response to Special Interrogatory No. 4.)

Still other KCAs testified that understaffing was a consistent issue that resulted in not
being able to take rest breaks. See Andrade Decl., ¶ 7 (“Almost every day I would miss my breaks
because there was no one to relieve me that was Trustline certified.”); Francis Decl. ¶ 5 (“24 Hour

1 Fitness was very clear that its company policy is that KCAs should not leave the Kids' Club Area
2 unless another Trustline certified employee relieves them. This policy often made it very difficult
3 for me and other KCAs to receive a rest break or even a bathroom break because there was often
4 not another Trust-Line certified employee to relieve us.”); Finch Decl. ¶ 7 (“About 50-60% of the
5 time I did not take any rest breaks because there was no one “certified” to relieve me...This
6 location was understaffed for the first year I worked there.).

7 **Managers Confirmed A Corporate Culture of Discouraging Rest Breaks**

8 26. The testimony of Defendant’s own managers, the Plaintiff, and other KCAs
9 confirm a corporate culture of discouraging rest breaks. This testimony establishes that
10 Defendant had a policy of requiring Plaintiff and other KCAs to *continue working* even if they
11 were not logged into the Kids Club. Plaintiff and other KCAs were instructed that even if no
12 children were present in the Kids’ Club, they must continue working.

13 Plaintiff testified that her manager, Sahar Hassanzada, emphasized that “there is always
14 something to do” and Plaintiff recalls a checklist of duties she had to perform if she was not
15 working in the Kids Club. (Declaration of Alyssa Madrigal in Support of Opposition to Summary
16 Judgment, ¶ 4.) These duties include (1) “walking” the floor, which consisted of picking up trash,
17 making sure members checked in properly, and engaging in member relations (i.e. answering
18 member questions, greeting members), (2) working the front desk, which meant she relieved the
19 front desk associated to take bathroom breaks, ring up beverage purchases, and greet customers;
20 (3) assisting the service manager with stocking items, turning beverage container labels out, and
21 other duties; and (4) cleaning the Kids Club, which consisted of wiping down furniture, arranging
22 toys, putting away movies, putting away crayons, and checking alarm. *Id.* at ¶¶ 3-4; Madrigal
23 Depo., 66:10-67:6 9 (worked at the Front Desk).

24 Plaintiff’s manager Sahar Hassanzada confirmed these facts. She specifically testified
25 that she saw Plaintiff “walking the floor” and instructed her to walk the floor. (Hassanzada
26 Depo., 19:13-23.) She further confirmed that she informed the Plaintiff “there was always
27 something to do” (*Id.*, 19:25-20:1) and in fact, gave her a *checklist of duties* to perform when she
28

1 wasn't watching kids. These duties include checking the room, making sure everything is safe for
2 children; turning on TVs, videotape games, checking emergency exit doors, wiping everything
3 down, and at the end of the shift, "turning off everything and making sure there is no big mess."
4 (*Id.* 22:17-23:7). Defendant's manager cannot now squirm out of this testimony. This practice
5 was not limited to a single club or manager. Other KCAs confirm that they too were required to
6 work even if there were no kids in the Kids Club. *See* Francis Decl. ¶ 4 ("If no children were
7 present, I was instructed to clean up the Kids Club and work at the front desk."); Andrade Decl., ¶
8 7 ("even if the Kids Club was empty I was told by my manager Maria that I had to do laundry, or
9 clean equipment, or work at the front desk before I was able to take any breaks."); Haug Decl., ¶
10 5 ("I was instructed that if there were no children present in the Kids Club, I should go help at the
11 front desk, and clean up scattered towels and weights throughout the gym, until our shift ended.)
12 In other words, simply being "logged out" of the Kids Club did not show Plaintiff and KCAs had
13 an opportunity to take a rest break. To the contrary, they were not relieved of their duties during
14 these times and were told to continue working.

15 **Uniform Policies Applied to All KCAs**

16 27. The above testimonial and documentary evidence that Plaintiff gathered is
17 buttressed by the uniform policies and procedures Plaintiff is challenging. Specifically,
18 Defendant's Person Most Knowledgeable Witness Marla Loar testified that the following policies
19 are applicable to all KCAs in California:

- 20 • All KCAs are subject to the same rest break policies.
- 21 • No KCAs are permitted to take rest breaks inside the Kids Club. (DEF-AM 0026.)
22 *See also* Hazzanzeda Depo. 92:17-94:8 (confirming that 24 Hour Fitness policy is
23 that "Kid's Club may not be utilized as a break area for team members or a rest
24 area for members.").
- 25 • All KCAs are required to check-in and check-out of the Kids Club if they leave,
26 (Marla Loar Deposition, 19:6-21)
- 27 • All KCAs are must be Trust-Line certified and registered, (*Id.* at 80:3-18)

- All 24 Hour Fitness facilities must comply with the ratio requirements dictating the number of KCAs that must be present in the Kids Club per child. (*Id.* at 82:21-83:19)
- All KCAs have the same fundamental training, responsibilities, and duties. (*Id.*)
- All KCAs are paid to the same way. (*Id.* at 129:10-21)
- All KCAs are subject to the same time recording policies and paystub policies. (*Id.*) (See plaintiff's Proposed Trial Plan, July 14, 2017, at p.12).

As shown by representative testimony of the Plaintiff and KCAs, these uniform policies and procedures discouraged KCAs from taking rest breaks, and result in KCAs missing their rest breaks entirely.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on this 18th of June 2018, in Costa Mesa, California.

/s/ Aashish Y. Desai

Aashish Y. Desai, declarant

EXHIBIT A

Row Labels	Sum of Estimated Billing	Sum of Hours
L110	104495	141.5
L120	487140	629.4
L160	53045	65.3
L230	61760	119
L240	157705	232.9
L300	68285	87.5
L330	78960	93.6
Grand Total	1011390	1369.2

Row Labels	Sum of Hours	Sum of Estimated Billing
De Castro, Adrian	200.1	110055
Desai, Aashish	1015.1	862835
Nava, Sonia	154	38500
Grand Total	1369.2	1011390

EXHIBIT B

Madrigal v. 24 Hour Fitness USA, Inc.

All Costs

All Costs

Date	Service Type	Company	Description	Amount
07/23/14	Court Filing	One Legal	Complaint Complex Case Fee	\$1,444.95
07/24/14	Postage	Stamps.com	Mailing of Initial Pleadings	\$6.00
09/22/14	Court Filing	One Legal	Joint Initial Case Mgmt Statement	\$9.95
12/29/14	Court Call	CourtCall	Courtcall appearance: Case Management Conference	\$86.00
01/06/15	Court Call	CourtCall	CMC	\$86.00
01/06/15	Court Filing	One Legal	Stip & Proposed Order to File FAC	\$9.95
01/07/15	Court Filing	One Legal	Stip & Proposed Order to File FAC	\$20.00
03/24/15	Court Filing	One Legal	Ntc & MTC, Dec ISO, Separate Statement	\$69.95
04/17/15	Court Filing	One Legal	Reply to MTC, Dec ISO	\$9.95
04/30/15	Copying & Binding Services	Skyline Document Solutions	COA filing: Pet for Writ & exhibits	\$151.58
08/24/15	Court Filing	One Legal	Suppl CMC Report	\$19.85
09/10/15	Deposition Services	Norman Schall Reporters	Hazzanda	\$627.20
10/01/15	Court Filing	One Legal	Opp to Defs Mtn for Reconsideration, Dec ISO	\$9.95
10/14/15	Deposition Services	Norman Schall Reporters	Bell	\$357.50
11/12/15	Court Filing	One Legal	Evidentiary Objections to Dec of Bell; Mtn for Reconsideration Proposed Order on	\$9.95
11/16/15	Court Filing	One Legal	Discovery Issues	\$19.85
11/18/15	Deposition Services	Norman Schall Reporters	Depo of Gopp & Drake	\$1,346.35
11/20/15	Court Filing	One Legal	Response to Defs Objections to Proposed Order Nov 13, 2015	\$19.85
01/13/16	Court Filing	One Legal	Notice of Ruling	\$9.95
03/07/16	Court Filing	One Legal	Opp, Dec ISO Opp	\$19.85
06/20/16	Court Filing	One Legal	Opp to Defs MSJ, Opp to Defs Separate Statement	\$19.85
06/20/16	Court Filing	One Legal	Proposed Stip & Order to Revise Briefing Schedule on	\$40.37
10/19/16	Copying & Binding Services	Skyline Document Solutions	COA filing; Opp to Pet	\$61.56
12/14/16	Court Filing	One Legal	Status Conference Statement	\$19.85

Madrigal v. 24 Hour Fitness USA, Inc. **All Costs**

12/16/16	Court Call	CourtCall	Courtcall appearance:	\$86.00
12/16/16	Court Call	CourtCall	Courtcall appearance:	\$86.00
12/19/16	Court Filing	One Legal	Notice of Ruling	\$19.85
02/14/17	Court Call	CourtCall	status confere	\$86.00
02/14/17	Court Filing	One Legal	Notice of Ruling	\$19.85
03/08/17	Court Call	CourtCall	status confere	\$86.00
05/31/17	Court Filing	One Legal	Status Conference Statement	\$19.85
06/07/17	Court Filing	One Legal	Notice of Ruling at June 7, 2017 Status Conference	\$19.85
02/12/18	Travel	Southwest Airlines	Flight to Oakland - Mediation	\$400.00
02/26/18	Travel	Waterfront	Hotel - Mediation two nights	\$704.37

Total		Total		\$6,004.03
-------	--	--------------	--	-------------------

EXHIBIT C

CASE No. 30-2014-00735568-CU-OE-CXC
Santa Monica, California

ALYSSA MADRIGAL
Monday, December 15, 2014

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ALYSSA MADRIGAL, ON BEHALF OF
HERSELF AND ALL OTHERS
SIMILARLY SITUATED, AND ON
BEHALF OF ALL OTHER
"AGGRIEVED" EMPLOYEES,

PLAINTIFFS,

VS.

24 HOUR FITNESS USA, INC., A
CALIFORNIA CORPORATION, DBA 24
HOUR FITNESS; AND DOES 1-10,
INCLUSIVE,

DEFENDANTS.

**ORIGINAL
TRANSCRIPT**

CASE No. 30-2014-
00735568-CU-OE-CXC

DEPOSITION OF
ALYSSA MADRIGAL
Santa Monica, California
Monday, December 15, 2014

Reported By:
Sandra Mitchell
CSR No. 12553
NDS Job No. 166619

COURT REPORTING
LEGAL VIDEOGRAPHY
INTERPRETING & TRANSLATION
TRIAL PRESENTATION
800.788.2021
networkdepo.com

1 the rest room was a big problem. I was discouraged from
2 using the rest room, and it was really hard to use the
3 rest room to ask to go again later. I would limit my
4 water, and I would try not to ask again because it was
5 so difficult to use -- to go around the first time so it
6 would be very difficult to go again.

7 Q To your knowledge were you ever told you
8 couldn't take a break when there was actually somebody
9 available to relieve you?

10 A I wasn't aware of the breaks we were allowed to
11 have. I just -- even if I knew about them, it would
12 pretty much be difficult to take them because of the
13 fact I was hardly allowed to use the rest room. I was
14 discouraged, so if I knew that we were allowed to take
15 breaks, it would be very difficult because of, you know,
16 the coverage they had, the people that are certified,
17 which was mostly one.

18 Q So whether it was communicated to you rudely or
19 politely, is it your belief that every time you couldn't
20 take a rest room break, it was because no one who was
21 certified was available?

22 A Yes.

23 MR. DESAI: Just real quick, can we go off the
24 record?

25 MR. SCHAPER: Sure.

1 A Like I said, it was hard to even get a rest
2 room break, so I can't imagine getting a rest period. I
3 felt like I was being discouraged. It was really hard
4 to use the rest room. They were really rude about it.
5 Well, what I say, "they," I mean Keenan. He was really
6 rude to me about it, and, you know, I'll be right down
7 there. Let me just finish this thing and let me finish
8 that.

9 I asked to use the rest room, and I felt like
10 he was, you know, it felt like I was bugging so bad
11 just to use the rest room, I couldn't even imagine like
12 asking to get an actual break, break towards the end.

13 My last few weeks by then I was like, I want to use the
14 rest room and just do my work.

15 Q When you worked on those occasions when you
16 worked the front desk, did you ever take a break there?

17 A No. I didn't know. Actually I stopped working
18 the front desk maybe three or four months before I left,
19 so like the first month I was there, I worked the front
20 desk, but I never took a break ever at 24.

21 Q Did you ever see any other employees who did
22 not work in the Kids' Club taking breaks?

23 A They had longer shifts than me at the front
24 desk, so I never knew what they were on. I assumed they
25 were on their lunch break because they would be eating.

1 then because that's the time she would come in at 9:00
2 or 9:30.

3 And I just would want to use the rest room, but
4 there was no coverage. She wasn't in. But I didn't
5 keep record of every day, but I know there was a lot of
6 incidents that was possibly two to four times a week
7 that this would happen. I only kept record of days that
8 I had actual accidents.

9 Q Two to four of days a week out of how many, out
10 of five days?

11 A I didn't work five days a week exactly. My
12 shifts were maybe four times a week, three times a week,
13 five times a week. It varied.

14 Q And you estimate that -- let me get this
15 correct. You're estimating two days a week -- two to
16 four days a week you didn't get a break when you asked
17 for it?

18 A I never took a break there.

19 Q You're saying two to four times week you never
20 took a break at all?

21 A I have never taken a break.

22 Q I'm sorry. Since you were focused on rest room
23 breaks, that's what I'll limiting my questions to right
24 now. So your testimony is you never took a break, just
25 a break; is that your testimony?

1 A Right.

2 Q Okay. And what happened to the two to four
3 times a week with respect to your rest room breaks?

4 A I had to use the rest room.

5 Q Virtually every day you needed to use the rest
6 room?

7 A Yeah, every day.

8 Q What's your estimate of how frequently you were
9 unable to use the rest room at all during the time
10 period you wanted to?

11 A I would say about 80 percent of the time.

12 Q 80 percent of the time you were never relieved?

13 A No. I would have to wait until the end of my
14 shift or when the kids left. I would be relieved, but I
15 wouldn't be relieved within five minutes or less. It
16 was always waiting for her to be done with the member or
17 she wasn't even in.

18 Q Okay. I understand that it happened a lot in
19 different ways. My first question is, how frequently do
20 you estimate it was that, although you asked for the
21 opportunity to go to the rest room, no one ever came to
22 relieve you and you had to wait until either your shift
23 was over or there were no kids in the club?

24 A Probably once a week.

25 Q Okay. How many times would you estimate it

EXHIBIT D

Video Transcription – Alyssa Madrigal Video Recordings

Alyssapics 707-968.MOV

I. April 3, 2014 9:29am

[START OF Alyssapics 707.MOV]

Alyssa: April 3rd, 9:29am. [10 second pause]

[Alyssa is dialing front desk]

Alyssa: Hey is Sahar in? [20 second pause] Hey Otis, is Sahar in? [2 second pause] *[Inaudible response from front desk]* No, she's not in? So no one can cover me for a little bit? [1 second pause] *[Inaudible response from front desk]* No one can cover me for a little bit? [6 second pause] *[Inaudible response from front desk]* Oh, Okay he can't come in either...it's...okay...thanks, bye.

[Alyssa hangs up the phone]

Alyssa video records the time on the computer.

Alyssa: No one can cover me and I've been here since 8:45am and its 9:39...9:30...April 3rd.
[END OF Alyssapics 707.MOV]

II. April 3, 2014 10:00am

[START OF Alyssapics 708.MOV]

Alyssa: April 3rd, 10am. 34 minutes later, I'm going to call to use the restroom again. [20 second pause] Hey Otis, is Sahar in? [3 second pause] *[Inaudible response from front desk]* Okay... Can I...umm...can I use the restroom? I need a restroom break. [2 second pause] *[Inaudible response from front desk]* Okay, thank you.

Alyssa hangs up the telephone and goes to the computer to record the time.

Alyssa: Okay, so she is in. I don't know what time she got in but 34 minutes later. I'm going to use the restroom. And now I have to wait to see what time she actually comes in.
[END OF Alyssapics 708.MOV]

III. April 30, 2014 10:15am

[START OF Alyssapics 709.MOV]

Alyssa: 10:15. Got to use the restroom.

Alyssa walks to the restroom and enters a stall to change her sanitary napkin. [inaudible] [20 second pause]

Alyssa: Change.

Alyssa reveals her soiled underwear. [inaudible]

Alyssa: Had an accident again...just happens.
[END OF Alyssapics 709.MOV]

IV. May 8, 2014 9:27am

[START OF Alyssapics 966.MOV]

Alyssa: 9:27, May 8th. Thursday. 2014. *[2 second pause]* I called Keenan...can't use the restroom yet again. I want to say I called him about five minutes ago. He said whenever Sahar gets in. Supposedly it was supposed to me nine to five but...not in. *[4 second pause]* I'll see what time she actually does get here...and what time I actually get to use the restroom.

Alyssa video records the clock and calendar from the Kids' Club computer.

[Inaudible]

[END OF Alyssapics 966.MOV]

V. May 8, 2014 10:27am

[START OF Alyssapics 967.MOV]

Alyssa: 10:27, the last kids checked out so now I'm free to use the restroom. An hour later...oh sorry...May 8, 2014. Thursday. 10:27. Uh Sahar still hasn't came down...they probably didn't even tell her. Or...I have no idea but the point is an hour later. Finally leaving the Kids Club to go use the restroom.

[inaudible] Alyssa walks to the telephone.

Alyssa: Check the time here.

[inaudible] Alyssa checks the telephone clock to show it is 10:27am on May 8, 2014.

Alyssa: Now I get to go use the restroom...an hour later.

*Alyssa video records the clock and calendar from the Kids' Club computer. Alyssa **doesn't end up** going to the restroom because a kid checks in at 10:38am.*

[Inaudible]

[END OF Alyssapics 967.MOV]

VI. May 8, 2014 10:38am

[START OF Alyssapics 968.MOV]

Alyssa: 10:38, I didn't get to use the restroom. The kid came in...four minutes ago... so...10:39 now so...10:35...couldn't use the restroom.

Alyssa is video recording the Kids' Club computer to show the date and Child Roster check in time. She was not able to use the restroom.

1 Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiffs Donna Holley and Paul Williams

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF RIVERSIDE

11
12 PHILLIP CLAVEL, as an aggrieved employee
pursuant to the Private Attorneys General Act
13 (“PAGA”),

14 Plaintiff,

15 vs.

16 99 CENTS ONLY STORES LLC, a California
limited liability company; BARONHR, LLC, a
17 Delaware limited liability company; and DOES
1 through 10, inclusive,

18 Defendants.
19

Case No. RIC1602246

**DECLARATION OF JULIE GREEN ON
BEHALF OF CPT GROUP, INC., THE
PROPOSED SETTLEMENT
ADMINISTRATOR**

Date: July 11, 2018

Time: 8:30 a.m.

Place: Department 5

Complaint Filed: February 24, 2016

DECLARATION OF JULIE GREEN

I, Julie Green, declare as follows:

1. I am the Sr. V.P. of Operations at CPT Group, Inc., ("CPT"). I am over authorized to make this declaration on behalf of CPT and myself.

2. CPT has extensive experience in class and PAGA actions. CPT specializes in pre-settlement consultation, data management, legal notification, call-center support, claims processing and tax reporting. A true and correct copy of CPT's company resume is attached as Exhibit A.

3. CPT has been selected by counsel to serve as the class action Settlement Administrator for this case. In this capacity, CPT will be charged with, among other responsibilities: (a) preparing and filing any reports requested by the parties and the Court; (b) establishing a fund for authorized claimants; (c) calculating all amounts due to each PAGA Settlement Employees pursuant to the settlement; (d) processing checks and mailing payments to PAGA Settlement Employees; and (e) preparing, processing, and filing all applicable tax forms and tax returns.

4. Based on counsel's representation that there are approximately 36,500 PAGA Settlement Employees, CPT has agreed to cap the cost of settlement administration at \$70,000. A true and correct copy of CPT's \$70,000 cost estimate is attached as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of June, 2018 at Irvine, California.


JULIE GREEN

EXHIBIT A



50 Corporate Park, Irvine CA 92606 • (800) 542-0900 • info@cptgroup.com

CURRICULUM VITAE

COMPANY PROFILE

CPT Group, Inc., founded in 1984, is a leading provider of notice and settlement class action administration services and has been appointed as the third-party administrator by all major courts in the State of California and numerous United States District Courts. Located in Irvine, CA, CPT's client base includes over 10,000 attorneys, both local and nationwide, that have entrusted CPT to bring their experience, expertise and proven excellence to their settlements for administration. CPT offers a wide range of class action administrative services for developing, managing and executing all stages of integrated settlement plans. This includes pre-certification and discovery mailings, class-certification mailings, claims processing and administration, data management, data reporting, settlement fund administration, legal noticing campaigns, website design and web hosting. Experienced CPT staff currently handles the following types of class action cases: Wage and Hour, FLSA, Employment/ADA, Consumer/Product, Insurance, Securities, Finance, Antitrust, and ERISA.

Once designated by the parties and approved by the court as the third-party administrator, CPT assumes full responsibility in overseeing management of the class database, notification to the class members, claims processing, and disbursement of settlement payments. The operations, IT and production facilities are all located at the corporate headquarters in Irvine. The integrity of CPT's work is strengthened by the staff's ability to work in close proximity and keep the work handled in-house. The IT data center is accessible 24/7/365 to authorized CPT personnel. CPT uses internal IT expertise, and follows internal business as well as IT policies and procedures to support its daily administration and service operations.

CPT prides itself on being the industry's premier class action administrator, offering comprehensive and cost-effective class action administration services, utilizing leverages that decades of personal insight and firsthand knowledge from multiple disciplines and legal arenas have provided. CPT is SOC 1 compliant, administers hundreds of cases per year, and has disbursed over a billion dollars in settlement funds. With a structured service platform and practice-area expertise, CPT can effectuate the services it provides accurately and expeditiously.

AREAS OF EXPERTISE

- **Project Management** – To ensure a smooth claims administration process, CPT Group acts as a neutral third party and provides comprehensive case administration from start to finish. Following the timeline set forth in the Settlement Agreement and Court Order, our team of Case Managers ensures that all actions required by the Claims Administrator are met.
- **Claims Administration** – CPT Group executes an extensive Quality Assurance process throughout the duration of the claims period. Any and all responses received from Class Members are processed according to our strict internal procedures and in accordance with Settlement Agreement. Once claims processing is completed, Counsel is provided with all required reporting, including, where applicable, a list of approved claimants and the settlement calculations for each.
- **Call Center** – CPT Group maintains a Call Center to provide support for Class Members between the hours of 9:00 AM and 5:30 PM, Monday through Friday, except for major holidays. The Call Center is specially trained to field questions pertaining to the important features of each case. Our Call Center representatives are all bilingual in English and Spanish, and upon special request, CPT can provide support in other languages.

- **Data Management/Reporting** – CPT Group will standardize and analyze the class data provided by Counsel to compile the master mailing list. CPT Group prepares weekly status reports for each case that summarize the status of returns and responses such as mail pieces and claim form submissions. These live reports can also be accessed by verified Counsel for each case 24-hours a day on our secured website. CPT Group, Inc. is SOC 1 (SSAE 16) compliant, which ensures that necessary measures are taken to guarantee that all class member data is handled and stored in a safe and secure manner.
- **Noticing Expertise** – CPT Group will format the court-approved Notices, Claim Forms, and Exclusion Forms whether the method of notification be standard mail or electronic distribution. CPT Group maintains an on-site printing and mail house, which ensures the utmost quality control. Regardless of class size, CPT strives to execute the class notification process using cost-effective and accurate methods.
- **Settlement Fund Administration** – CPT Group’s staff of accounting professionals oversees the disbursement process for each case in strict detail and in accordance with the terms of the Settlement Agreement. Utilizing a Qualified Settlement Fund (QSF) for each case, CPT maintains its settlement account through a federally insured bank where access to each Settlement Account is restricted to authorized personnel. Bank accounts for each case are reconciled monthly and are available to each client upon request. On behalf of the QSF, CPT Group pays and reports all applicable State and Federal tax withholdings and liability, and issues and reports W-2 wages and 1099 income, as required, for each case.

SERVICES

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> • Settlement Notification • Pre-Certification Notification • Data Analysis • Bilingual Call Center • Publication & Media Campaigns | <ul style="list-style-type: none"> • Claims Processing • Class Certification Notification • Secure Data Management • In-House Print & Mail House • Website Hosting | <ul style="list-style-type: none"> • Settlement Fund Administration • Electronic Notification • Secure Data Reporting • NCOA & Skip Tracing • Website Design |
|--|---|---|

REFERENCES

For your reference, please find attached the following Exhibits:

1. CPT’s Information Security Statement followed by Independent Service Auditor’s Report Provided by SSAE 16 Professionals, LLP. Which explains that the Auditing Standards Boards (ASB) of the American Institute of Certified Public Accountants (AICPA) has certified CPT Group’s effectiveness in meeting security standards and protocols regarding our clients’ confidential information.
2. Partial list of the Defendants with whom CPT has worked, including a partial list of Defense and Plaintiff’s Counsels.
3. CPT Group, Inc.’s company brochure.
4. CPT Group, Inc.’s client testimonials.

EXHIBIT 1



INFORMATION SECURITY STATEMENT

CPT Group, Inc., ("CPT") maintains and enforces strict guidelines for the protection of confidential class member information, and employs security measures to prevent cyber theft of data and information, as well as safeguards for controlling these risks. CPT is SOC 1 compliant and continues to maintain these controls as well improve upon and upgrade our systems.

These measures include but are not limited to the following:

- 1) CPT maintains a comprehensive, written Information Security Program that complies with all applicable laws and regulations and that is designed to (a) ensure the security, privacy and confidentiality of Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information.
- 2) CPT uses Class Member Information only for the purposes for which its Clients provide it, as described in any Agreements and/or Court Orders governing the provision of CPT's services on any particular engagement.
- 3) CPT has designated one or more specifically named employees to be responsible for the administration of its Information Security Program.
- 4) CPT maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of CPT's operations and evaluating the effectiveness of the safeguards for controlling these risks.
- 5) CPT regularly monitors, tests, and updates its Information Security Program.
- 6) CPT restricts access to Class Member Information only to those employees, agents, or subcontractors who have a need to know the information to perform their jobs (each an "Authorized Person" as defined below).
- 7) CPT performs regular audits of its Information Security Program. These audits will include a review of the controls set forth in this Agreement as well as the following controls: vulnerability scans, secure software development life cycle, patch management, intrusion detection and prevention, and services provided vendors used to perform services for our clients. CPT agrees to make reasonable changes to its information security program to ensure it is capable of maintaining safeguards that are appropriate for the Class Member Information at issue.
- 8) CPT performs background checks of its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal background to ensure they do not pose a risk to the security of Class Member Information. Nothing in this agreement shall compel CPT to disclose the results of such background information of its employees.

- 9) CPT conducts a monthly third-party vulnerability scan of its networks and remediate any risk ranked by the third party as a medium or higher within 6 months.
- 10) CPT implements the following safeguards for systems that process, store or transmit Class Member Information:
 - Identity and Access Management;
 - Complex passwords that must be changed on a regular basis;
 - Encryption of Class Member Information if it is transmitted over public or wireless networks (e.g., via email, ftp, Internet, etc.);
 - Two-factor or complex password authentication for remote access to CPT's networks;
 - Upon hire and annually thereafter, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the CPT's Information Security Program;
 - Disciplinary measures for employees who violate CPT's Information Security Program;
 - Preventing terminated employees from accessing Class Member Information;
 - Appropriately configured and updated firewall, antivirus, and spyware software;
 - Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact to CPT's systems or Class Member Information; and
 - Separation of Duties
 - Infrastructure and Physical Security
 - Business Continuity Planning
 - Disaster Recovery Planning

Definitions

- 1) **"Authorized Persons"** means CPT's employees, contractors, agents, outsourcers, and auditors, who have a need to know or otherwise have access to Class Member Information to enable CPT to perform its obligations under this Agreement, and who are bound in writing by confidentiality obligations sufficient to protect Class Member Information in accordance with the terms and conditions of this Agreement.
- 2) **"Class Member Information"** means class member name, address, other contact information, and class member claim filing information necessary for CPT to perform services required by applicable Agreements or Court Orders in the context the administration of a settlement or other class action litigation.
- 3) **"Sensitive Personal Information"** means Class Member Information that includes private and confidential personal information of the type that commonly falls within the scope of security breach notification and other consumer identity theft prevention regulations or statutes, including, but not limited to, Social Security number, driver's license number or state-issued identification card number, financial account number, and credit or debit card account number.

**INDEPENDENT SERVICE AUDITOR'S REPORT PROVIDED BY
SSAE 16 PROFESSIONALS, LLP**

To CPT Group, Inc.:

Scope

We have examined CPT Group, Inc.'s ("CPT Group" or the "service organization") description of its class action administration system for class action settlement administration services as of July 15, 2013, and the suitability of the design of controls to achieve the related control objectives stated in the description. The description indicates that certain complementary user entity controls must be suitably designed and implemented at user entities for related controls at the service organization to be considered suitably designed to achieve the related control objectives. We have not evaluated the suitability of the design or operating effectiveness of such complementary user entity controls.

Service organization's responsibility

In Section 2 of this report, CPT Group has provided an assertion about the fairness of the presentation of the description and suitability of the design of the controls to achieve the related control objectives stated in the description. CPT Group is responsible for preparing the description and for its assertion, including the completeness, accuracy, and method of presentation of the description and the assertion, providing the services covered by the description, specifying the control objectives and stating them in the description, identifying the risks that threaten the achievement of the control objectives, selecting the criteria, and designing, implementing, and documenting controls to achieve the related control objectives stated in the description.

Service auditor's responsibilities

Our responsibility is to express an opinion on the fairness of the presentation of the description and on the suitability of the design of the controls to achieve the related control objectives stated in the description, based on our examination. We conducted our examination in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform our examination to obtain reasonable assurance, in all material respects, about whether the description is fairly presented and the controls were suitably designed to achieve the related control objectives stated in the description as of July 15, 2013.

An examination of a description of a service organization's system and the suitability of the design effectiveness of the service organization's controls to achieve the related control objectives stated in the description involves performing procedures to obtain evidence about the fairness of the presentation of the description of the system and the suitability of the design of those controls to achieve the related control objectives stated in the description. Our procedures included assessing the risks that the description is not fairly presented and that the controls were not suitably designed to achieve the related control objectives stated in the description. An examination engagement of this type also includes evaluating the overall presentation of the description and the suitability of the control objectives stated therein, and the suitability of the criteria specified by the service organization and described in management's assertion in Section 2 of this report. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We did not perform any procedures regarding the operating effectiveness of the controls stated in the description and, accordingly, do not express an opinion thereon.

Inherent limitations

Because of their nature, controls at a service organization may not prevent, or detect and correct, all errors or omissions in processing or reporting class action settlement administration services. The projection to the future of any evaluation of the fairness of the presentation of the description, or any conclusions about the suitability of the design of the controls to achieve the related control objectives is subject to the risk that controls at a service organization may become inadequate or fail.

Opinion

In our opinion, in all material respects, based on the criteria described in CPT Group's assertion,

- a. the description fairly presents the class action administration system that was designed and implemented as of July 15, 2013, and
- b. the controls related to the control objectives stated in the description were suitably designed to provide reasonable assurance that the control objectives would be achieved if the controls operated effectively as of July 15, 2013.

Description of tests of controls

The specific controls tested and the nature, timing, and results of those tests are listed in Section 4 of this report.

Restricted use

This report, including the description of tests of controls and results thereof in Section 4 of this report, is intended solely for the information and use of CPT Group, user entities of CPT Group's class action administration system as of July 15, 2013, and the independent auditors of such user entities, who have a sufficient understanding to consider it, along with other information including information about controls implemented by user entities themselves, when assessing the risks of material misstatements of user entities' financial statements. This report is not intended to be and should not be used by anyone other than these specified parties.

SSAE 16 Professionals, LLP

July 24, 2013

Orange, California

EXHIBIT 2

Partial List of Defendants

24 Hour Fitness USA, Inc.	Beverly Hills Hotel	Cook County Nurses
4 Sunkids	Beverly Hills Steakhouse, LLC	Core-Mark International, Inc.
ABC Security Service, Inc.	Beverly Pavilion Associates	Countrywide Financial Corporation
Adidas	Black and Decker	Culinary Adventures
Adriana's Insurance Services	Blockbuster, Inc.	CVS Corporation
ADT Security Services	Blood Bank of SB & Riverside	Dave and Buster's, Inc.
Advantage Sales & Marketing	BMW of Riverside	DCH Honda of Oxnard
AJC Sandblasting, Inc.	BP West Coast Products, LLC	Del Taco
Ajilon Communications	Breakaway Courier	Denny's, Inc.
Albertsons, Inc.	Brookstone Company, Inc.	DHL Worldwide Express, Inc.
Aldo US, Inc.	Bubba Gump Shrimp Co. Restaurants	Diamond Contract
All City Management Services	Burbank Airport Marriott	Diamond Environmental Services, LLC
American Airlines, Inc.	Burger King	Direct TV
American CoPak	Caché, Inc.	Discount Tires Company
American Golf Corporation	California Franchise Tax Board	Disney Stores
American Greetings	California Grand Casino	Dollar Thrifty Automotive Group
American Kiosk Management	California Maintenance, Inc.	DS Waters
American Range Corporation	Calko Transport Company, Inc.	DSW Shoe Warehouse
American Vision Windows	Calpine Corporation	Duke Energy
Amtrak	Camden Development	Dunbar Armored, Inc.
Anthropologie, Inc.	Cardiac Science, Inc.	E-Trade
Aorta Restaurant Operating	Carl Karcher	Eat Good Stuff
Apple & Eve, LLC.	Carmax	Eco Lab
Applebee's International, Inc.	Casual Male, Inc.	Eddie Bauer
Arnel Management Company	Catalina Restaurant Group, Inc.	Edwards Lifesciences
Arrowhead Pond of Anaheim	Cathy Jean	El Pollo Loco
Associated Health Professionals	Cendant Settlement Group	Ensign
AT&T Services	Centex Homes	EPC Global
Attorneys' Title Guaranty Fund	Cenveo Commercial, Inc.	Excalibur
Autism Behavior Consultants	Champagne French Bakery Café	Eye Exam of California
Automac Parking, Inc.	Chart House	Family Automotive
Babies R Us	Circuit City Stores, Inc.	FedEx Office & Print Services
Baja Fresh	Cisco Systems, Inc.	Fidelity National Financial, Inc.
Barclays	Claim Jumper Restaurants	First Transit
Bargain Rent-A-Car	Claire's Boutiques, Inc.	Flextronics
Ben Bridge Jeweler	Closet Factory, Inc.	Fogo de Chao Churrascaria
Benefit Cosmetics	Comedy Club of Brea, LLC	Follett Corporation Fossil Stores, Inc.
Best American Hospitality, Inc.	Container Store	Four Points Sheraton

Partial List of Defendants

Fresh & Easy	JP Morgan Chase Bank	MJM Investigations, Inc.
Fresh Grill	JV Industrial	MPMC
Full Spectrum Lending, Inc.	Kaiser Foundation Health Plan, Inc.	Monarch Roofing
Fullner Construction	Kaiser Foundation Hospitals	Moran Foods, Inc.
Gate Gourmet	Kaiser Permanente Insurance Co.	MSI Computer Corporation
Global Shield Security, Inc.	KB Homes, Inc.	National City Mortgage, Inc.
GM Financial, Inc.	Kelloggs	National Product Services, Inc.
GMRI, Inc. (Olive Garden and	Kenneth Cole	Network Omni, Inc.
Red Lobster)	Keyes Motors, Inc.	New Century Title
Go Wireless	K-Hovnanian	Newell Rubbermaid
Gold's Gym	King Security Services, Inc.	Nextel Nigal, Inc.
Golden State Supply, Inc.	Kohl's Department Stores, Inc.	Nick Alexander Imports
Goldmax	Kraft Foods Group	Nordstrom
Golfsmith	KV Mart	North State Grocery, Inc.
Guerrero Mexican Food Products	LA Financial	Northstar Moving Corporation
Guess, Inc.	LA Fitness	Nutro Product
Halliburton Energy Services, Inc.	Landmark Equity Management, Inc.	OAO Healthcare Solutions
Hennessey's Tavern, Inc.	Lemore Trans. Inc.	Office Depot
Hertz Local Edition Corporation	Linton	Old Orchard
Hewlett-Packard	Liz Palacios Designs, Inc.	Oxnard European Motors
H-H Catering	Lone Star Steakhouse & Saloon	Pacific Maritime Association
Hilton Hotels Corporation	Longwood	Pacific Oaks College
Hof's Hut	Lowes	Pacwest Security Services
Home Depot USA, Inc.	Lucky Strike	Palo Verde Hospital
Honeywell International	Lynch Ambulance	Paramount Fire System, Inc.
Hooper Homes, Inc.	Maintex	Paul Graham Drilling
Horizon Hobby, Inc.	Mancini's Sleepworld, Inc.	Payless Shoesource, Inc.
Household Finance Corp. Of CA	Marie Callendar's Pie Shops	People's Choice Home Loan
HSBC Auto Finance	Marriott	Pier 1 Imports, Inc.
Hustler Casino	Matrix Direct	Pink Dot Sunset, Inc.
Hyatt	McGrath's Fish House	Pratt Communications
Hyundai	Medallion Products	Pyramid Breweries, Inc.
Ikea Property, Inc.	Media Maverick, Inc.	Rainforest Café, Inc.
IKON	Meiko Freight Services	Rapid Gas, Inc.
Innovative Dining	Mercedes Benz	Raytheon Company
Integrated Media Solutions	Michael Kors Stores	Republic Drilling Company
Ivy Hill Corporation	Milgard Manufacturing, Inc.	Retail Brand Alliance
Jack in the Box	Miller Infiniti, Inc.	Rice Garden
Jim Falk	Miyagis & Co, Inc.	Rio Tinto Minerals, Inc.

Partial List of Defendants

Rite Aid Corporation	St. Mortiz	United Parcel Services
Ritz-Carlton Hotel Company	Stein Mart, Inc.	United Protection Private Services
Rock Hard Transportation, Inc.	Stonebridge Hospitality Associates	United Title Company
Roger Dunn Golf Shops, Inc.	Stonegate Senior Care	Universal Protection Security Services
Romantix, Inc.	Styles for Less, Inc.	US Bancorp
Rosetta Stone	Sunshine Floral	US Borax, Inc.
Ross Stores, Inc.	Sweda Company	US Remodelers
Royal Truck Bodies, Inc.	Target Optical & Sears Optical	USA Truck
Roy's Worldwide, Inc.	Temple-Inland, Inc.	USF Reddaway
Rubio's	Tenet Healthcare Corporation	USH of Delaware
Ryland Group, Inc.	Terminix	Utiliquet, LLC
Safeway	The Dolce Group	Vallarta Supermarkets, Inc.
Sahara Dunes Casino	The Equinox	Valley Inventory Service, Inc.
Sajahtera, Inc.	The Gap, Inc.	Vegas Grand
Salesforce	The Geo Group	Vegas Icon
Santa Margarita Animal Care	The Griddle Café, Inc.	Vital Care America
Sbarro, Inc.	The Habits Restaurant	Vitamin Shoppe
S&C Ford, Inc.	The Harbor of Santa Barbara	Vitamin World, Inc.
Scarborough Management	The Mobile Solution Corporation	Vons Food Services, Inc.
Schurman Fine Papers (Papyrus)	The Ohio State Life Insurance	Vortex Industries
Score! Education Centers, Inc.	The Pro's Entertainment Services	Walgreen
Scripps Health Service	The Sports Club Company	Washington Mutual Bank
Shea Homes Market	The Wet Seal, Inc.	Wells Fargo
Sherwood Valley HOA	Thomas Bavarian Motor Works, Inc.	West Marine Products, Inc.
Siemens IT Solution & Services	TIC-The Industrial Company	West Publishing Corporation
Sleep Country USA, Inc.	Tierra Verde Landscape, Inc.	Western Exterminator
Social Vocational Services	Time Warner	Western National Group
Solar Link Technologies	Timmons Enterprises, Inc.	What's Cookin', Inc.
SOS Security, Inc.	TIN, Inc.	White Wave Foods (WWF)
Soutars	Tommy Bahama	Whittier Presbyterian Hospital
Southern California Edison	Torch Rig Services	Wilcox & Wilcox
Spherion Pacific Workforce	Toys R Us	Wolfgang Puck
Sprint Spectrum	Trader Distribution	Xpress Enterprises, Inc.
St. Paul Mercury Insurance	Travel Guard Insurance	Yard House
Staffmark Holdings	Trimspa Corporation	YMCA
Stan Tashman & Associate	Tri-Valley Mechanical	Yosemite Waters
State Farm Fire and Casualty	Tuesday Morning, Inc.	Zales
Company	Tully's Coffee Company	Zumiez, Inc.
St. John Companies	Ultra Salon	

Partial List of Defense Firm Clientele

Abrams Garfinkel Margolis Bergson	Carlsen Law Corporation	Foley & Lardner
Akin Gump Strauss Hauer & Feld	Carothers DiSante & Freudenberger	Fonda & Fraser
Allen Matkins Leck Gamble	Carroll, Kelly, Trotter, Franzen &	Ford & Harrison
Allie & Schuster	McKenna	Ford, Walker, Haggerty & Behar
Altshuler & Spiro	CE Smith Law Firm	Fox Rothschild
Andersen Hilbert & Parker	Christa & Jackson	Fox Wang & Morgan
Anderson, McPharlin & Connors	Cihigoyenette, Grossberg & Clouse	Freedman & Taitelman
Archer Norris	Clark & Trevithick	Fromberg Edelstein Fromberg
Arent Fox	Coblentz, Patch, Duffy & Bass	Fulbright & Jaworski
Atkinson, Andelson, Loya, Ruud &	Cohon & Pollak	Gardere Wynne Sewell
Romo	Cole Pedroza	Gareeb Law Group
Baer & Troff	Conkle Kremer & Engel	Gibson Dunn & Crutcher
Baker Hostetler	Conner & Pinski	Gilker and Jones
Baker Olson LeCroy Danielian	Cook Brown	Glick & Haupt
Ballard Rosenberg Golper & Savitt	Crowell & Moring	Goldstein Demchak Baller Borgen &
Barnes & Thornburg	Cummins & White	Dardarian
Barnes Crosby	Curiale Hirschfeld Kraemer	Gordon & Rees
Barritt Smith	David L. Moring	Gould & Associates
Barton, Klugman and Oetting	Davis Wright Tremaine	Greenberg Traurig
Benton, Orr, Duval & Buckingham	DLA Piper	Gresham Savage Nolan & Tilden
Best Best & Krieger	Dongell Lawrence Finney	Gurnee & Daniels
Bleau Fox	Dorsey & Whitney	Haight Brown & Bonesteel
Bornhoft & Berkenstadt	Dougell Lawrence Finney	Hanson Bridgett
Borton Petrini	Dowling, Aaron & Keeler	Harry O. Schenk
Bradley & Gmelich	Downey Brand	Hathaway, Perrett, Webster, Powers,
Bremer Whyte Brown & O'Meara	Drinker Biddle	Chrisman & Gutierrez
Brown & Charbonneau	Duane Morris	Hershorin & Henry
Brown Eassa & McLeod	Edwards Wildman	Higgs Fletcher & Mack
Brown Gitt Law Group	Elliott Greenleaf & Siedzikowski	Hill Farrer & Burrill
Brown White & Newhous	Elrod Trial Attorneys	Hinshaw & Culbertson
Browning Hocker	Emilio Law Group	Hixson Nagatani
Bryan Cave	Epstein Becker & Green	Hogan & Hartson
Builders Law Group	Ervin Cohen & Jessup	Hogan Lovells
Burke, Williams & Sorensen	Evans Brizendine & Silver	Hogue Belong
Calderone Law Firm	Farella Braun & Martell	Hughes Hubbard & Reed
Call & Jensen	Felahy Law Group	Hunton & Williams
Callahan Thompson Sherman & Caudill	Fisher & Phillips	Ice Miller
Carico Johnson Toomey	Fitzgerald & Mule	Isaacman Kaufman Painter

Partial List of Defense Firm Clientele

Jackson Lewis	Law Offices of Michael S. Yu	Nelson Comis Kahn & Sepulveda
Jeffer Mangels Butler & Mitchell	Law Offices of Nada L. Edwards	Newport Trial Group
Johnson & Pham	Law Offices of Peter M. Hart	Newton, O'Connor, Turner and Ketchum
Jones Day	Law Offices of Phyllis Andelin	Nixon Peabody
K & L Gates	Law Offices of Samuel & Samuel	Ogletree Deakins Nash Smoak & Stewart
Kaufman Dolowich Voluck	Law Offices of Steven R. Young	O'Melveny & Myers
Kelly, Hockel & Klein	Law Offices of Timothy T. Huber	Orrick Herrington & Sutcliffe
Kenneth P. Roberts	LeClair Ryan	P.K. Schrieffer
Kesluk & Silverstein	Lee Tran & Liang	Patterson Law Group
Kiesewetter Wise Kaplan Prather	Legally Nanny	Paul Hastings
Kilpatrick Townsend	Levinson Arshonsky & Kurtz	Paul Plevin Sullivan & Connaughton
Kingsley & Kingsley	Lewis Brisbois Bisgaard & Smith	Payne & Fears
Klein Denatale Goldner Cooper	Light Gabler	Pestotnik & Gold
Rosenlieb & Kimbal	Liner Grode Stein Yankelevitz Sunshine	Pettit Kohn Ingrassia & Lutz
Klinedinst	Regenstreif & Taylor	Pierce Law Firm
Knee Ross & Silverman	Littler Mendelson	Pillsbury Winthrop
Koorennny & Teitelbaum	Lobb & Cliff	Pope Berger & Williams
Korshak, Kracoff, Kong & Sugano	Loeb & Loeb	Posner & Rosen
Krasnow Saunders Kaplan & Beninati	Lounsbery Ferguson Altona & Peak	Proskauer Rose
Kring & Chung	Manatt, Phelps & Phillips	Pyka Lenhardt Schnaider
Lafayette & Kumagai	Manning & Kass, Ellrod, Ramirez, Trester	Rao Tilakos
Landegger Baron Lavenant Ingber	Margolis & Tisman	Rediger, McHugh & Owensby
Lathrop & Gage	Marshack Hays	Reed Smith
Law Office of Cindy A. Brand	McCormick, Barstow, Sheppard, Wayte & Carruth	Reid & Hellyer
Law Office of Jane M. McNamara	McGuireWoods	Ridout & Lyon
Law Office of John G. Warner	McKenna Long & Aldridge	Romero Park & Wiggins
Law Office of Palacio and Associates	McMillion & Hirtensteiner	Ropers Majeski Kohn & Bentley
Law Office of Thomas W. Sardoni	Michelman & Robinson	Ross & Silverman
Law Offices of Brian C. Percy	Mitchell Silberberg & Knupp	Ross Wersching & Wolcott
Law Offices of Charley M. Stoll	Monteleone & McCrory	Roxborough Pomerance Nye & Adreani
Law Offices of Clyde Dewitt	Morgan Lewis & Bockius	Rutan & Tucker
Law Offices of Elliott Kim	Morris, Polich & Purdy	Sabbah & Mackoull
Law Offices of George Young	Mullen & Henzell	Sanborn & Sine
Law Offices of James M. Gilbert	Murchison & Cumming	Schadrack & Chapman
Law Offices of Joseph C. Markowitz	Murphy Law Group	Scopelitis, Garvin, Light, Hanson & Feary
Law Offices of Julian A. Pollok	Nassiri & Jung	
Law Offices of Mark Rabinovich		
Law Offices of Martin P. Eramo		



Partial List of Defense Firm Clientele

Scott & Whitehead	Winston & Strawn
Sedgwick	Wolds Law Group
Seyfarth Shaw	Wolflick & Simpson
Sheppard Mullin Richter & Hampton	Younger & Associates
Sidley Austin	
Silverstein & Huston	
Simpson, Cameron, Medina & O'Brien	
Simpson, Delmore & Greene	
Snell & Wilmer	
Solomon Ward Seidenwurm & Smith	
Soltman, Levitt, Flaherty & Wattles	
Specter & Willoughby	
Stern and Goldberg	
Stokes Roberts & Wagner	
Swerdlow Florence Sanchez Swerdlow & Wimmer	
Tharpe & Howell	
The Altman Law Group	
The Carlton Firm	
The Chugh Firm	
The Garcia Law Firm	
The Goldstein Law Firm	
The Ingber Law Firm	
The Office of Eli M. Kantor	
The Welch Law Group	
Tredway, Lumsdaine & Doyle	
Tunink Law Firm	
Varner & Brandt	
Ventura Agricultural Associates	
Vorys, Sater, Seymour & Pease	
Wargo & French	
Webster Kaplan Sprunger	
White & Case	
Wilson Elser Moskowitz Edelman & Dicker	
Wilson Turner & Kosmo	
Wingert Grebing Brubaker & Goodwin	
Winstead	

Partial List of Plaintiff Firm Clientele

Ackermann & Tilajef	David Yeremian & Associates	Hoyer & Associates
Advantage Law Group	Desai Law Firm	Hurst & Hurst
Aegis Law Firm	Deskin Law Firm	Hurwitz, Orihuela & Hayes
AeQuitas Law Group	Dickinson Wright	Hutkin Law
Aiman-Smith & Marcy	Diversity Law Group	Hyde & Swigart
Alfonso & Hoyng	Donahoo & Associates	Initiative Legal Group
Altshuler & Spiro	Dychter Law Offices	James Hawkins
Anglin Law Group	English Lloyd & Armenta	Janssen, Malloy, Needham, Morrison, Reinholtson,
Appell Hilaire Bernardo	Epstein Becker & Green	Jennifer Kramer Legal
Arbogast Bowen	Fakhimi & Associates	John P. Martin & Associates
Arias Ozzello & Gignac	Felahy Law Group	Johnson & Johnson
Azimy & Nathan	Fernandez & Lauby	Jones, Bell, Abbott, Fleming & Fitzgerald
Baltodano & Baltodano	Fibich, Hampton, Leebron, Briggs & Josephson	Joseph Herbert Law
Baradat & Paboojian	Fitapelli and Schaffer	Kabateck Brown Kellner
Barritt Smith	Fitzpatrick, Spini & Swanston	Karasik Law Firm
Beeson, Tayer, & Bodine	Fleming & Fell	Karlin & Karlin
Blady Weinred Law Group	Fried & Bonder	Kawahito, Shraga, Westrick
Blumenthal, Nordrehaug & Bhowmik	Friedman, Enriquez & Carlson	Kearney Littlefield
Borton Petrini	Gaines & Gaines	Keller Grover
Braun Law Group	Ganong Law Office	Kennedy Hodges
Bruckner Burch	Gartenberg Gelfand Hayton & Selden	Kesluk & Silverstein
Burke, Williams & Sorensen	Gigliotti & Gigliotti	Khorrami Boucher Sumner Sanguinetti,
Burrows Law Firm	Girardi & Keese	King, Cheng & Miller
Cadena Churchill	Gould & Associates	Kingsley & Kingsley
Caldwell, Leslie & Proctor	Goyette & Associates	Kirtland & Packard
California Wage & Employment Attorneys	Graham Hollis	Kletter Law Firm
Callahan & Blaine	Graves & Associates	Knapp Petersen & Clarke
Canlas Law Group	Hamner Law Offices	Krieger & Krieger
Capstone Law	Harke Clasby & Bushman	Labor Law Office
Chavez & Gertler	Harris & Ruble	Lakeshore Law Center
Clark & Markham	Hathaway, Perrett, Webster, Powers,	Langford & Langford
Class Action Litigation Group	Chrisman & Gutierrez	Larson King
Cohelan Khoury & Singer	Hayes Pawlenko	Lavi & Ebrahiman
CounselOne	Hersh & Hersh	Law Office of Craig T. Brynes
Crone & McEvoy	Heyrich, Kalish, McGuigan	Law Office of David Edward Bruce
Dadgostar Law	Hogue Belong	Law Office of Dirk Bruinsma
Daniels Fine Israel Schonbuch	Hollins Law Attorneys	



Partial List of Plaintiff Firm Clientele

Law Office of Isandra Fernandez	Law Offices of Kristi Rothschild	Mallison & Martinez
Law Office of Jared Peterson	Law Offices of L. Michael Wilson	Marcarian Law Firm
Law Office of Jeffrey D. Fulton	Law Offices of Lisa L. Maki	Markson Pico
Law Office of Louis Benowitz	Law Offices of Manuel H. Miller	Markun Zusman & Compton
Law Office of Robert W. Skripko	Law Offices of Matthew J. Matern	Marlin & Saltzman
Law Office of Sahag Majarian	Law Offices of Michael D. Thamer	Martinez Charles
Law Office of Shadie L. Berenji	Law Offices of Michael Milligan	Mass & Montes
Law Office of Walter L. Boyaki	Law Offices of Michael S. Sorgen	Mastagni, Holstedt, Amick, Miller & Johnsen
Law Office of William B. Harrell	Law Offices of Morris Nazarian	Matrix Law Firm
Law Offices of Allan A. Siegel	Law Offices of Neal J. Fialkow	McInerney & Jones
Law Offices of Barron E. Ramos	Law Offices of Nicholas Boylan	McKenna Long & Aldridge
Law Offices of Barry G. Florence	Law Offices of Paul D. Jackson	McNicholas & McNicholas
Law Offices of Benjamin J. Smith	Law Offices of Peter M. Hart	Meservy Law
Law Offices of C. Joe Sayas, Jr.	Law Offices of Randall C. Crane	Michael H. Kim Law Firm
Law Offices of Choi & Associates	Law Offices of Richard A. Jones	Michael Tracy Law Firm
Law Offices of David A. Mallen	Law Offices of Ron Bochner	Michele Jackson Law
Law Offices of Donald Potter	Law Offices of Scott A. Miller	Milhaupt & Cohen
Law Offices of Douglas J. Campion	Law Offices of Shaun Setareh	Minami Tamaki
Law Offices of Eric Epstein	Law Offices of Stephen F. Henry	Morgan & Morgan
Law Offices of Eric Honig	Law Offices of Stephen Glick	Mower & Carreon
Law Offices of Farrah Mirabel	Law Offices of Stephen Madoni	Murphy Law Group
Law Offices of Frank Coughlin	Law Offices of Steven L. Miller	Nassiri & Jung
Law Offices of George Paul Hakim	Law Offices of Steven R. Young	Nava & Gomez
Law Offices of George S. Henderson	Law Offices of Thomas W. Falvey	Newhouse Seroussi
Law Offices of Goldberg & Gage	Law Offices of Timothy Donahue	Neyhart, Anderson, Flynn & Grosboll
Law Offices of Gregg A. Farley	Law Offices of Timothy Rumberger	Nicholas & Butler
Law Offices of Herbert Hafif	Law Offices of Ziad Rawa	Nichols Kaster
Law Offices of Ian Herzog	Lawyers For Justice	Nourmand Law Firm
Law Offices of James H. Cordes	Le Clerc & Le Clerc	Olsen Law Offices
Law Offices of Janet M. Koehn	Lee & Braziel	Palay Law Firm
Law Offices of John D. Trieu	Lee Law Offices	Palumbo Bergstrom
Law Offices of Jonathan Ricasa	Lee Litigation Group	Patterson Law Group
Law Offices of Jonathan W. Biddle	Levine Law Group	Perez Law Offices
Law Offices of Jonathan Weiss	Liberation Law Group	Pflaster & Berman Law Offices
Law Offices of Joseph Antonelli	Mabry Law Firm	Pollard & Bailey
Law Offices of Justian Jusuf	Mahoney Law Group	Pope Berger & Williams
Law Offices of Kenneth H. Yoon	Makarem & Associates	Posner & Rosen
Law Offices of Kevin Barnes	Malk Law Firm	



Partial List of Plaintiff Firm Clientele

Quintilone & Associates	The Castanon Law Group	Walsh & Roach
R.Rex Parris Law Firm	The Cifarelli Law Firm	Walsh & Walsh
Rastegar Law Group	The Cochran Firm	Walters & Caietti
Reich, Adell & Cvitan	The Cooper Law Firm	Weinberg, Roger & Rosenfeld
Rheuban & Gresen	The Cowan Law Firm	Western Center on Law & Poverty
Ridout & Lyon	The Cullen Law Firm	Westrup Klick
Righetti & Glugoski	The Dente Law Firm	Wilson Trial Group
Robbins Arroyo	The deRubertis Law Firm	Wucetich & Korovilas
Robert Alan Krasney	The Downey Law Firm	Wynne Law Firm
Rose, Klein & Marias	The Employment Law Group	Yarian & Patatanyan
Rosner Barry & Babbitt	The Feldman Law Firm	Zeldes & Haeggquist
Ross Wersching & Wolcott	The Garay Law Firm	Zuber & Taillieu
Rossi & McDonald	The Gillam Law Firm	
Rousso & Jackel	The Graves Firm	
Rukin Hyland Doria & Tindall	The Hinkle Law Firm	
Sahm Manouchehri Attorney at Law	The Kaufman Law Firm	
Salehi & Associates	The Law Office of Andrew Sokolowski	
Schneider Wallace Cottrell Brayton	The Law Office of Louis H. Kreuzer II	
Konecky	The Law Offices of Daniel Berko	
Schonbrun DeSimone Seplow Harris	The Law Offices of Rhett T Francisco	
Hoffman & Harrison	The Law Offices of Robert L. Starr	
Schroeter Goldmark & Bender	The Linde Law Firm	
Schwartz & Deutsch	The Mauro Law Firm	
Scott Cole & Associates	The Nunes Law Group	
Shanberg Stafford & Bartz	The Patel Law Firm	
Sheppard Mullin Richter & Hampton	The Pearl Law Firm	
Sofonio & Associates	The Phelps Law Group	
Spiro Moore	The Rossbacher Firm	
Stebner & Associates	The Sattiraju Law Firm	
Stephen Danz & Associates	The Spencer Law Firm	
Stoll Berne	The Spivak Law Firm	
Stonebarger Law	Thierman Law Firm	
Strauss Law Group	Thomas & Solomon	
Stueve Siegel Hanson	Traber & Voorhees	
Sullivan Law Group	Trush Law Office	
Tafoya & Garcia	United Employees Law Group	
The Arns Law Firm	Vorzimer Masserman	
The Carter Law Firm	Wagner & Jones	

EXHIBIT 3



Leading the way

The Industry's Premier Class Action Administrator

SSAE 16 Certified





Stability. Experience. Reliability.

SSAE 16 Certified

We are in full compliance with SSAE 16 protocols, attesting to our rigorous standards of organizational and quality control. SSAE 16 certification meets the requirements of public companies and assures all clients that transactional data is held in a secure environment, accessible only to authorized users. Our SSAE 16 standing adds a significant measure of confidence to your selection of CPT Group.

Serving attorneys nationwide and
administering thousands of cases
since 1984 — we are the right firm to call.

**CPT Group is the Nation's premier
Class Action Claims Administrator handling
a broad spectrum of cases with value-added,
single-source expertise, full SSAE 16 compliant
protocols and premier service.**

Putting CPT Group in place as your Administrator influences every element of the process thereafter. Rely on us to analyze, plan, and administrate with integrity, drawing from a broad base of administration experience with class action settlements and beyond.

Value Added Philosophy

CPT Group's cadre of experts understands how each piece of the administrative puzzle fits seamlessly into the big picture. Dynamic, capable, and service-centric, our elite staff delivers peak productivity and value. The longevity of our Administrators, stringently tested Case Managers, and trusted Consultants merge to assure neutrality, attention to detail and quality for "true-number" proposals and no costly surprises.

Best In Class Service

From informed Case Managers who are your single point of contact, to secure in-house resources, we work as one to bring you superior service you can rely on. Count on us to be fully up to date, aware of all contingencies, and respond with speed and accuracy.





One team. One purpose. We Put You First.

Proprietary Technology and Superior Workflow

Without doubt, the security of settlement information is of the utmost importance. We've gladly undergone the rigors of the SSAE 16 certification process, and developed our own technology to assure our clients and members of the class superior peace of mind.

Real Time Case Management

Exclusive proprietary technology offers online access to real time reports, response rates and more, 24/7.

AdminLink: Internal Case Information Access Management

With AdminLink, our operations staff can access current case information in one single location, ensuring every CPT staff member involved in your case is up to date and has all the information they need at their fingertips.

Comprehensive Marketing

Our onsite print/mail house and web development team not only affords you greater value and tighter security, we assure full legal compliance in all materials and up to date information for all class members, thereby reducing demands on client time and resources.

Capabilities

Selecting CPT Group is the first step in determining the outcome of your settlement. Multifaceted capabilities, the distinct advantage of experience, particularly in cross category settlements, require that all pieces are organized, positioned correctly and put into place.

Comprehensive Services

Pre-Settlement Consulting

- Electronic Data Discovery
- Notice Format & Design
- Timelines
- Scheduling
- MCLE Training

Notification

- Belaire West / Privacy
- Class Certification
- Settlement
- Electronic (email / website)
- In-House Production
- Publication & Media Campaigns

Live Call Center Support

- Onsite / In-House
- Multilingual
- Voice Over IP

Data Management

- Data Analysis
- Secure Data Management
- Secure Data Reporting

Claims Administration

- In-House Processing
- Traditional / Paper
- Online Submission
- Host & Maintain case website

Settlement Fund Administration

- Complete Disbursement Processing
- Escrow Services
- Qualified Settlement Fund
- Tax Reporting (W2 / 1099)

Widespread Experience

Consumer • Labor & Employment • Securities • Finance
Insurance & Healthcare • Antitrust • Mass Torts

CPT Group disburses hundreds of millions of dollars in settlement funds each year.

Our consultative approach provides you with unparalleled analysis, accuracy and value.

Strategic Partnership Services and Electronic Data Discovery

In-depth early analysis of all the facts of the settlement enables us to put all the pieces in place for our clients and class members alike. Our strategic alliances with global online discovery firms let us formulate authentic, precedent-based strategies from analytics and forensics to data mapping and negotiated cost savings.

CPT Group offers an array of local/global advantages plus single source efficiency and economy:

- Electronic Data Processing
- Social Media Discovery (Facebook, Twitter, webpage data collection)
- Mobile Device Forensic Collection (iPhone, Blackberry, Android, etc.)
- TIFF/PDF Conversion
- OCR
- Forensic Hard Drive Collection
- Electronic Bates Endorsement
- Online Hosted Review
- Project Management
- Copy/Scan
- MCLE Training



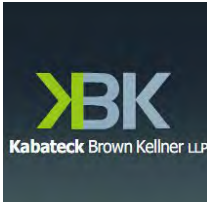
Contact Us 800.542.0900

CPT Group, Inc. is not just part of the solution. It is the solution.
Please allow us to answer your questions and discuss your
immediate and future needs.



EXHIBIT 4

Client Testimonials



"CPT is as professional as they come. Their team really goes the extra mile to work with you and your team. Do yourself a favor and get to know the CPT Group."

Brian S. Kabateck, Esq.

Kabateck Brown Kellner, LLP



"On behalf of the defendants, we were extremely pleased with the service that CPT Group provided, and would not hesitate using your services again."

Philip L. Ross, Esq.

Littler Mendelson, P.C.



Solutions at Work®

"I have used CPT successfully over the last four or five years on a variety of wage hour class action cases. I find them to be very professional class action administrators in their on-time delivery of work product, their great process of keeping counsel updated and their reasonable pricing. I will use them again."

Robert Yonowitz, Esq.

Fisher & Phillips, LLP



"CPT is great, they have tremendous service, knowledgeable staff and make the experience seamless and efficient. I would recommend them for jobs big or small."

Eric B. Kingsley, Esq.

Kingsley & Kingsley



"It's one thing to retain a third party administrator. It's another to retain professionals who communicate well and will go the extra mile to ensure that all parties are completely satisfied."

Joel P. Kelly, Esq.

Jackson Lewis



"CPT can handle all aspects of our wage and hour class actions, from privacy opt out notices to administering claims. CPT handles these matters quickly and efficiently and always on budget."

Derek S. Sachs, Esq.

Lewis Brisbois Bisgaard & Smith LLP

"CPT is absolutely the best. They are true professionals who are always available, responsive and willing to go the extra mile to get the job done effectively, efficiently and at the best price. They find solutions and resolve problems. There is no better class action administrator."

Patrick McNicholas, Esq.

McNicholas & McNicholas, LLP





"I routinely go back to CPT for class action services because they have proven over and over that they provide excellent service for a great value. When I hire CPT, I know that I can get instant, personal attention on any issue that comes up, and that my matter will be handled with the attention to detail that I expect. I like being able to call and reach people I trust."

Jeff Ames, Esq.

Paul Plevin Sullivan & Connaughton



"I have used CPT Group as a wage and hour class action administrator in several cases. On each occasion, CPT has been thorough, responsive, and efficient. I have enjoyed working with CPT and look forward to working with CPT in the future."

Howard Z. Rosen, Esq.

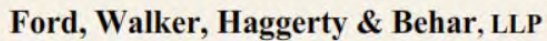
Posner & Rosen LLP



"I truly appreciate your patience and assistance on this. I will certainly recommend you and your company in the future when "class action administration" services are needed...it seems the administration part of the case has been handled with minimal headaches for me personally."

Rhonda Wolf, Esq. General Counsel

United Oil Company



"Fast, friendly responses to all my questions. High quality work."

Patrick Stark, Esq.

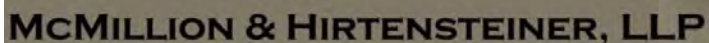
Ford, Walker, Haggerty, & Behar



"I can't say enough about the professionalism and work product quality of your Directors... You get what you pay for, as evidenced with my experience with certain other administrators..."

Sam Kim, Esq.

The Garay Law Firm



"I am extremely happy with all that you have done with the administration of this matter. Excellent service, from start to finish, as to all matters and you stayed within budget! You don't know how happy that makes me. CPT is our #1 admin company. Please feel free to use me as a reference."

Denise M. Caprioli, Esq.

McMillion & Hirtenstein

EXHIBIT B

Case Name: Holley

Date: February 28, 2018

PAGA Disbursement Only

Requesting Attorney: **Eduardo Santos**

* Class Members: **36,500**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$16,135.07**

Firm Name: **Capstone Law**

Grand Total: **\$101,328.07**

Telephone: **(310) 556-4811**

***** DISCOUNTED FLAT FEE: \$69,750.00**

Email: eduardo.santos@capstonelawyers.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup/Create a Unified Mailing List/NCOA

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	15	\$1,425.00
System Programming/Data Base Setup	\$150.00	15	\$2,250.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Total			\$3,920.00

* Up to 120 days after disbursement

SSN Verification

Verify SSN for Validity, Send Letters to Mis-Matches

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.15	36,500	\$5,475.00
Follow up on Mis-Matches	\$5.00	365	\$1,825.00
Total			\$7,735.00

Distribution

Create & Manage QSF / Print & Mail Notice, Checks & 1099

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	75	\$11,250.00
Project Manager-Correspond w/ Attorney	\$95.00	38	\$3,610.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	10	\$1,500.00
Print Mail Notice, Checks & 1099	\$1.25	36,500	\$45,625.00
Postage	\$0.42	36,500	\$15,330.00
Total			\$78,065.00

Post-Distribution

Reissue Checks When Necessary / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	365	\$1,825.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	1,825	\$2,281.25
Remail Undeliverable Checks	\$2.25	1,643	\$3,696.75
Postage	\$0.49	1,643	\$805.07
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$11,608.07

**CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement / Order / parties require(s) multiple state tax filings.*

Grand Total: \$101,328.07

Terms and Conditions

The "flat fee" amount for cost of administration is based on the specifications and information (e.g. class member size, claims to be filed) provided by Counsel/Client at the time this Agreement is prepared. The flat fee amount is subject to change, as and when Counsel/Client request additional work and/or provide changes, such as an increase in class member size, or changes in administrative duties/scope, which changes shall be set forth in writing by Counsel/Client. No provisions have been made for any services not specified in this Agreement. Prices and rates are subject to review and modification, pending review of the operative settlement agreement and further consultation with Counsel/Client. Counsel/Client shall, in addition to the flat fee, pay any applicable sales tax. ***PRICING GOOD FOR 90 DAYS***

Database & Mailing Requirements: The Agreement assumes that data provided to CPT Group, Inc. ("CPT") will be in ready-to-use condition, and that all data is provided in a single, comprehensive spreadsheet. CPT will not be liable for any errors or omissions arising due to additional work required for preparation of the original database, including, but not limited to data entry of claim information from claim forms. A minimum of five (5) business days is required for processing prior to the anticipated mailing date. Additional time will be required for mailings in excess of 5,000 pieces. CPT will keep counsel apprised of the estimated mailing date. All claims data, reports and computer compiled information relating to the matter covered by this Agreement shall be retained by CPT for its exclusive use. During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

Other: CPT's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, CPT will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, CPT will require disclaimer language regarding facsimile transmissions. CPT will not be responsible for any acts or omissions caused by the U.S.P.S. CPT will not make payments to any claimants without verified, valid Social Security Numbers. CPT will retain all other class member and putative class member correspondence (including without limitation, claim forms and opt out forms) for one year after final distribution of funds or benefits, unless directed otherwise in writing by the client.

Payment Terms: *All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents.* CPT bills are due upon receipt, unless otherwise negotiated and agreed to with CPT by Counsel/Client. In the event settlement terms provide that CPT is to be paid out of the settlement fund, CPT will request that Counsel/Client endeavor to make alternate payment arrangements for CPT charges that are due at the commencement of the case. The entire remaining balance is due and payable at the time the settlement account is funded by defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Accept Case Services: Receipt of any data or documents from Counsel/Client by CPT shall constitute constructive acceptance of this Agreement. Any deviation from this Agreement, including its terms and conditions, must be addressed by the parties in writing prior to or at the commencement of the case administration.

Applicable Law; Personal Jurisdiction; Venue: This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of California. All parties to this Agreement agree to submit to personal jurisdiction in the County of Orange, State of California. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in the applicable federal or state court in the County of Orange, State of California.

Attorneys' Fees: In the event either party commences litigation (including arbitration) to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all litigation-related costs (including expert witnesses' fees) incurred in addition to all other items of recovery permitted by law.

Integration and Modification: This Agreement contains the entire and only Agreement between the parties with respect to services requested, and there are no other promises, representations, or warranties, either expressed or implied. The provisions of this Agreement shall not be changed or modified except for an instrument in writing signed by the parties hereto.

Termination: This Agreement may be terminated by either party on thirty (30) days prior written notice if either party continues to materially fail to perform or comply with this Agreement or any of its provisions, after receiving written notice of such non-compliance. Such termination shall be effective thirty calendar (30) days after receipt of notice of termination to the defaulting party if the default(s) have not been cured within such thirty (30) day period, unless the default is of a nature which is permanent and not capable of cure, in which event, termination shall be effective upon receipt of said notice. The rights and remedies of the parties provided herein shall not be exclusive and are in addition to any and all other rights and remedies provided by law or this Agreement. Upon termination, CPT will do a final accounting with respect to amounts due it or Counsel/Client, as applicable.

Document Retention: Unless otherwise directed in writing by Counsel/Client, CPT will destroy all undeliverable mail upon Final Approval of the settlement. CPT will image all claim forms and correspondence. CPT will maintain the original documents at minimum one year after Final Approval at which point all original documents are subject to being destroyed, unless otherwise directed in writing by the Counsel/Client. CPT will retain all bank and tax documentation in compliance with state and federal requirements.

Severability: The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.

Notices: Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if personally served or sent by registered or certified mail (or similar process), return receipt requested, postage prepaid, and addressed to the other party as follows, until one party has notified in writing the other party of any new address:

If to CPT:

Mr. Henry Arjad, President
CPT Group, Inc.
50 Corporate Park
Irvine, California 92606

If to Counsel/Client:

At the address set forth at the end of this Agreement

Waiver: Any term or provision of this Agreement may be waived in writing at any time by the party entitled to the benefit thereof. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

Excuse from Performance. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, electrical outs, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused.

This Agreement, including these Terms and Conditions, are hereby accepted by the parties:

Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Tel: (310) 556-4811
Fax: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

[Counsel for Additional Plaintiffs Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1602246

**DECLARATION OF ALYSSA MADRIGAL
IN SUPPORT OF MOTION TO APPROVE
SETTLEMENT PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

1 Carolyn H. Cottrell (SBN 166977)
2 David C. Leimbach (SBN 265409)
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100
8 Fax: (415) 421-7105

9 John F. Edgar (*pro hac vice* to be submitted)
10 EDGAR LAW FIRM LLC
11 1032 Pennsylvania Avenue
12 Kansas City, Missouri 64105
13 Tel: (816) 531-0033
14 Fax: (816) 531-3322

15 Attorneys for Plaintiff Justin Vorise

16 David Borgen
17 Laura Ho
18 GOLDSTEIN BORGEN DARDARIAN & HO
19 300 Lakeside Drive, Suite 100
20 Oakland, CA 94612

21 Aashish Desai
22 Adrienne De Castro
23 DESAI LAW FIRM, P.C.
24 3200 Bristol Street, Suite 650
25 Costa Mesa, CA 92626

26 Attorneys for Plaintiff Alyssa Madrigal
27
28
29
30
31
32

1 I, Alyssa Madrigal, declare as follows:

2
3 1. I have personal knowledge of the facts set forth herein, and could, and would,
4 competently testify thereto if called upon as a witness. I am a named Plaintiff in this action and
5 submit this declaration in support of Motion for Court Approval of the Parties' PAGA Settlement.

6 2. I was employed by Defendant 24 Hour Fitness USA, Inc. ("Defendant") as an
7 hourly-paid Kids Club Attendant ("KCA") August 2013 to June 2014. I worked at Irvine (on
8 Culver St.), Costa Mesa (on Adams St.), Ultra Sport (Irvine), Costa Mesa (on 19th St.), and
9 Huntington Beach (on Main St.). From the start of this lawsuit to its settlement, I have worked
10 with my attorneys to provide invaluable assistance.

11
12 3. Prior to filing my action, my attorneys and I had multiple meetings about the
13 factual bases for the claims that I wanted to pursue against Defendant. During those meetings,
14 my attorneys provided me with an overview of how those claims would be litigated and generally
15 educated me about the nature of complex/representative litigation and my role as the
16 representative Plaintiff in a PAGA action.

17
18 4. My attorneys provided me with a draft of the Complaint and PAGA notice for my review
19 and approval. I closely reviewed the Complaint and PAGA notice to ensure accuracy and completeness,
20 and my attorneys filed the Complaint and notice only after I had approved its content. Following the filing
21 of the Complaint on July 22, 2014, I collaborated with my attorneys on the prosecution of my claims and
22 provided additional facts and information to assist my attorneys in the litigating the claims.

23
24 5. Over the last three and a half years, I have invested a lot of personal time and energy into
25 this lawsuit. I attended regular in-person and phone meetings with my attorneys even when it was not
26 easy. Because of my school and work and lack of a car, it was difficult for me to get time off to attend
27 these meetings. Despite the difficulty, I took time off because I knew it was important for me to attend
28 these meetings to get critical updates about the case, provide information to my attorneys, and it was also
29 my duty as a Class Representative. These meetings could often last a couple of hours which is time I
30 could've spent with my family and especially my newborn baby.

1 6. I worked closely with my attorneys during the discovery phase of the litigation, and in
2 particular, I spent considerable time working with my attorneys to prepare responses to Defendant's two
3 sets of discovery requests, including special interrogatories and document requests. I also answered any
4 questions my attorneys had stemming from Defendant's production of company documents.

5 7. In addition to written discovery, Defendant's counsel took my deposition on December
6 15, 2014. Prior to my deposition, I extensively conferred with my attorneys to prepare, and to learn more
7 about the deposition process. I spent significant time reviewing the Complaint and my discovery
8 responses, and other critical documents that I may be asked about. I did not have a car at the time and
9 needed to coordinate with my sister's schedule, so she could drive me from Santa Ana to Santa Monica to
10 attend my deposition. During my deposition I felt afraid, nervous, and frustrated. I was five months
11 pregnant at the time and after several hours of questioning I was exhausted. The attorney would
12 sometimes ask her questions quickly, which often made it difficult to understand so I had to ask her to
13 repeat the question. Following my deposition, I carefully reviewed the deposition transcripts to ensure that
14 my testimony was properly and accurately recorded.

15 8. Defendant engaged in aggressive discovery tactics. One of the early battles
16 focused on Defendant's Motion to Compel a second deposition after it changed lawyers. I was
17 subjected to a second deposition on April 7, 2016. On the day of my second deposition, I had to
18 make arrangements for child care and also transportation.

19 9. I suffered several highly embarrassing bathroom accidents while working at 24
20 Hour because of 24 Hour's KCA understaffing policy and submitted the evidence to my
21 attorneys. Even at my depositions I had to recall these embarrassing incidents. Ultimately, I
22 decided to take the risk and handover these photos and videos because I wanted to help protect
23 and prevent embarrassing accidents like this from happening to other KCAs:

24 The iPhone Videos:

- 25 • Indeed, while Defendant intimates that Plaintiff is lying about a corporate culture that
26 permitted multiple episodes of Plaintiff actually urinating on herself, there is actual
27 videotape here. The iPhone video (that was taken by Plaintiff) shows a desperate young
28 girl asking over and over again to use the restroom because of the understaffing problem:
29 "so no one can cover me for a little bit?" "Oh, okay he can't come in either ..." "Can I ...
30 umm ... can I use the restroom? I need a restroom break." Plaintiff even produced an
31

1 iPhone, time-stamped photo showing her soiled underwear to prove that she was being
2 truthful.

- 3 • Plaintiff, on another video, says: "I called Keenan ... can't use the restroom yet again. I
4 want to say I called him about five minutes ago. He said whenever Sahar [Manager] gets
5 in. Supposedly it was supposed to be nine to five but ... not in. [4 second pause] I'll
6 seewhat time she actually does get here ... and what time I actually get to use the
7 restroom."¹

8 10. My attorneys conferred with me about the mediation that took place in this case and I
9 have carefully reviewed the terms of the proposed settlement. My attorneys explained the specifics of
10 how the settlement would work and I accepted the settlement only after I had spent time evaluating the
11 proposed outcome to assure that it was fair. Based on my attorneys' evaluation and recommendation, and
12 my own review, I believe the settlement is fair and reasonable.

13 11. In summary, over the course of this litigation I have spent a significant amount of time
14 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement
15 and related documents. I estimate that I have spent between 300 and 350 hours assisting my attorneys in
16 the prosecution of this lawsuit.

17 12. I believe my negotiated General Release Payment is reasonable compensation for the
18 general release that I am required to provide Defendant as a condition of settlement. This general release
19 requires me to waive *all* claims that I may have arising out of my employment and is considerably broader
20 than the claims aggrieved employees will release under the settlement, which is limited to civil penalties
21 under PAGA for the claims alleged in the Actions.

22 13. Aside from the payment I am eligible to receive as an aggrieved employee and the
23 General Release Payment, I am not receiving any other benefits from the Settlement.

24 I declare under the penalty of perjury under the laws of the state of California that the
25 foregoing is true and correct and this declaration was executed this 17th day of June, 2018 at
26 Santa ana, California.

27 DocuSigned by:
28 
29

30 Alyssa Madrigal, declarant

31 ¹ These videos have been transcribed and attached as **Exh. A**.

EXHIBIT A

Video Transcription – Alyssa Madrigal Video Recordings

Alyssapics 707-968.MOV

I. April 3, 2014 9:29am

[START OF Alyssapics 707.MOV]

Alyssa: April 3rd, 9:29am. [10 second pause]

[Alyssa is dialing front desk]

Alyssa: Hey is Sahar in? [20 second pause] Hey Otis, is Sahar in? [2 second pause] *[Inaudible response from front desk]* No, she's not in? So no one can cover me for a little bit? [1 second pause] *[Inaudible response from front desk]* No one can cover me for a little bit? [6 second pause] *[Inaudible response from front desk]* Oh, Okay he can't come in either...it's...okay...thanks, bye.

[Alyssa hangs up the phone]

Alyssa video records the time on the computer.

Alyssa: No one can cover me and I've been here since 8:45am and its 9:39...9:30...April 3rd.
[END OF Alyssapics 707.MOV]

II. April 3, 2014 10:00am

[START OF Alyssapics 708.MOV]

Alyssa: April 3rd, 10am. 34 minutes later, I'm going to call to use the restroom again. [20 second pause] Hey Otis, is Sahar in? [3 second pause] *[Inaudible response from front desk]* Okay... Can I...umm...can I use the restroom? I need a restroom break. [2 second pause] *[Inaudible response from front desk]* Okay, thank you.

Alyssa hangs up the telephone and goes to the computer to record the time.

Alyssa: Okay, so she is in. I don't know what time she got in but 34 minutes later. I'm going to use the restroom. And now I have to wait to see what time she actually comes in.
[END OF Alyssapics 708.MOV]

III. April 30, 2014 10:15am

[START OF Alyssapics 709.MOV]

Alyssa: 10:15. Got to use the restroom.

Alyssa walks to the restroom and enters a stall to change her sanitary napkin. [inaudible] [20 second pause]

Alyssa: Change.

Alyssa reveals her soiled underwear. [inaudible]

Alyssa: Had an accident again...just happens.
[END OF Alyssapics 709.MOV]

IV. May 8, 2014 9:27am

[START OF Alyssapics 966.MOV]

Alyssa: 9:27, May 8th. Thursday. 2014. *[2 second pause]* I called Keenan...can't use the restroom yet again. I want to say I called him about five minutes ago. He said whenever Sahar gets in. Supposedly it was supposed to me nine to five but...not in. *[4 second pause]* I'll see what time she actually does get here...and what time I actually get to use the restroom.

Alyssa video records the clock and calendar from the Kids' Club computer.

[Inaudible]

[END OF Alyssapics 966.MOV]

V. May 8, 2014 10:27am

[START OF Alyssapics 967.MOV]

Alyssa: 10:27, the last kids checked out so now I'm free to use the restroom. An hour later...oh sorry...May 8, 2014. Thursday. 10:27. Uh Sahar still hasn't came down...they probably didn't even tell her. Or...I have no idea but the point is an hour later. Finally leaving the Kids Club to go use the restroom.

[inaudible] Alyssa walks to the telephone.

Alyssa: Check the time here.

[inaudible] Alyssa checks the telephone clock to show it is 10:27am on May 8, 2014.

Alyssa: Now I get to go use the restroom...an hour later.

*Alyssa video records the clock and calendar from the Kids' Club computer. Alyssa **doesn't end up** going to the restroom because a kid checks in at 10:38am.*

[Inaudible]

[END OF Alyssapics 967.MOV]

VI. May 8, 2014 10:38am

[START OF Alyssapics 968.MOV]

Alyssa: 10:38, I didn't get to use the restroom. The kid came in...four minutes ago... so...10:39 now so...10:35...couldn't use the restroom.

Alyssa is video recording the Kids' Club computer to show the date and Child Roster check in time. She was not able to use the restroom.

1 Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiffs Donna Holley and Paul Williams

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF RIVERSIDE

11
12 DONNA HOLLEY, and PAUL WILLIAMS,
as aggrieved employees pursuant to the Private
13 Attorneys General Act ("PAGA"),

14 Plaintiffs,

15 vs.

16 24 HOUR FITNESS USA, INC. a California
corporation, and DOES 1 through 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. RIC1602246

**DECLARATION OF DONNA HOLLEY IN
SUPPORT OF MOTION FOR COURT
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

Date: July 11, 2018

Time: 8:30 a.m.

Place: Department 5

Complaint Filed: February 24, 2016

DECLARATION OF DONNA HOLLEY

I, Donna Holley, hereby declare as follows:

1. I am over eighteen years old and unless the context indicates otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I am a Plaintiff in the above-captioned action. I make this declaration in support of the Motion for Court Approval of the Parties' PAGA Settlement.

2. I was employed by Defendant 24 Hour Fitness USA, Inc. ("Defendant") as an hourly-paid, non-exempt Group Exercise Instructor and as a Personal Trainer from approximately June 2008 to May 2015. I worked at Defendant's gyms in Glendora (Club No. 910) and Eastvale (Club No. 893), California. I decided to bring this lawsuit to redress certain employment-related grievances that I had against Defendant; e.g., that Defendant regularly failed to relieve employees to take their meal and rest periods, or to take them on time.

3. Prior to filing my action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant.¹ During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff in a PAGA action.

4. I also understood the risks of litigation, including being potentially liable for Defendant's fees and costs if the lawsuit was unsuccessful, that the lawsuit could continue for several years, and that it would be public knowledge to other potential employers that I was involved in a PAGA action. Notwithstanding, I was willing to serve as a PAGA representative because I believed Defendant had unlawful wage and hour policies/practices. This is the first and only case in which I have served as a PAGA representative. In fact, this is the only lawsuit to which I have been a party.

5. My attorneys provided me with a draft of the Complaint and PAGA notice for my review and approval. I closely reviewed the Complaint and PAGA notice to ensure accuracy and

¹ Although the preservation of my attorney-client privilege requires that I refrain from revealing the specifics of my communications with my attorneys, I understand that the privilege is not waived by stating generally the matters that I have discussed with my attorneys.

1 completeness, and my attorneys filed the Complaint and notice only after I had approved its content.
2 Following the filing of the Complaint on February 24, 2016, I collaborated with my attorneys on the
3 prosecution of my claims, provided additional facts and information to assist my attorneys in the
4 litigating the claims, and responded to my attorneys' questions. I remained in regular contact with my
5 attorneys to stay current on the status of the litigation, and to discuss my attorneys' progress in
6 prosecuting the claims. On average, I have spoken to my attorneys approximately twice a month
7 throughout the course of this case.

8 6. I worked closely with my attorneys during the discovery phase of the litigation, and in
9 particular, I spent considerable time working with my attorneys to prepare responses to Defendant's
10 discovery requests, including special interrogatories and document requests. I also answered any
11 questions my attorneys' had stemming from Defendant's production of company documents. At my
12 attorneys' request, I collected my bank statements and mobile phone records during my employment
13 with Defendant, as well as messages and pictures I had taken that were relevant to the case. I also
14 prepared a list of the names and contact information of all my former clients and co-workers whose
15 telephone numbers I maintained.

16 7. In addition to written discovery, Defendant's counsel took my deposition for two days
17 on December 7, 2017 and February 8, 2018. I was required to commute over two hours to attend each of
18 these deposition sessions, and because I recently had a child I needed to make infant care arrangements
19 for my child on both of those occasions. Prior to my deposition, I extensively conferred with my
20 attorneys to prepare, and to learn more about the deposition process. Following my deposition, I
21 carefully reviewed the deposition transcripts to ensure that my testimony was properly and accurately
22 recorded.

23 8. Prior to mediation, I discussed the mediation process with my attorneys. I also remained
24 on-call during the mediation to answer any questions they might have. I was updated about the progress
25 of the mediation. My attorneys conferred with me about the mediation that took place in this case and I
26 have carefully reviewed the terms of the proposed settlement. My attorneys explained the specifics of
27 how the settlement would work and I accepted the settlement only after I had spent time evaluating the
28 proposed outcome to assure that it was fair. Based on my attorneys' evaluation and recommendation,

1 and my own review, I believe the settlement is fair and reasonable.

2 9. In summary, over the course of this litigation I have spent a significant amount of time
3 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement
4 and related documents. I estimate that I have spent between 75 and 100 hours assisting my attorneys in
5 the prosecution of this lawsuit.

6 10. I believe my negotiated General Release Payment is reasonable compensation for the
7 general release that I am required to provide Defendant as a condition of settlement. This general release
8 requires me to waive *all* claims that I may have arising out of my employment, and is considerably
9 broader than the claims aggrieved employees will release under the settlement, which is limited to civil
10 penalties under PAGA for the claims alleged in the Actions. Accordingly, unlike other aggrieved
11 employees I am also releasing all of my individual claims including for the following:

- 12 a. I was regularly required to work off the clock and through meal periods.
13 Managers and clients would frequently contact me off the clock and I was
14 required to complete paperwork, recruit new clients, and clean the facilities off
15 the clock without compensation.
- 16 b. I was not paid all of the commissions owed to me for training / fitness packages
17 I sold to members.
- 18 c. I was almost never able to take meal and rest break during my tenure at 24 Hour
19 Fitness.
- 20 d. I was required to use my personal cell phone for 24 Hour business without
21 sufficient reimbursement.
- 22 e. Finally, although not part of this lawsuit I believe that I was wrongfully
23 terminated from my employment with 24 Hour.

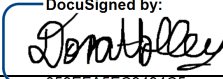
24 11. Aside from the payment I am eligible to receive as an aggrieved employee and the
25 General Release Payment, I am not receiving any other benefits from the Settlement.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 16 of June, 2018 at Eastvale, CA
3 California. City

4 DocuSigned by:
5 
6 Donna Holley
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Tel: (310) 556-4811
Fax: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

[Counsel for Additional Plaintiffs Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1602246

**DECLARATION OF JUSTIN VORISE IN
SUPPORT OF MOTION FOR COURT
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Craig G. Rierner
Dept.: 5

1 Carolyn H. Cottrell (SBN 166977)
2 David C. Leimbach (SBN 265409)
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100
8 Fax: (415) 421-7105

9 John F. Edgar (*pro hac vice* to be submitted)
10 EDGAR LAW FIRM LLC
11 1032 Pennsylvania Avenue
12 Kansas City, Missouri 64105
13 Tel: (816) 531-0033
14 Fax: (816) 531-3322

15 Attorneys for Plaintiff Justin Vorise

16 David Borgen
17 Laura Ho
18 GOLDSTEIN BORGEN DARDARIAN & HO
19 300 Lakeside Drive, Suite 100
20 Oakland, CA 94612

21 Aashish Desai
22 Adrianne De Castro
23 DESAI LAW FIRM, P.C.
24 3200 Bristol Street, Suite 650
25 Costa Mesa, CA 92626

26 Attorneys for Plaintiff Alyssa Madrigal
27
28
29
30
31
32

DECLARATION OF JUSTIN VORISE

I, Justin Vorise, declare as follows:

1. I am the Named Plaintiff in *Vorise v. 24 Hour Fitness USA, Inc.*, pending in Contra Costa County Superior Court. I am over the age of eighteen. The following statements are based on my personal knowledge. If called on to do so, I could and would testify competently thereto.

2. I submit this declaration in support of the Motion for Court Approval of the Parties' PAGA Settlement. I understand that the proposed Settlement resolves several cases against Defendant 24 Hour Fitness USA, Inc. ("Defendant"), and that it will be submitted for Court approval in the *Holley* case in Riverside County Superior Court.

3. I began my employment with Defendant on November 15, 2012. I worked at a fitness club in San Diego. I worked at the front desk as a Service Representative. I was promoted to the Lead Service Representative position approximately seven or eight months into my employment. I worked for Defendant until approximately October 2014.

4. I experienced issues in my employment, including inadequate meal and rest breaks. I decided to contact an attorney about this. Schneider Wallace Cottrell Konecky Wotkyns LLP and the Edgar Law Firm LLC are my attorneys in this case.

5. Prior to filing the case, I had multiple telephonic interviews with my attorneys. Generally, we discussed my work experiences, the law, and the kinds of claims I could pursue. We also discussed the risks of a case like this.

6. I knew that there was no guarantee that we would be successful in this case, and that there was a significant chance of protracted litigation. I understood I could potentially be liable for fees and costs, and that there was a risk that some of the claims could be compelled to arbitration. I realized that my name would be on a class and representative action, and that this information could be visible to others. I also understood that I could have to spend a significant amount of time in the discovery process. But I felt strongly that Defendant had unlawful wage and hour policies. Therefore, I decided to proceed as a representative plaintiff and file a lawsuit. I understood that I would serve as the Named Plaintiff, the representative of a proposed class of workers, and the representative employee for claims under the California Labor Code Private Attorneys General Act ("PAGA").

7. I worked with my attorneys to draft the class and representative action complaint. I reviewed it carefully before filing. We filed the case on November 5, 2015 in Contra Costa County Superior Court.

8. After we filed the case, Defendant filed a motion to compel arbitration of my claims. I

1 worked together with my attorneys to oppose this motion, and provided detailed information. I submitted
2 several declarations to support the opposition. Despite our best efforts, the Court entered an order
3 compelling arbitration.

4 9. At that point, I had more discussions with my attorneys. Ultimately, I decided to request
5 dismissal of my individual claims without prejudice to litigate the PAGA claims against Defendant. I
6 wanted to pursue claims on behalf of numerous workers and obtain relief for all of the employees who
7 are subject to these policies and practices. At that point, my case was a PAGA-only action. I understood
8 that I may still hold potential individual claims against Defendant under the California Labor Code.

9 10. We then entered the discovery phase. Defendant served two sets of requests for
10 production of documents and one set of special interrogatories. I discussed these requests at length with
11 my attorneys, and we worked together to prepare responses. I spent a considerable amount of time
12 assembling information and documents, including paystubs, account records, pictures, and social media
13 communications. I then closely reviewed the finalized responses.

14 11. In addition to written discovery, Defendant's counsel took my deposition on February
15 13, 2018. I flew from San Diego to the Bay Area and stayed overnight in order to complete the
16 deposition. I met with my attorneys for a preparation session prior to the deposition. Afterwards, I
17 reviewed the transcript to ensure that my testimony was properly and accurately recorded.

18 12. Early in the case, I discussed alternative dispute resolution with my attorneys. We
19 discussed the potential for mediation and settlement throughout the action. In early 2018, we discussed
20 the possibility of a joint mediation with other PAGA cases. We had further discussions ahead of the
21 February 27, 2018 global mediation. I remained on-call during the mediation and stayed updated
22 regarding the progress during the mediation and afterwards.

23 13. After the proposed Settlement was reached, I carefully reviewed the terms. I discussed
24 the Settlement with my attorneys. I spent time evaluating the proposed outcome to assure that it was fair.
25 Based on my own review and my attorneys' evaluation and recommendation, I believe the settlement is
26 fair and reasonable.

27 14. Throughout this action, I have been in constant communication with my attorneys to
28 keep apprised of the status of the litigation. I have kept up-to-date on the status at every phase.

29 15. In sum, I worked with my attorneys to prepare the complaint, provided extensive
30 information and several declarations to oppose the arbitration motion, strategized with my attorneys after
31 the arbitration order, spent dozens of hours assembling discovery responses, sat for a full day of
32 deposition, participated in the mediation process and settlement decisions, and otherwise remained in

1 constant contact with my attorneys. Over the course of this litigation, I have contributed well over a
2 hundred hours of my own time to the litigation of these claims.

3 16. In order to make this proposed Settlement a reality, I agreed to a general release. The
4 general release encompasses all claims that I may have arising out of my employment with Defendant,
5 including my potential individual Labor Code claims. In contrast, I understand that the release for the
6 aggrieved employees is limited to civil penalties under PAGA for the claims alleged. I agreed to the
7 general release as a condition of settlement in order to resolve my claims and the claims of the aggrieved
8 employees. I believe my negotiated General Release Payment is reasonable compensation for the general
9 release, as I am foregoing potential claims.

10 17. Aside from the payment I am eligible to receive as an aggrieved employee and the
11 General Release Payment, I am not receiving any other benefits from the Settlement.

12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct. Executed on 06/15/2018 at San Diego, California.

15
16
17 

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Justin Vorise

1 Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiffs Donna Holley and Paul Williams

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF RIVERSIDE

11
12 DONNA HOLLEY, and PAUL WILLIAMS,
13 as aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

14 Plaintiffs,

15 vs.

16 24 HOUR FITNESS USA, INC. a California
corporation, and DOES 1 through 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. RIC1602246

**DECLARATION OF PAUL WILLIAMS IN
SUPPORT OF MOTION FOR COURT
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

Date: July 11, 2018

Time: 8:30 a.m.

Place: Department 5

Complaint Filed: February 24, 2016

DECLARATION OF PAUL WILLIAMS

I, Paul Williams, hereby declare as follows:

1. I am over eighteen years old and unless the context indicates otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I am a Plaintiff in the above-captioned action. I make this declaration in support of the Motion for Court Approval of the Parties' PAGA Settlement.

2. I was employed by Defendant 24 Hour Fitness USA, Inc. ("Defendant") as an hourly, non-exempt Service Representative and as a Personal Trainer from approximately December 2015 to August 2016. I worked at Defendant's gym in Fairfield (Club No. 803), California. I decided to join this lawsuit to redress certain employment-related grievances that I had against Defendant; e.g., that Defendant regularly failed to relieve employees to take their meal and rest periods, or to take them on time. This is the first and only case I have been a PAGA representative in. In fact, this is the only lawsuit I have been a party in.

3. Prior to joining the action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant.¹ During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff in a PAGA action.

4. I also understood the risks of litigation, including being potentially liable for Defendant's fees and costs if the lawsuit was unsuccessful, that the lawsuit could continue for several years, and that it would be public knowledge to other potential employers that I was involved in a PAGA action. Notwithstanding, I was willing to serve as a PAGA representative because I believed Defendant had unlawful wage and hour policies/practices.

5. My attorneys provided me with a draft of the Second Amended Complaint ("SAC") for my review and approval. I closely reviewed the SAC to ensure accuracy and completeness, and my

¹ Although the preservation of my attorney-client privilege requires that I refrain from revealing the specifics of my communications with my attorneys, I understand that the privilege is not waived by stating generally the matters that I have discussed with my attorneys.

1 attorneys filed the SAC after I had approved its content. Following the filing of the SAC on September
2 13, 2017, I collaborated with my attorneys on the prosecution of my claims, provided additional facts
3 and information to assist my attorneys in the litigating the claims, and responded to my attorneys'
4 questions. I remained in regular contact with my attorneys to stay current on the status of the litigation,
5 and to discuss my attorneys' progress in prosecuting the claims.

6 6. Defendant's counsel took my deposition on February 20, 2018, which lasted a full day
7 and required me to take off one and one-half days' work to both prepare for and attend the deposition. I
8 had a considerable commute of approximately 45-60 minutes each way in order to attend my deposition.
9 Prior to my deposition, I traveled to meet with one of my attorneys, for several hours in person to
10 prepare, and to learn more about the deposition process. Thereafter, I spent several more hours preparing
11 for my deposition. Following my deposition, I carefully reviewed the deposition transcript to ensure that
12 my testimony was properly and accurately recorded.

13 7. Prior to mediation, I discussed the mediation process with my attorneys. I also remained
14 on-call during the mediation to answer any questions they might have. I was updated about the progress
15 of the mediation and subsequent settlement negotiations. I have carefully reviewed the terms of the
16 proposed settlement. My attorneys explained the specifics of how the settlement would work and I
17 accepted the settlement only after I had spent time evaluating the proposed outcome to assure that it was
18 fair. Based on my attorneys' evaluation and recommendation, and my own review, I believe the
19 settlement is fair and reasonable.

20 8. In summary, over the course of this litigation I have spent a significant amount of time
21 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement
22 and related documents. I estimate that I have spent between 55 and 65 hours assisting my attorneys in
23 the prosecution of this lawsuit.

24 9. I believe my negotiated General Release Payment is reasonable compensation for the
25 general release that I am required to provide Defendant as a condition of settlement. This general release
26 requires me to waive *all* claims that I may have arising out of my employment, and is considerably
27 broader than the claims aggrieved employees will release under the settlement, which is limited to civil
28 penalties under PAGA for the claims alleged in the Actions. Accordingly, unlike other aggrieved

employees I am also releasing all of my individual claims including for the following:

- a. As a night time service representative, I was required to remain on-duty at all times as I was working alone. Thus, I never received off-duty meal or rest breaks.
- b. As a personal trainer, I was regularly required to work off the clock and through meal periods. I trained clients, participated in group work-out session, and I was required to complete paperwork and recruit new clients off the clock without compensation.
- c. In addition, as a personal trainer I almost never got meal breaks or rest breaks.
- d. I was required to use my personal cell phone for 24 Hour business without sufficient reimbursement.
- e. I was not paid all of the commissions owed to me for training / fitness packages I sold to members.
- f. Finally, although not part of this lawsuit, I believe I was wrongfully terminated.

10. Aside from the payment I am eligible to receive as an aggrieved employee and the General Release Payment, I am not receiving any other benefits from the Settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15 of June, 2018 at Fairfield,
City
California.

DocuSigned by:
Paul Williams
C1CE53704BB7457...
Paul Williams

Raúl Pérez (SBN 174687)
Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Donna Holley and Paul Williams

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act (“PAGA”),

Plaintiff,

v.

24 HOUR FITNESS USA, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. RIC1602246

**[PROPOSED] ORDER APPROVING
PAGA SETTLEMENT**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

The Parties have filed a Motion for Approval of PAGA Settlement. The Court has reviewed the materials and information submitted by the Parties and finds and orders as follows:

1. In February 2018, Defendant 24 Hour Fitness USA, Inc. participated in a joint mediation with the plaintiffs and their respective counsel in three (3) pending PAGA actions against Defendant: the present action, and two other pending actions entitled *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC) (“Madrigal Action”), and *Vorise v. 24 Hour Fitness USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051) (“Vorise Action”) (collectively, the “Actions”).

1 2. The plaintiffs in the Actions (Donna Holley, Paul Williams, Alyssa Madrigal,
2 and Justin Vorise, hereinafter collectively as “Plaintiffs”), on behalf of themselves and as the
3 authorized proxies/agents for the State of California, and Defendant 24 Hour Fitness USA,
4 Inc. (“Defendant” or “24 Hour Fitness”) (collectively, the “Parties”) have agreed to a
5 Settlement of the Actions.

6 3. The Court hereby grants approval of the Settlement based on the terms set
7 forth in the Parties’ Private Attorneys General Act Settlement Agreement and Release (the
8 “Settlement Agreement” or the “Settlement”). All defined terms contained herein shall have
9 the same meanings as set forth in the Settlement Agreement. The Settlement Agreement is
10 attached hereto as **Exhibit 1**.

11 4. The Settlement Agreement was executed by Plaintiffs, Plaintiffs’ counsel,
12 Defendant, and Defendant’s counsel. The Court finds that the Settlement is entitled to
13 judicial approval, and meets all of the requirements for approval of a settlement under the
14 PAGA, including that the Parties complied with Labor Code § 2699(l)(2) by submitting a
15 copy of the Settlement Agreement to the California LWDA.

16 5. Pursuant to Labor Code § 2699(l)(2), the Court has reviewed the settlement
17 and finds the Settlement of PAGA claims described therein to be fair, adequate and
18 reasonable. The Court also finds that the LWDA has not objected to the terms of the
19 Settlement. The Court further finds that no other objection to the Settlement has been
20 received by the Court.

21 6. The Court approves and confirms the release and waiver of claims as provided
22 for in the Settlement Agreement. Pursuant to the California Supreme Court decision in *Arias*
23 *v. Superior Court* (2009) 46 Cal.4th 969, 986, “with respect to the recovery of civil penalties,
24 nonparty employees as well as the government [i.e., the State of California] are bound by the
25 judgment in an action brought under the [PAGA]” As defined in the Settlement
26 Agreement, the non-party employees who are covered and bound by this Settlement and its
27 waiver and release provisions are: (i) all current and former Kids Club Attendants and Kids
28 Club Supervisors Defendant has employed in California at any time from June 19, 2013

1 through and including October 2, 2014; and (ii) all current and former non-exempt
2 employees, including Kids Club Attendants and Kids Club Supervisors, Defendant has
3 employed at fitness clubs in California at any time from October 3, 2014 through and
4 including the date of this Order.

5 7. The Court also finds that the requested attorneys' fees and costs, the named
6 Plaintiffs' individual settlement payments, and costs of administration as set forth in the
7 Settlement are reasonable and hereby are approved.

8 8. As provided for in the Settlement Agreement, the Settlement will not become
9 effective, binding, and enforceable—and Defendant will have no obligation whatsoever to
10 fund the Settlement—until and unless the following additional events occur (1) the *Madrigal*
11 Action and the *Vorise* Action are dismissed and (2) this Court enters a final Judgment. The
12 Parties shall promptly submit to this Court copies of the orders of dismissal obtained in the
13 *Madrigal* Action and the *Vorise* Action. Following receipt of those dismissals, it is the intent
14 of this Court to enter Judgment consistent with this Order.

15 9. In addition, if any objection is made or filed to the Settlement, the Settlement
16 will not become effective, binding, and enforceable—and Defendant will have no obligation
17 whatsoever to fund the Settlement—until and unless (a) the deadline for filing an appeal
18 expires without an appeal having been filed or (b) an appeal is filed but the appeal is resolved
19 resulting in a final court order approving the Settlement.

20 10. The Settlement is not an admission by Defendant, nor is this Order a finding
21 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the
22 Settlement Agreement, nor any document referred to herein, nor any action taken to carry out
23 the Settlement, may be construed as, or may be used as, an admission of any fault,
24 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

25 11. The Court shall retain continuing jurisdiction over the Parties to this action to
26 ensure effectuation of the Settlement in accordance with the terms of the Settlement and this
27 Order.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Plaintiffs shall submit a copy of this Order to the LWDA within ten (10) days of entry of this Order.

IT IS SO ORDERED.

DATED: _____

Hon. Craig G. Riemer
Judge of the Superior Court

Exhibit 1

1 CAPSTONE LAW APC
Raúl Pérez (SBN 174687)
2 Raul.Perez@capstonelawyers.com
Arnab Banerjee (SBN 252618)
3 Arnab.Banerjee@capstonelawyers.com
Brandon Brouillette (SBN 273156)
4 Brandon.Brouillette@capstonelawyers.com
Ruhandy Glezakos (SBN 307473)
5 Ruhandy.Glezakos@capstonelawyers.com
1875 Century Park East, Suite 1000
6 Los Angeles, California 90067
Tel: (310) 556-4811
7 Fax: (310) 943-0396

8 Attorneys for Plaintiffs
Donna Holley and Paul Williams

9 MORGAN, LEWIS & BOCKIUS LLP
10 Eric Meckley (SBN 168181)
eric.meckley@morganlewis.com
11 Andrew P. Frederick (SBN 284832)
andrew.frederick@morganlewis.com
12 Nicole Antonopoulos (SBN 306882)
nicole.antonopoulos@morganlewis.com
13 One Market Street, Spear Street Tower
San Francisco, CA 94105
14 Tel: (415) 442-1000
Fax: (415) 442-1001

15 Attorneys for Defendant
16 24 Hour Fitness USA, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18
19 FOR THE COUNTY OF RIVERSIDE

20 DONNA HOLLEY, and PAUL WILLIAMS, as
aggrieved employees pursuant to the Private
21 Attorneys General Act ("PAGA"),

22 Plaintiff,

23 v.

24 24 HOUR FITNESS USA, INC., a California
corporation; and DOES 1 through 10, inclusive,

25 Defendants.
26
27

Case No. RIC1602246

**PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT
AND RELEASE**

1 This Private Attorneys General Act (“PAGA”) Settlement Agreement and Release
2 (“Agreement”) is made by and between Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal,
3 and Justin Vorise (“Plaintiffs”), on behalf of themselves and as the authorized proxies and agents
4 for the State of California, and Defendant 24 Hour Fitness USA, Inc. (“Defendant” or “24 Hour
5 Fitness”) (collectively, the “Parties”). The Parties hereby agree to the following settlement
6 (“Settlement”) negotiated in connection with the pending PAGA-only actions entitled *Holley, et*
7 *al. v. 24 Hour Fitness USA, Inc.* (Riverside County Superior Court, Case No. RIC1602246)
8 (“Holley Action”), *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County Superior Court, Case
9 No. 30-2014-00735568-CU-OE-CXC) (“Madrigal Action”), and *Vorise v. 24 Hour Fitness USA,*
10 *Inc.* (Contra Costa County Superior Court, Case No. CIV-MS15-02051) (“Vorise Action”)
11 (collectively, the “Actions”).

12 **1. THE CONDITIONAL NATURE OF THIS AGREEMENT**

13 1.1. This Agreement and all associated exhibit(s) and attachment(s) are made for the
14 purpose of settling the PAGA representative claims, as described further herein, at issue as a
15 result of the Actions. This Agreement and the Settlement it evidences are made in compromise of
16 disputed claims. Because this Agreement involves settlement of PAGA representative action
17 claims, the “superior court shall review and approve any settlement of any civil action filed
18 pursuant to [Labor Code §§ 2698 *et seq.*]” Cal. Lab. Code § 2699(l)(2). Accordingly, the Parties
19 enter into this Agreement and associated Settlement on a conditional basis. If the Riverside
20 Superior Court does not enter the Approval Order and Judgment, and/or the Effective Date does
21 not occur, pursuant to the terms of this Agreement, then this Agreement shall be deemed null and
22 void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for
23 any purpose whatsoever, it shall not constitute or evidence any admission of purported liability
24 against 24 Hour Fitness, and the terms and negotiation of the Agreement shall remain subject to
25 the provisions of California Evidence Code section 1152 and any other analogous rules of
26 evidence that are applicable.

27 1.2. Defendant denies all the allegations asserted in the Actions and also denies any
28 claims for relief, including claims for underlying wages, civil penalties, attorneys’ fees, costs of

1 suit, and interest. Defendant has agreed to resolve the Actions, but to the extent this Agreement is
2 not approved in accordance with its express terms or the Effective Date does not occur,
3 Defendant does not waive, but rather expressly reserves, all rights to challenge all claims and
4 allegations in the Actions upon all procedural and factual grounds, as well as asserting any and all
5 other potential defenses or privileges. Plaintiffs and Plaintiffs' Counsel agree that Defendant
6 retains and reserves these rights, and agree not to argue or present any argument, and hereby
7 waive any argument that, based on this Agreement, Defendant cannot assert any and all potential
8 defenses and privileges if these Actions were to proceed.

9 **2. DEFINITIONS**

10 The following terms, when used in this Agreement, shall have the following meanings:

11 2.1. "558 Civil Penalties Fund" means thirty-six and one-half percent (36.5%) of the
12 portion of the Net Settlement Amount. The 558 Civil Penalties Fund is currently estimated at
13 Two Million Five Hundred Ninety-Two Thousand Seven Hundred Sixteen Dollars and Fifty-Five
14 Cents (\$2,592,716.55).

15 2.2. "Actions" mean the following currently pending civil actions: (1) *Holley, et al. v.*
16 *24 Hour Fitness USA, Inc.* (Riverside County, Case No. RIC1602246); (2) *Madrigal v. 24 Hour*
17 *Fitness USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC); and (3) *Vorise v.*
18 *24 Hour Fitness USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051).

19 2.3. "Approval Date" means the date that the Riverside Superior Court enters the
20 Approval Order.

21 2.4. "Approval Order" means the Riverside Superior Court's Order approving this
22 Private Attorneys General Act Settlement Agreement and Release.

23 2.5. "Attorneys' Fees and Costs" means the attorneys' fees and costs to be requested by
24 Plaintiffs' Counsel and subject to approval by the Riverside Superior Court for Plaintiffs'
25 Counsel's litigation and resolution of the Actions.

26 2.6. "Database" means information in electronic form provided by Defendant to the
27 Settlement Administrator (as defined below) that for each PAGA Settlement Employee includes
28 his or her name, last known address, social security number, and the total number of pay periods

1 the PAGA Settlement Employee worked for Defendant in California during the PAGA Release
2 Period.

3 2.7. "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

4 2.8. "Effective Date" means the latest of the following: (i) provided that no objection
5 is made or filed to the Settlement, the date on which *all* of the following events have occurred:
6 the Riverside Superior Court approves the Settlement and enters the Approval Order, both the
7 Madrigal Action and Vorise Action are dismissed, and the Riverside Superior Court enters the
8 Judgment; (ii) if an objection is made or filed and the Approval Date occurs, but no appeal is
9 filed, then the date on which the deadline for any appeals expires (i.e., 60 days from when the
10 Judgment is entered), provided that both the Madrigal Action and Vorise Action have been
11 dismissed and the Riverside Superior Court has entered the Judgment; and (iii) if an objection is
12 made or filed and the Approval Date occurs, and an appeal is filed, then the date on which the
13 appeal is finally resolved resulting in a final court order approving this Settlement, provided that
14 both the Madrigal Action and Vorise Action have been dismissed and the Riverside Superior
15 Court has entered the Judgment.

16 2.9. "Funding Date" means twenty-one (21) calendar days after the Effective Date.

17 2.10. "General Release Payments" means the amounts to be paid to each of the Plaintiffs
18 as payment for general releases of all claims arising out of their employment with Defendant.

19 2.11. "General PAGA Penalties Fund" means sixty-three and one-half percent (63.5%)
20 of the Net Settlement Amount. The General PAGA Penalties Fund is currently estimated at Four
21 Million Five Hundred Ten Thousand Six Hundred Sixteen Dollars and Forty Five Cents
22 (\$4,510,616.45).

23 2.12. "Holley Action" means the action entitled *Donna Holley, et al. v. 24 Hour Fitness*
24 *USA, Inc.*, Case No. RIC1602246, pending in Riverside Superior Court.

25 2.13. "Judgment" means the judgment that is executed and entered by the Riverside
26 Superior Court pursuant to this Agreement.

27 2.14. "LWDA" means the State of California Labor & Workforce Development Agency.
28

1 2.15. “Madrigal Action” means the action entitled *Madrigal v. 24 Hour Fitness USA,*
2 *Inc.*, Case No. 30-2014-00735568-CU-OE-CXC, pending in the Superior Court of the State of
3 California for the County of Orange.

4 2.16. “Maximum Settlement Amount” is the total gross sum of Eleven Million Dollars
5 and Zero Cents (\$11,000,000.00), which represents the maximum amount payable pursuant to
6 this settlement by Defendant, and which includes all payments to PAGA Settlement Employees,
7 Attorneys’ Fees and Costs, General Release Payments, Settlement Administration Costs, and the
8 payment to the LWDA

9 2.17. “Net Settlement Amount” is the amount remaining after deducting the Attorneys’
10 Fees and Costs, the General Release Payments, and Settlement Administration Costs from the
11 Maximum Settlement Amount.

12 2.18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
13 Cal. Lab. Code §§ 2698 *et seq.*

14 2.19. “PAGA Release Period” means the periods (i) from June 19, 2013 through and
15 including October 2, 2014, with respect to all current and former employees of Defendant who
16 worked in the position(s) of Kids Club Attendant and/or Kids Club Supervisor in California; and
17 (ii) from October 3, 2014, through and including the Approval Date with respect to all current and
18 former non-exempt employees of Defendant, including but not limited to employees who worked
19 in the position(s) of Kids Club Attendants and/or Kids Club Supervisors, who worked in clubs in
20 California.

21 2.20. “PAGA Released Claims” means any and all claims against Releasees that have
22 been or could have been asserted under the PAGA, including under Labor Code Section 558,
23 based upon alleged violations of the Labor Code, the Industrial Welfare Commission Wage Order
24 2-2001 (“Wage Order”), and any other provision of law as alleged in the complaints, amended
25 complaints, LWDA letters, and amended LWDA letters in the Actions, including claims based on
26 meal periods, rest breaks, off-the-clock work, minimum wage, straight time wages, overtime,
27 double time, unlawful deductions, split shift pay, premium pay, pay stubs/wage statements, final
28 pay, timing of pay, record keeping/retention, and expense reimbursement, whether known or

1 unknown, and whether anticipated or unanticipated, that accrue through the Approval Date,
2 whether based on the Wage Order, including, but not limited to, Sections 3, 4, 5, 7, 8, 9, 11, and
3 20, the California Labor Code, including, but not limited to, Sections 201, 202, 203, 204, 204b,
4 210, 221, 223, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197,
5 1197.1, 1198, 2698, 2699 *et seq.*, 2800, 2802, and any other provision of law, as well as all
6 associated claims for penalties, attorneys' fees, and costs and interest. With respect to these
7 PAGA Released Claims *only*, all PAGA Settlement Employees waive their rights under
8 California Civil Code section 1542, which states: "A general release does not extend to claims
9 which the creditor does not know or suspect to exist in his or her favor at the time of executing
10 the release, which if known by him or her must have materially affected his or her settlement with
11 the debtor."

12 2.21. "Plaintiffs' Released Claims" means any and all claims, demands, liens,
13 agreements, contracts, covenants, actions, suits, causes of action, grievances, obligations, debts,
14 expenses, damages, judgments, orders and liabilities of whatever kind or nature in state, federal or
15 local law, or based on any constitutional provision, statute or regulation, or in tort, or in contract,
16 equity or otherwise, whether known or unknown, which arose at any time up to and including the
17 Approval Date, including but not limited to any and all wage and hour and pay related claims
18 under California law, the Fair Labor Standards Act (FLSA), federal, state or local laws and/or
19 ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or
20 unanticipated, including unknown claims covered by California Civil Code Section 1542, as
21 quoted in Section 4.12.3, below, and that were or could have been asserted in these Actions,
22 including but not limited to claims based on meal periods, rest breaks, off-the-clock work,
23 minimum wage, straight time, overtime, double time, unlawful deductions, split shift pay,
24 premium pay, pay stubs/wage statements, final pay, timing of pay, record keeping/retention,
25 expense reimbursement, penalties, and/or liquidated damages under the FLSA, the Wage Order,
26 and/or claims under the Labor Code, including but not limited to Sections 201, 202, 203, 204,
27 204b, 210, 221, 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 510, 512, 558, 1174,
28 1174.5, 1175, 1182 *et seq.*, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and

1 including claims for penalties under the Private Attorneys General Act, 2698 *et seq.*, claims under
2 any and all city and county living wage ordinances, any waiting time penalties that could have
3 been sought, other penalties, related tort, contract, and punitive damages claims, claims for
4 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
5 declaratory relief, and violations of the California Civil Code, the California Government Code,
6 the California Business & Professions Code, section 17200 *et seq.*, and/or 29 U.S.C. §§ 206,
7 211(c) and 215(a).

8 2.22. "PAGA Settlement Employees" mean and include (i) all current and former
9 employees of Defendant who worked in the position(s) of Kids Club Attendant and/or Kids Club
10 Supervisor in California at any time from June 19, 2013 through and including October 2, 2014;
11 and (ii) all current and former non-exempt employees of Defendant, including but not limited to
12 employees who worked in the position(s) of Kids Club Attendants and/or Kids Club Supervisors,
13 who worked in clubs in California from October 3, 2014, through and including the Approval
14 Date.

15 2.23. "Plaintiffs" mean Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and
16 Justin Vorise.

17 2.24. "Plaintiffs' Counsel" means, collectively, Capstone Law APC, Schneider Wallace
18 Cottrell Konecky Wotkyns LLP, Edgar Law Firm LLC, Goldstein, Borgen, Dardarian & Ho, and
19 the Desai Law Firm.

20 2.25. "Releasees" means Defendant 24 Hour Fitness USA, Inc., and its parents,
21 subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and
22 present, and each of their respective trustees, directors, officers, agents, joint employers,
23 attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons
24 acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of
25 them.

26 2.26. "Riverside Superior Court" means the Superior Court of the State of California for
27 the County of Riverside.

1 2.27. “Settlement Administration Costs” mean the amount to be paid to the Settlement
2 Administrator for all costs associated with administering the Settlement, including, but not
3 limited to, all tax document preparation, custodial fees, and accounting fees incurred by the
4 Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any
5 and all communications to PAGA Settlement Employees; all costs and fees associated with
6 issuing settlement payments; and all costs and fees associated with issuing IRS Form 1099s (to
7 the extent required by applicable law) relating to payments made under the settlement; all costs
8 and fees associated with preparing any tax returns and any other filings required by any
9 governmental taxing authority or agency; all costs and fees associated with preparing any other
10 notices, reports, or filings to be prepared in the course of administering the settlement, and any
11 other costs and fees incurred and/or charged by the Settlement Administrator in connection with
12 the execution of its duties under this Agreement.

13 2.28. “Settlement Administrator” means CPT Group, Inc.

14 2.29. “Vorise Action” means the action of *Justin Vorise v. 24 Hour Fitness USA, Inc.*,
15 Case No. CIV-MSC15-02051, pending in the Superior Court of the State of California for the
16 County of Contra Costa.

17 **3. RECITALS**

18 3.1. Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and Justin Vorise are
19 currently prosecuting three (3) separate wage and hour actions against Defendant in which
20 Plaintiffs allege claims under the PAGA.

21 3.2. On July 22, 2014, Plaintiff Madrigal, a former Kids’ Club Attendant (“KCA”),
22 filed the Madrigal Action in Orange County Superior Court, alleging a PAGA-only action. Her
23 complaint alleged that Defendant failed to provide KCAs in California with rest periods, failed to
24 provide itemized and accurate wage statements, and failed to maintain accurate payroll records in
25 compliance with California law. In January 2015, Madrigal filed a First Amended Complaint
26 adding allegations that Defendant failed to pay overtime compensation in compliance with
27 California law. Defendant filed a motion for summary judgment, which was denied by the court.
28 The court certified its ruling denying summary judgment for interlocutory review under Code of

1 Civil Procedure § 166.1. Defendant filed a petition for writ of mandate. The Court of Appeal
2 and, thereafter, the California Supreme Court denied Defendant's petitions for writ of mandate.

3 3.3. On November 5, 2015, Plaintiff Vorise, a former Service Representative, Lead
4 Service Representative, and Athletic Monitor, filed the Vorise Action in Contra Costa County
5 Superior Court, alleging that Defendant failed to provide meal periods, failed to provide rest
6 periods, failed to provide itemized accurate wage statements, failed timely to pay wages upon
7 termination, and failed to maintain accurate payroll records. Vorise originally sought to bring his
8 case as a putative class action and PAGA action. In 2016, the court granted Defendant's motion
9 to compel arbitration of Vorise's individual claims, dismiss his putative class claims, sever
10 Vorise's PAGA claims, and stay the action pending arbitration. Vorise thereafter dismissed his
11 individual claims without prejudice, leaving the PAGA claims as the only active claims.
12 Defendant demurred to Vorise's PAGA claims. The court overruled the demurrer, but certified
13 its ruling for interlocutory review under Code of Civil Procedure § 166.1. Defendant filed a
14 petition for writ of mandate. The Court of Appeals and, thereafter, the California Supreme Court
15 denied Defendant's writ petitions.

16 3.4. On February 24, 2016, Plaintiff Holley, a former Group Exercise Instructor and
17 Personal Trainer, filed the Holley action in Riverside Superior Court, alleging a PAGA-only
18 action for alleged unpaid overtime, unpaid minimum wages, failure to provide meal periods,
19 failure to provide rest periods, failure to provide itemized accurate wage statements, failure to pay
20 wages timely upon termination, failure to pay wages timely and appropriately during
21 employment, failure to provide split shift premiums, failure to reimburse necessary business
22 expenses, and failure to provide notice under Labor Code section 2810.5. In September 2017,
23 Holley filed a Second Amended Complaint adding an additional named plaintiff, Paul Williams, a
24 former Night Service Representative and Personal Trainer. The amended complaint included
25 allegations challenging Defendant's on-duty meal period agreement.

26 3.5. Defendant asserts that fitness club employees hold multiple job positions during
27 their employment. For example, Plaintiff Holley worked both as a Group Exercise Instructor and
28 Personal Trainer. Plaintiff Williams worked both as a Personal Trainer and Night Service

1 Representative. Plaintiff Vorise worked as an Athletic Monitor, Service Representative, and lead
2 Service Representative. Defendant asserts that employees oftentimes may work in multiple
3 different job positions within the same pay period.

4 3.6. On or around January 30 and 31, 2018, Defendant filed and served notices of
5 related cases in the Madrigal, Vorise, and Holley Actions, as well as in the following two
6 actions: *Mark Smiley v. 24 Hour Fitness USA, Inc.*, Case No. MSC17-00622 (Contra Costa
7 Superior Court, filed on April 3, 2017); and *Lita Abella v. 24 Hour Fitness USA, Inc.*, Case No.
8 BC658905 (Los Angeles Superior Court, filed on April 24, 2017). The notices of related cases
9 identified all of the then-pending PAGA actions, and also included notification and identification
10 regarding a sixth PAGA action, *Joseph Bullock et al. v. 24 Hour Fitness USA, Inc.*, Case No.
11 RG16806772 (Alameda Superior Court, filed on March 8, 2016), which has been abated/stayed
12 since approximately September 16, 2016, based on the pending Holley Action. On or around
13 February 7, 2018, Vorise's counsel filed and served in the *Bullock* matter a response to the related
14 case filing that identified all of the above pending cases.

15 3.7. The Parties have conducted exhaustive discovery in the Actions. Each of the
16 Plaintiffs has been deposed. In addition, multiple days of person most knowledgeable depositions
17 of Defendant have been taken by Plaintiffs in the Madrigal, Vorise, and Holley Actions. The
18 Parties have propounded and responded to multiple sets of written interrogatories and requests for
19 production of documents in the Actions. The Parties have filed discovery motions seeking
20 additional discovery that resulted in court orders in the Actions. Defendant has produced
21 information and documents/data regarding thousands of employees, including names and contact
22 information, time keeping records, and payroll data.

23 3.8. Following nearly eight years of combined vigorous litigation and at the strong
24 urging of the courts overseeing the Actions, the Parties agreed to participate in a joint mediation
25 of the Actions. The mediation took place on February 27, 2018 in Oakland, California before
26 Jeffrey Ross, Esq., an experienced and respected wage and hour mediator. At the conclusion of
27 mediation, Mr. Ross presented the parties with a "mediator's proposal," which outlined the
28 principal terms of a global settlement of all the Actions, which the Parties later accepted, subject

1 to certain conditions, including approval of the settlement by Defendant's Board of Directors. On
2 March 20, 2018, Defendant's Board of Directors approved the settlement.

3 3.9. Defendant has denied all of the allegations in the Actions, and specifically has
4 denied that it has violated any section of the Labor Code or Wage Order or committed any
5 misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any
6 kind. Defendant further has denied that the Actions may be maintained or prosecuted as
7 representative actions on behalf of any other employees of Defendant.

8 3.10. The Parties understand, acknowledge, and agree that this Agreement constitutes a
9 compromise of PAGA representative claims, and that it is the desire and intention of the Parties to
10 affect a final, complete and binding resolution of the PAGA representative claims, which have
11 been brought on behalf of the State of California. The Parties further acknowledge that this
12 Agreement is a compromise of disputed claims and that nothing in this Agreement shall be
13 construed as an admission or concession by Defendant of any liability.

14 3.11. The Parties and their counsel recognize the continuing expense and significant
15 length of continued proceedings necessary to litigate the disputes through trial and any
16 subsequent appeals. The Parties have also taken into account the uncertainty and risk of the
17 outcome of further litigation, and the difficulties and delays inherent in such litigation. The
18 Parties and their respective counsel are aware of the burdens of proof necessary to establish
19 liability for the claims alleged, the affirmative and other defenses asserted, and the risk that the
20 court could significantly reduce civil penalties, if any, awarded under Labor Code section
21 2699(e)(2). Thus, reaching this Settlement now has the potential for achieving a higher value
22 today than it might have later if the litigation were to continue. Based on the all of the foregoing,
23 Plaintiffs have determined that the settlement is fair and reasonable and promotes the PAGA's
24 objectives.

25 3.12. Under California law, the State of California may assess and collect civil penalties
26 from employers for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§
27 2699 *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by
28 certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged

1 to have been violated,” and the State thereafter decides not to investigate, the employee may, “as
2 an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law
3 enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of
4 himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by
5 aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the
6 aggrieved employees.” *Id.*

7 3.13. Along with the aforementioned PAGA penalties, Plaintiffs contend that “an
8 aggrieved employee acting as the LWDA’s proxy or agent by bringing a PAGA action may
9 likewise recover underpaid wages as a civil penalty under section 558.” *Thurman v. Bayshore*
10 *Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1148 (2012); *Lawson v. ZB, N.A.*, 18 Cal.
11 App. 5th 705, 722-25 (2017), *petition for review granted*, Case No. S246711, 2018 WL 1440035
12 (Mar. 21, 2018). Plaintiffs further contend that Labor Code section 558 provides for a “civil
13 penalty that consists of both the \$50 or \$100 penalty amount and [an amount sufficient to
14 recover] underpaid wages, with the underpaid wages going entirely to the affected employee or
15 employees[.]” *See Thurman*, 203 Cal. App. 4th at 1145. Plaintiffs contend that under *Thurman*
16 and *Lawson*, all remedies provided by Labor Code section 558 are treated as civil penalties. *See*
17 *Thurman*, 203 Cal. App. 4th at 1145 (“[t]hese statements show that the Supreme Court viewed the
18 recovery of underpaid wages under section 558, subdivision (a) as being part of, rather than in
19 addition to, the civil penalty provided by that subdivision”); *Lawson*, 18 Cal. App. 5th at 722
20 (“Section 558, by its terms and as we interpreted it in *Thurman*, expressly provides for civil
21 penalties and hence claims under section 558, including claims for underpaid wages, are
22 cognizable under the PAGA”). Plaintiffs assert that pursuant to *Thurman*, Labor Code section
23 558 is “an express exception to the general rule that civil penalties recovered in a PAGA action
24 are distributed 75 percent to the [LDWA] and 25 percent to the aggrieved employees.” *See*
25 *Thurman*, 203 Cal. App. 4th at 1145.

26 3.14. With respect to Plaintiffs’ contentions as reflected in Paragraph 3.13, Defendant
27 disagrees with the characterization of the recovery of underpaid wages under Labor Code section
28 558 as a “civil penalty” and notes that there currently exists a split in authority as to whether the

1 recovery of wages under Labor Code section 558 constitutes a civil penalty. *Compare Lawson*,
2 18 Cal. App. 5th at 722, with *Esparza v. KS Industries, L.P.*, 13 Cal. App. 5th 1228, 1234 (2017)
3 (finding that the recovery of wages under Labor Code section 558 constitutes “statutory
4 damages,” not “civil penalties”). Defendant does not accept or agree with the contentions stated
5 in Paragraph 3.13 and expressly reserves any and all rights it may have to challenge the assertion
6 that the recovery of wages under Labor Code section 558 constitutes a “civil penalty” in the
7 Actions and/or in other pending or future actions.

8 **4. OPERATIVE TERMS OF THE PAGA SETTLEMENT**

9 The Parties to the Actions agree as follows:

10 4.1. Conditional Nature of the Settlement; Sequencing of Settlement Approval. The
11 Settlement will not become effective, binding, and enforceable—and Defendant will have no
12 obligation whatsoever to fund the Settlement—until and unless the following events occur in the
13 following sequence and order: (1) first, the Riverside Superior Court must approve the Settlement
14 and enter the Approval Order; (2) second, the Madrigal Action and Vorise Action must be
15 dismissed by the Orange County and Contra Costa Superior Courts, respectively; and (3) third,
16 the Riverside Superior Court must enter the Judgment. In addition, even if all these events occur,
17 if any objection is made or filed to the Settlement, then the Settlement will not become effective,
18 binding, and enforceable—and Defendant will have no obligation whatsoever to fund the
19 Settlement—until and unless (a) the deadline for filing an appeal expires without an appeal
20 having been filed; or (b) an appeal is filed, but the appeal is resolved resulting in a final court
21 order approving the Settlement.

22 4.2. Court Approval of the Settlement. The Parties will present this Settlement
23 Agreement to the Riverside Superior Court for approval via a formally noticed motion pursuant to
24 the Court’s standing order at the same time they submit a copy of the Agreement to the LWDA.
25 Plaintiffs’ Counsel will prepare a draft of the noticed motion for approval of the Settlement.
26 Defendant will have five (5) business days to review and comment on the draft for approval prior
27 to it being filed with the Court. The Parties will request that the Riverside Superior Court issue
28 the Approval Order, in the form attached hereto as **Exhibit A**, approving and incorporating by

1 reference the terms and conditions of the Settlement Agreement. If the Riverside Superior Court
2 enters the Approval Order, then Plaintiffs' counsel in accordance with Labor Code Section
3 2699(l)(3) will submit a copy of the Approval Order to the LWDA within ten (10) days of the
4 entry of the Approval Order.

5 4.3. Dismissals with Prejudice of the Madrigal Action and the Vorise Action. Within
6 five (5) court days of the Approval Date, Plaintiffs Madrigal and Vorise will file stipulated
7 dismissals without prejudice of the Madrigal Action and the Vorise Action. Attached hereto as
8 **Exhibits B** and **C** are copies of the stipulated dismissals without prejudice that will be filed with
9 the courts overseeing the Madrigal Action and the Vorise Action, respectively, provided that the
10 Riverside County Superior Court approves the Settlement. To the extent that either the Orange
11 County Superior Court in Madrigal or the Contra Costa County Superior Court in Vorise refuses
12 to enter the dismissal without prejudice of the respective pending action, the Parties agree to work
13 promptly and cooperatively to attempt to secure such dismissal.

14 4.4. Entry of Final Judgment. Within five (5) court days of the date on which both the
15 Madrigal Action and the Vorise Action have been dismissed without prejudice, Plaintiffs Holley
16 and Williams will file a proposed Judgment with the Riverside County Superior Court that
17 incorporates by reference the terms and conditions of the Approval Order and Settlement
18 Agreement and dismisses the Holley Action with prejudice. Plaintiffs also will file with the
19 Riverside County Superior Court copies of the dismissals entered by the courts in the Vorise
20 Action and the Madrigal Action. Attached hereto as **Exhibit D** is a copy of the proposed
21 Judgment that Plaintiffs Holley and Williams will file in the Holley Action, provided that the
22 Settlement has been approved and provided that the Madrigal Action and the Vorise Action each
23 have been dismissed without prejudice. If the Riverside Superior Court enters the Judgment, then
24 Plaintiffs' counsel in accordance with Labor Code Section 2699(l)(3) will submit a copy of the
25 Judgment to the LWDA within ten (10) days of the entry of the Judgment.

26 4.5. Maximum Settlement Amount. Provided that and conditioned upon the Effective
27 Date occurring, Defendant shall pay a Maximum Settlement Amount of Eleven Million Dollars
28 and Zero Cents (\$11,000,000.00) pursuant to the terms of this Agreement.

1 4.6. Settlement Administrator.

2 4.6.1. The Settlement Administrator shall be CPT Group, Inc. The Settlement
3 Administrator will be responsible for administering the Settlement, including establishing a
4 qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA
5 Settlement Employees, the LWDA, Plaintiffs, and Plaintiffs' Counsel. The Settlement
6 Administration Costs will all be paid from the Maximum Settlement Amount; Defendant shall
7 neither owe nor be responsible for paying any administration costs outside of the Maximum
8 Settlement Amount.

9 4.6.2. Based on the Parties' estimates that there are currently approximately
10 Thirty-Six Thousand Five Hundred (36,500) PAGA Settlement Employees, Settlement
11 Administration Costs are estimated at approximately Seventy Thousand Dollars (\$70,000).

12 4.6.3. The actions of the Settlement Administrator shall be governed by the terms
13 of this Agreement, any orders from the Riverside Superior Court, and any agreement by counsel
14 of record regarding communications with the Settlement Administrator.

15 4.6.4. In the event that either Defendant's Counsel or Plaintiffs' Counsel takes the
16 position that the Settlement Administrator is not acting in accordance with the terms of the
17 Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary with
18 the Settlement Administrator or the Riverside Superior Court to attempt to resolve the issue.

19 4.7. General PAGA Penalties Fund. The General PAGA Penalties Fund will be paid to
20 PAGA Settlement Employees and the LWDA. Pursuant to the PAGA, seventy-five percent
21 (75%), of the General PAGA Penalties Fund will be paid to the LWDA, and the remaining
22 twenty-five percent (25%), will be paid to all PAGA Settlement Employees according to the
23 formula in Section 4.9.

24 4.8. Section 558 Civil Penalties Fund. The entire 558 Civil Penalties Fund,
25 approximately \$2,592,716.55, will be paid to PAGA Settlement Employees according to the
26 formula in Section 4.9.

1 4.9. Calculation of Settlement Payments. Payments to PAGA Settlement Employees
2 from the General PAGA Penalties Fund and 558 Civil Penalties Fund will be calculated and
3 issued as follows:

4 4.9.1. Based on its business records, Defendant will calculate and provide to the
5 Settlement Administrator: (i) the total number of pay periods worked by each PAGA Settlement
6 Employee during the PAGA Release Period, and (ii) the total number of pay periods worked by
7 all PAGA Settlement Employees during the PAGA Release Period. Pay periods will not be
8 double-counted.

9 4.9.2. To determine each individual PAGA Settlement Employee's payment from
10 the General PAGA Penalties Fund and 558 Civil Penalties Fund, the Settlement Administrator
11 will use the following formula: Settlement Payment = [25% of General PAGA Penalties Fund +
12 100% of 558 Civil Penalties Fund] × [pay periods worked by individual PAGA Settlement
13 Employee during PAGA Release Period ÷ total pay periods worked by all PAGA Settlement
14 Employees during the PAGA Release Period].

15 4.10. Tax Treatment of PAGA Settlement Payments. Because the settlement payments
16 to PAGA Settlement Employees are payments in compromise and settlement of claims for alleged
17 PAGA civil penalties, these settlement payments will be treated as non-wage income with no tax
18 withholdings to be made, and will be reported, if required by applicable tax laws, by the
19 Settlement Administrator on IRS Form 1099s to the respective PAGA Settlement Employee and
20 applicable governmental authorities. The Settlement Administrator will issue an IRS Form 1099
21 to Plaintiffs' Counsel and applicable governmental authorities for the payment of attorneys' fees
22 and costs in the amount approved by the Court. Plaintiffs agree to hold Defendant harmless from
23 and against any damage or penalty incurred by Defendant as a result of any taxing authority
24 assessing any tax or penalty upon Defendant as a consequence of any tax being due and unpaid on
25 each of their portions of the Maximum Settlement Amount.

26 4.11. General Release Payments. For general releases of all claims Plaintiffs may have
27 against Releasees arising out of their employment with Defendant, Defendant agrees to pay each
28 Plaintiff the sum of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for a total of Sixty

1 Thousand Dollars and Zero Cents (\$60,000.00). Because the General Release Payments are in
2 compromise and settlement of both wage and non-wage claims, a portion of these payments will
3 be subject to withholding and deduction. Each Plaintiff therefore will receive two payments: (1)
4 one payment in the gross amount of Five Thousand Hundred Dollars and Zero Cents (\$5,000.00),
5 less applicable withholdings and taxes, for alleged unpaid wages for which the Settlement
6 Administrator will issue an IRS Form W-2 and (2) a second payment in the amount of Ten
7 Thousand Dollars and Zero Cents (\$10,000.00) for alleged non-wage damages, including alleged
8 damages for expense reimbursement, penalties and statutory interest, for which the Settlement
9 Administrator will issue an IRS Form 1099. The Settlement Administrator will report these
10 payments to the pertinent taxing authorities as required by law. Plaintiffs assume full
11 responsibility for paying all taxes, federal and state, if any, due as a result of the General Release
12 Payments and agree to indemnify Releasees for any penalties, costs, expenses, and fees associated
13 with the failure to withhold and deduct with respect to the non-wage payments to them for which
14 a Form 1099 is issued. Notwithstanding the foregoing, the terms and recitals herein are not
15 intended to provide, and should not be relied on for, tax, legal, or accounting advice. Plaintiffs
16 should consult their own tax advisors regarding the payments described herein. Defendant will be
17 responsible for employer payroll taxes on the portions of the General Release Payments allocated
18 to wages. The Settlement Administrator will pay the General Release Payments to Plaintiffs no
19 later than fourteen calendar (14) days following the Funding Date.

20 4.12. Releases

21 4.12.1. Upon the Effective Date, each PAGA Settlement Employee shall be
22 deemed to have fully, finally, and forever released the Releasees from the PAGA Released
23 Claims for and during the PAGA Release Period, and the Judgment entered by the Riverside
24 Superior Court shall have *res judicata* effect as to each PAGA Settlement Employee with respect
25 to the PAGA Released Claims.

26 4.12.2. Upon the Effective Date, Plaintiffs Donna Holley, Paul Williams, Alyssa
27 Madrigal, and Justin Vorise shall be deemed to have fully, finally, and forever released Releasees
28 from all Plaintiffs' Released Claims through the Approval Date.

1 4.12.3. In addition, Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and
2 Justin Vorise shall be deemed to have expressly waived and relinquished, to the fullest extent
3 permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the
4 Plaintiffs' Released Claims pursuant to Section 1542 of the California Civil Code, which provides
5 as follows:

6 A general release does not extend to claims which the creditor does not know or
7 suspect to exist in his or her favor at the time of executing the release, which if
8 known to him or her must have materially affected his or her settlement with the
debtor.

9 4.13. Settlement Payment Procedures.

10 4.13.1. Seven (7) calendar days after the Effective Date, the Settlement
11 Administrator shall send counsel for Defendant electronic wiring instructions to fund the
12 Maximum Settlement Amount.

13 4.13.2. Fourteen (14) calendar days after Defendant's receipt of electronic wiring
14 instructions from the Settlement Administrator, Defendant will send to the Settlement
15 Administrator the Database. This information shall be treated as and remain confidential and
16 shall be used solely to manage the notice and payment process described herein, shall not be
17 disclosed to anyone (including Plaintiffs' counsel) other than the Settlement Administrator,
18 except to applicable taxing authorities if required, or pursuant to express written authorization of
19 Defendant, the individual in question, or by order of the Riverside Superior Court.

20 4.13.3. Fourteen (14) calendar days after Defendant's receipt of electronic wiring
21 instructions from the Settlement Administrator, Defendant will wire to the Settlement
22 Administrator the amount of Eleven Million Dollars and Zero Cents (\$11,000,000.00) to fund the
23 Settlement.

24 4.13.4. Because this is a PAGA settlement and not a class action settlement, and
25 because there is no claims procedure and no ability to "opt out," there will be no procedure by
26 which the PAGA Settlement Employees must submit claims in order to receive a settlement
27 payment and no prior notice provided to the PAGA Settlement Employees advising them of the
28 PAGA settlement. Fourteen (14) calendar days following the Settlement Administrator's receipt

1 of the settlement funds from Defendant, the Settlement Administrator shall mail a Letter
2 (substantially in the form attached hereto as **Exhibit E**) and a settlement check to each PAGA
3 Settlement Employee in the amount of his or her combined share of the 558 Civil Penalties Fund
4 and General PAGA Penalties Fund.

5 4.13.5. Prior to mailing the Letter and settlement check, the Settlement
6 Administrator shall check the addresses provided in the Database using the National Change of
7 Address database and shall update any addresses accordingly. Any checks returned as non-
8 deliverable on or before the check cashing deadline will be sent promptly via regular First-Class
9 U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, then the
10 Settlement Administrator will promptly attempt to determine the correct address using a skip-
11 trace, or other search using the name, address or Social Security number of the PAGA Settlement
12 Employee involved, and will then perform a single re-mailing.

13 4.13.6. Expiration of Settlement Checks. Checks issued to PAGA Settlement
14 Employees pursuant to this Agreement will expire 180 calendar days from the date they are
15 issued by the Settlement Administrator. After the 180-day period, the Settlement Administrator
16 shall remit any unclaimed funds to the State of California Unclaimed Wages Fund pursuant to the
17 then-applicable instructions of the California State Controller.

18 4.14. Attorneys' Fees and Costs. The Settlement Administrator shall pay to Plaintiffs'
19 Counsel from the Maximum Settlement Amount the amount of attorney's fees (not to exceed
20 Three Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars and Zero Cents
21 (\$3,666,667.00)) and costs (not to exceed One Hundred Thousand Dollars and Zero Cents
22 (\$100,000.00)) that are approved and awarded by the Riverside County Superior Court.
23 Defendant's Counsel will not oppose Plaintiffs' Counsel's request for attorneys' fees not to
24 exceed \$3,666,667 and for costs not to exceed \$100,000. An award by the Riverside County
25 Superior Court of less than the amount of requested attorneys' fees and/or costs shall not be a
26 basis upon which Plaintiffs' Counsel may void this Agreement, and any amounts of requested
27 attorneys' fees or costs not awarded shall be included the Net Settlement Fund. The Settlement
28 Administrator will issue an IRS Form 1099 to Plaintiffs' Counsel as required by IRS regulations.

1 The Settlement Administrator shall pay the amount awarded by the Riverside County Superior
2 Court to Plaintiffs' Counsel no later than fourteen calendar (14) days following the Funding Date.
3 This payment shall include and satisfy all past and future fees and costs incurred to prosecute,
4 settle, and administer this action, including obtaining approval of the settlement and securing
5 dismissals required by the settlement. Plaintiffs and Plaintiffs' Counsel expressly represent that
6 they are not aware of and have no knowledge of any liens filed or placed on this Action by any
7 person or entity.

8 4.15. LWDA Payment. No later than fourteen calendar (14) days following the Funding
9 Date, the Settlement Administrator will issue a payment to the LWDA from the General PAGA
10 Penalties Fund for the LWDA's share of the settlement attributable to claims for civil penalties
11 brought under the PAGA.

12 4.16. Non-Reversionary. This settlement is non-reversionary. Any portion(s) of the
13 requested Attorneys' Fees and Costs not awarded by the Court shall become part of the Net
14 Settlement Fund.

15 4.17. Impact of Non-Approval by Court. Should the Riverside County Superior Court
16 not approve the settlement, the Parties shall meet and confer to make reasonable efforts to address
17 any issues raised by the Court in order to obtain the Court's approval, except that Defendant will
18 not be required under any circumstances to increase the Maximum Settlement Amount or to
19 diminish or lessen the scope and time period of the PAGA Released Claims. If the Parties cannot
20 obtain approval from the Riverside County Superior Court, or if the Effective Date does not
21 occur, then the Parties shall be restored to their litigation positions as of March 1, 2018, and this
22 Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not
23 be referred to or used in this or any other action.

24 4.18. No Right to Object or Opt Out. Because this Settlement is not a class action
25 settlement, but rather a PAGA settlement involving claims on behalf of the State of California, no
26 person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out
27 from being covered by PAGA Released Claims at any time before or after the Approval Order is
28 made.

1 4.19. The Parties agree to work cooperatively to comply with the notice requirements to
2 the LWDA pursuant to Labor Code sections 2699(l)(2) and 2699(l)(3).

3 4.20. Miscellaneous Provisions.

4 4.20.1. Denial of Liability. Neither the acceptance nor the performance by
5 Defendant of the terms of this Agreement, nor any of the related negotiations or proceedings, is or
6 shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of
7 any of the allegations in the Actions, the appropriateness of the PAGA representative claims or
8 actions, the validity of any of the claims that were or could have been asserted by Plaintiffs and/or
9 any PAGA Settlement Employees in the action, or of any liability or wrongdoing of Defendant.
10 Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward each
11 and all of them. Each of the Parties has entered into this Agreement with the intention to avoid
12 further disputes and litigation with the attendant inconvenience, expenses, and contingencies.

13 4.20.2. Cooperation and Execution of Necessary Documents. The Parties agree to
14 cooperate fully with one another to accomplish and implement the terms of this Settlement. Such
15 cooperation shall include, but not be limited to, execution of such other documents and the taking
16 of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The
17 Parties to this Settlement shall exercise reasonable efforts, including all efforts contemplated by
18 this Settlement and any other efforts that may become necessary by court order, or otherwise, to
19 effectuate this Settlement and the terms set forth herein.

20 4.20.3. Enforcement and Continuing Jurisdiction of the Court. Pursuant to
21 California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction
22 over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the
23 terms and intent of the Settlement and this Agreement.

24 4.20.4. No Credit Toward Benefit Plans. Payments to PAGA Settlement
25 Employees as referenced herein will not be used to calculate any additional benefits under any
26 benefit plans to which any PAGA Settlement Employee may be eligible, including, but not
27 limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
28 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that

1 this Settlement Agreement will not affect any rights, contributions, or amounts to which any
2 PAGA Settlement Employee may be entitled under any benefit plans.

3 4.20.5. No Publicity. Plaintiffs and Plaintiffs' Counsel agree not to provide,
4 publish, or disseminate any information about these Actions or this Agreement or the Settlement,
5 except as otherwise required by applicable law, to or via (1) plaintiffs' attorneys' message boards,
6 the California Employment Lawyers Association, or the Consumer Attorneys of California; (2)
7 the media or press, including but not limited to Employment Law 360 (including in response to
8 any inquiries or requests for comment from the press/media); or (3) press releases, website
9 postings, and/or social media comments or postings, and Plaintiffs and Plaintiffs' Counsel
10 affirmatively represent that they have not done so prior to signing this Agreement. Nothing in
11 this paragraph shall prevent Plaintiffs' Counsel from communicating with the PAGA Settlement
12 Employees, the LWDA, the DLSE, or the courts in which the Actions are pending, as may be
13 required to carry out the terms of this Settlement and/or fulfill their ethical responsibilities under
14 the Settlement and to their respective clients.

15 4.20.6. Neither Plaintiffs' Counsel nor any other attorneys acting for, formerly
16 acting for, or purporting to act for, Plaintiffs or any of the PAGA Settlement Employees may
17 recover or seek to recover any amounts for attorneys' fees, costs, or disbursements from
18 Releasees or from the Maximum Settlement Amount for any of the Released Claims during the
19 PAGA Release Period, except as expressly provided herein.

20 4.20.7. Authorization to Enter into Settlement Agreement; Representation by
21 Counsel. Plaintiffs represent and warrant that they have the right and exclusive authority to
22 execute this Agreement and that they have carefully read and understand the full contents of this
23 Agreement and are voluntarily entering into this Agreement after having received legal advice
24 from Plaintiffs' Counsel with respect to the advisability of making the Settlement provided for
25 herein and the advisability of executing this Agreement.

26 4.20.8. Acknowledgement that the Settlement is Fair, Adequate and Reasonable.
27 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the
28 PAGA Released Claims and have arrived at this Settlement after significant and extensive

1 litigation and discovery and due diligence and arm's-length negotiations by experienced counsel
2 with the involvement of a neutral third-party mediator. The Parties further acknowledge that they
3 are each represented by competent counsel and that they have had an opportunity to consult with
4 their respective counsel regarding the fairness, adequacy, and reasonableness of this Settlement

5 4.20.9. No Prior Assignments. Plaintiffs represent and warrant that they have not
6 assigned or transferred or purported to assign or transfer to any person or entity, any claim or
7 portion thereof, or interest therein, which is or may be subject to this Agreement, and agree to
8 indemnify, defend, and hold Releasees harmless from and against any and all claims based on or
9 arising out of any such assignment or transfer, or purported assignment or transfer, of any claims
10 or any portion thereof or interest therein.

11 4.20.10. Entire Agreement. This Agreement sets forth the entire agreement
12 between the Parties hereto and fully supersedes any and all prior and/or supplemental
13 understandings, whether written or oral, between the Parties concerning the subject matter of this
14 Agreement. Any modification to this Agreement must be in writing and signed by all Plaintiffs
15 and Plaintiffs' Counsel and an authorized officer of 24 Hour Fitness and Defendant's Counsel.
16 This Agreement may not be changed, altered, or modified, except in writing signed by the Parties
17 hereto and approved by the Riverside County Superior Court.

18 4.20.11. Binding on Successors and Assigns. This Agreement shall be binding
19 upon and inure to the benefit of the Parties hereto, and their respective heirs, trustees, executors,
20 administrators, successors, and assigns.

21 4.20.12. Execution and Counterparts. This Agreement may be executed in
22 counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
23 scanned copies of the signature pages, will be deemed to be one and the same instrument and
24 shall have the same force and effect as if all signatories had signed the same instrument.

25 4.20.13. Captions. Paragraph titles or captions contained in the Agreement are
26 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
27 describe the scope of this Agreement, or any provision thereof.

1 4.20.14. Mutual Preparation. This Agreement shall be construed and interpreted
2 as if all of its language were prepared jointly by the Parties. No language in this Agreement shall
3 be construed against a Party on the ground that such Party drafted or proposed that language.

4 4.20.15. Except for the purposes of effectuating and enforcing the terms of this
5 Agreement, which includes but is not limited to barring and/or dismissing other claims that are
6 released by *res judicata* pursuant to this Agreement, neither this Agreement nor any of its terms
7 nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received
8 as, or deemed to be evidence for any purpose adverse to Defendant and/or any of the Releasees,
9 including but not limited to, evidence of a presumption, concession, indication, or admission by
10 any of the Releasees of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
11 disclosed, referred to, or offered in evidence against Defendant and/or any of the Releasees in any
12 other civil, criminal, or administrative action or proceeding.

13 4.20.16. Binding Agreement. The Parties warrant that they understand and have
14 full authority to enter into this Settlement, and further intend that this Settlement Agreement will
15 be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
16 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
17 provisions that otherwise might apply under federal or state law.

18 4.20.17. California Law Governs. The rights and obligations of the Parties under
19 this Agreement shall be construed and enforced in accordance with, and governed by, the laws of
20 the State of California. California law shall govern the interpretation of this Agreement even if a
21 choice of law analysis under state or federal law would dictate that another forum's law be
22 applied.

23 4.20.18. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
24 however, that Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the
25 amount they request from the Court, and any Party may appeal any court order that materially
26 alters the Settlement's terms.

27 4.20.19. Waiver. No waiver of any condition or covenant contained in this
28 Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be

1 considered to imply or constitute a further waiver by such party of the same or any other
2 condition, covenant, right or remedy.

3 4.20.20. Enforcement Action. In the event that one or more of the Parties
4 institutes any legal action or other proceeding against any other Party or Parties to enforce the
5 provisions of this Settlement or to declare rights and/or obligations under this Settlement, the
6 successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties
7 reasonable attorneys' fees and costs, including expert witness fees incurred in connection with
8 any enforcement actions.

9 4.20.21. Invalidity of Any Provision. Before declaring any provision of this
10 Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the
11 fullest extent possible consistent with applicable precedents so as to define all provisions of this
12 Settlement Agreement valid and enforceable. Except as provided below, if any provision of this
13 Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be
14 deemed severed and deleted from this Agreement, and neither that provision nor its severance and
15 deletion shall affect the validity of the remaining provisions. If the Court invalidates or amends a
16 provision that either of the Parties in good faith considers to be a material term of this Agreement,
17 then that Party shall have the option to send a written notice to the other Party no later than
18 fourteen (14) calendar days after the applicable Court order that it wishes to void the entire
19 Agreement and to restore the Parties to their litigation positions prior to the execution of this
20 Agreement. If the Parties are thereafter unable to resolve the issue by reasonable efforts, this
21 Agreement in its entirety shall be deemed null and void, shall be of no force or effect whatsoever,
22 and shall not be referred to or used for any purpose whatsoever. Notwithstanding the foregoing,
23 no portion of any release contained herein may be deemed severed or deleted from this
24 Agreement except upon express agreement in writing by the applicable Released Party(ies).

25 4.20.22. Destruction of PAGA Settlement Employee Contact Information.
26 Plaintiffs and Plaintiffs' Counsel agree that within ten (10) calendar days after the Effective Date,
27 they and each of them will either return to Defendant's counsel or destroy all lists, documents,
28 data, compilations and other records that contain any PAGA Settlement Employees' names and

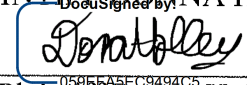
contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such records, then they must provide a written representation to Defendant's counsel expressly affirming that they have completed such destruction in its entirety.

IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties and their duly authorized attorneys, as of the date(s) and year herein set forth.

Dated: 6/4/2018, 2018

PLAINTIFF DONNA HOLLEY

By



Plaintiff Donna Holley

Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

By

Plaintiff Paul Williams

Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

By

Plaintiff Alyssa Madrigal

Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

By

Plaintiff Justin Vorise

Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

By

Name:
Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
 2 records, then they must provide a written representation to Defendant's counsel expressly
 3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
 5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6
 7 Dated: _____, 2018

PLAINTIFF DONNA HOLLEY

8 By _____
 Plaintiff Donna Holley

9
 10 Dated: 6/4/2018, 2018

PLAINTIFF PAUL WILLIAMS

11 By Paul Williams
 Plaintiff Paul Williams

12
 13 Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

14 By _____
 Plaintiff Alyssa Madrigal

15
 16 Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

17 By _____
 Plaintiff Justin Vorise

18
 19 Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

20 By _____
 Name:
 Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
2 records, then they must provide a written representation to Defendant's counsel expressly
3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6
7 Dated: _____, 2018

PLAINTIFF DONNA HOLLEY

8 By _____
9 Plaintiff Donna Holley

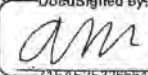
10 Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

11 By _____
12 Plaintiff Paul Williams

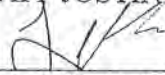
13 Dated: 6/5/2018 10:36:58 AM PDT
14 _____, 2018

PLAINTIFF ALYSSA MADRIGAL

15 By  _____
16 Plaintiff Alyssa Madrigal

17 Dated: 06/05/2018
18 _____, 2018

PLAINTIFF JUSTIN VORISE

19 By  _____
20 Plaintiff Justin Vorise

21 Dated: _____, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

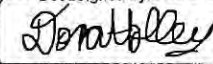
22 By _____
23 Name:
24 Title:

1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
 2 records, then they must provide a written representation to Defendant's counsel expressly
 3 affirming that they have completed such destruction in its entirety.

4 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
 5 and their duly authorized attorneys, as of the date(s) and year herein set forth.

6 Dated: 6/4/2018, 2018

7 PLAINTIFF DONNA HOLLEY

8 By 
 9 Plaintiff Donna Holley

10 Dated: _____, 2018

11 PLAINTIFF PAUL WILLIAMS

12 By _____
 13 Plaintiff Paul Williams

14 Dated: _____, 2018

15 PLAINTIFF ALYSSA MADRIGAL

16 By _____
 17 Plaintiff Alyssa Madrigal

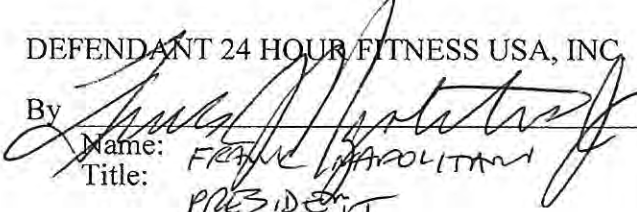
18 Dated: _____, 2018

19 PLAINTIFF JUSTIN VORISE

20 By _____
 21 Plaintiff Justin Vorise

22 Dated: 6/9/, 2018

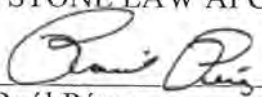
23 DEFENDANT 24 HOUR FITNESS USA, INC.

24 By 
 25 Name: FRANK CAROLITANI
 26 Title: PRESIDENT

APPROVED AS TO FORM AND CONTENT

Dated: June 5, 2018

CAPSTONE LAW APC

By: 

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: _____

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____

David Borgen

Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs

By: _____

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAILLAW FIRM, P.C.

By: Aashish Desai

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: June 5, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: David Borgen Laura L. Ho

David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS

By: _____

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAILLAW.FIRM, P.C.

By: Aashish Desai

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____

David Borgen

Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: 6-5, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNIS

By: Carolyn H. Cottrell

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

By: _____

John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____
Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

6/1/2018 3:10:46 PM PDT
Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: Aashish Desai
Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: 6-5, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYN

By: Carolyn H. Cottrell
Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: 6-11, 2018

EDGAR LAW FIRM LLC

By: John F. Edgar
John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2018

CAPSTONE LAW APC

By: _____
Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

Dated: _____, 2018

DESAI LAW FIRM, P.C.

By: _____
Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
David Borgen
Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs

By: _____
Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: _____, 2018

EDGAR LAW FIRM LLC

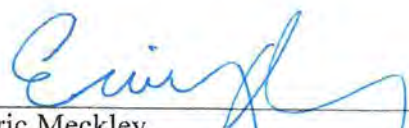
By: _____
John F. Edgar

Attorneys for Plaintiff Justin Vorise

Dated: June 8, 2018

MORGAN, LEWIS & BOCKIUS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 
Eric Meckley

Attorneys for Defendant
24 Hour Fitness USA, Inc.



EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. RIC1602246

**[PROPOSED] ORDER APPROVING
PAGA SETTLEMENT**

Judge: Hon. Craig G. Riemer
Dept: 5

The Parties have filed a Motion for Approval of PAGA Settlement. The Court has reviewed the materials and information submitted by the Parties and finds and orders as follows:

1. In February 2018, Defendant 24 Hour Fitness USA, Inc. participated in a joint mediation with the plaintiffs and their respective counsel in three (3) pending PAGA actions against Defendant: the present action, and two other pending actions entitled *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC) ("Madrigal Action"), and *Vorise v. 24 Hour Fitness USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051) ("Vorise Action") (collectively, the "Actions").

2. The plaintiffs in the Actions (Donna Holley, Paul Williams, Alyssa Madrigal,

1 and Justin Vorise, hereinafter collectively as “Plaintiffs”), on behalf of themselves and as the
2 authorized proxies/agents for the State of California, and Defendant 24 Hour Fitness USA,
3 Inc. (“Defendant” or “24 Hour Fitness”) (collectively, the “Parties”) have agreed to a
4 Settlement of the Actions.

5 3. The Court hereby grants approval of the Settlement based on the terms set
6 forth in the Parties’ Private Attorneys General Act Settlement Agreement and Release (the
7 “Settlement Agreement” or the “Settlement”). All defined terms contained herein shall have
8 the same meanings as set forth in the Settlement Agreement. The Settlement Agreement is
9 attached hereto as **Exhibit 1**.

10 4. The Settlement Agreement was executed by Plaintiffs, Plaintiffs’ counsel,
11 Defendant, and Defendant’s counsel. The Court finds that the Settlement is entitled to
12 judicial approval, and meets all of the requirements for approval of a settlement under the
13 PAGA, including that the Parties complied with Labor Code § 2699(l)(2) by submitting a
14 copy of the Settlement Agreement to the California LWDA.

15 5. Pursuant to Labor Code § 2699(l)(2), the Court has reviewed the settlement
16 and finds the Settlement of PAGA claims described therein to be fair, adequate and
17 reasonable. The Court also finds that the LWDA has not objected to the terms of the
18 Settlement. The Court further finds that no other objection to the Settlement has been
19 received by the Court.

20 6. The Court approves and confirms the release and waiver of claims as provided
21 for in the Settlement Agreement. Pursuant to the California Supreme Court decision in *Arias*
22 *v. Superior Court* (2009) 46 Cal.4th 969, 986, “with respect to the recovery of civil penalties,
23 nonparty employees as well as the government [i.e., the State of California] are bound by the
24 judgment in an action brought under the [PAGA]” As defined in the Settlement
25 Agreement, the non-party employees who are covered and bound by this Settlement and its
26 waiver and release provisions are: (i) all current and former Kids Club Attendants and Kids
27 Club Supervisors Defendant has employed in California at any time from June 19, 2013
28 through and including October 2, 2014; and (ii) all current and former non-exempt

1 employees, including Kids Club Attendants and Kids Club Supervisors, Defendant has
2 employed at fitness clubs in California at any time from October 3, 2014 through and
3 including the date of this Order.

4 7. The Court also finds that the requested attorneys' fees and costs, the named
5 Plaintiffs' individual settlement payments, and costs of administration as set forth in the
6 Settlement are reasonable and hereby are approved.

7 8. As provided for in the Settlement Agreement, the Settlement will not become
8 effective, binding, and enforceable—and Defendant will have no obligation whatsoever to
9 fund the Settlement—until and unless the following additional events occur (1) the *Madrigal*
10 Action and the *Vorise* Action are dismissed and (2) this Court enters a final Judgment. The
11 Parties shall promptly submit to this Court copies of the orders of dismissal obtained in the
12 Madrigal Action and the Vorise Action. Following receipt of those dismissals, it is the intent
13 of this Court to enter Judgment consistent with this Order.

14 9. In addition, if any objection is made or filed to the Settlement, the Settlement
15 will not become effective, binding, and enforceable—and Defendant will have no obligation
16 whatsoever to fund the Settlement—until and unless (a) the deadline for filing an appeal
17 expires without an appeal having been filed or (b) an appeal is filed but the appeal is resolved
18 resulting in a final court order approving the Settlement.

19 10. The Settlement is not an admission by Defendant, nor is this Order a finding
20 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the
21 Settlement Agreement, nor any document referred to herein, nor any action taken to carry out
22 the Settlement, may be construed as, or may be used as, an admission of any fault,
23 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

24 11. The Court shall retain continuing jurisdiction over the Parties to this action to
25 ensure effectuation of the Settlement in accordance with the terms of the Settlement and this
26 Order.

27 12. Plaintiffs shall submit a copy of this Order to the LWDA within ten (10) days
28 of entry of this Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: _____

Hon. Craig G. Riemer
Judge of the Superior Court

EXHIBIT B

1 MORGAN, LEWIS & BOCKIUS LLP
Eric Meckley, Bar No. 168181
2 eric.meckley@morganlewis.com
One Market, Spear Street Tower
3 San Francisco, California 94105-1596
Telephone: +1.415.442.1000
4 Facsimile: +1.415.442.1001

5 Attorneys for Defendant
24 HOUR FITNESS USA, INC.

6 DESAI LAW FIRM, P.C.
7 Aashish Y. Desai, Bar No. 187394
aashish@desai-law.com
8 Adrienne De Castro, Bar No. 238930
adrienne@desai-law.com
9 3200 Bristol St., Suite 650
Costa Mesa, CA 92626
10 Telephone: (949) 614-5830
Facsimile: (949) 271-4190

11 GOLDSTEIN, BORGEN, DARDARIAN & HO
12 David Borgen, Bar No. 99354
dborgen@gbdhlegal.com
13 Laura L. Ho, Bar No. 173179
lho@gbdhlegal.com
14 300 Lakeside Drive, Suite 1000
Oakland, CA 94612
15 Tel: (510) 763-9800
Fax: (510) 835-1417

16 Attorneys for Plaintiff
17 ALYSSA MADRIGAL

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ORANGE, CIVIL COMPLEX CENTER
20

21 ALYSSA MADRIGAL, on behalf of herself
22 and all others similarly situated, and on behalf
of all other "aggrieved" employees,

23 Plaintiffs,

24 vs.

25 24 HOUR FITNESS USA, INC., a California
26 Corporation dba 24 HOUR FITNESS; and
DOES 1-10, inclusive.

27 Defendants.
28

CASE NO.: 30-2014-00735568-CU-OE-CXC

Assigned For All Purposes To:
The Hon. William D. Claster, Dept CX-102

**STIPULATION AND [PROPOSED]
ORDER DISMISSING CASE WITHOUT
PREJUDICE**

Complaint Filed: July 22, 2014

1 Plaintiff Alyssa Madrigal ("Plaintiff"), on behalf of herself and as an authorized
2 proxy/agent for the State of California, and Defendant 24 Hour Fitness USA, Inc. ("Defendant")
3 (collectively, "the Parties") submit this Stipulation and [Proposed] Order dismissing the case
4 without prejudice:

5 WHEREAS, on July 22, 2014, Plaintiff, a former Kids' Club Attendant ("KCA") filed the
6 pending Private Attorney General Act ("PAGA") action in this Court. The original Complaint
7 alleged that Defendant failed to provide KCAs in California with rest periods and accurate wage
8 statements and failed to maintain accurate payroll records in compliance with California law.

9 WHEREAS, on January 5, 2015, Plaintiff filed a First Amended Complaint adding
10 allegations that Defendant failed to pay overtime compensation to KCAs. Plaintiff sought to
11 represent allegedly "aggrieved" current and former KCA employees from June 19, 2013 to the
12 present.

13 WHEREAS, on February 27, 2018, the Parties mediated this case with Jeffrey Ross, Esq.,
14 an experienced wage and hour mediator. The mediation was a joint mediation with two other
15 pending PAGA-only actions against Defendant, *Holley, et al. v. 24 Hour Fitness USA, Inc.*
16 (Riverside County, Case No. RIC1602246) ("the Holley Action") and *Vorise v. 24 Hour Fitness*
17 *USA, Inc.* (Contra Costa County, Case No. CIV-MS15-02051) ("the Vorise Action") (this
18 Action, the Holley Action, and the Vorise Action are collectively referred to as "the Actions"),
19 and the respective plaintiffs and counsel from those other actions participated in the mediation.

20 WHEREAS, on _____, 2018, the parties executed a Private Attorneys General Act
21 Settlement Agreement and Release resolving all claims in the Actions on a representative basis.

22 WHEREAS, the parties presented the global PAGA settlement for review and approval by
23 the court in the Riverside County Superior Court, where the Holley action is pending. On
24 _____, 2018, the Riverside County Superior Court in the Holley action approved the
25 PAGA settlement. Attached as **Exhibit A** is a true and correct copy of the Approval Order that
26 the Holley court issued, which includes a copy of the PAGA Settlement Agreement. Pursuant to
27 Labor Code § 2699(l)(2), the court in Holley reviewed the settlement and found the Settlement of
28 PAGA claims described therein to be fair, adequate and reasonable.

1 WHEREAS, the Riverside County Superior Court's approval of the PAGA settlement
2 fully resolves any and all claims pending in the Madrigal action.

3 WHEREAS, the Parties in the pending action agreed that within five (5) court days of the
4 Riverside County Superior Court's approval of the PAGA Settlement that Plaintiff would file a
5 stipulated dismissal without prejudice of this action.

6 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between
7 the undersigned that the Court dismiss this case without prejudice and close the case.

8 **IT IS SO STIPULATED.**

9
10 Dated: _____, 2018

DESAI LAW FIRM, P.C.

11
12 _____
Aashish Y. Desai
Adrianne De Castro

13 Attorneys for Plaintiff
14 ALYSSA MADRIGAL

15 Dated: _____, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

16
17 _____
David Borgen
Laura L. Ho

18 Attorneys for Plaintiff
19 ALYSSA MADRIGAL

20 Dated: _____, 2018

MORGAN LEWIS BOCKIUS, LLP

21
22 _____
Eric Meckley

23 Attorneys for Defendant
24 24 HOUR FITNESS USA, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Pursuant to the Stipulation of the Parties, the Court hereby dismisses the above-captioned case without prejudice and orders the court clerk to enter the dismissal without prejudice. The case is now closed.

IT IS SO ORDERED.

Dated: _____

Honorable William D. Claster
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105

Attorneys for Plaintiff

Eric Meckley (SBN 168181)
Andrew P. Frederick (SBN 284832)
Nicole Antonopoulos (SBN 306882)
MORGAN, LEWIS & BOCKIUS LLP
One Market Street, Spear Street Tower
San Francisco, CA 94105
Tel: 415.442.1000
Fax: 415.442.1001

Attorneys for Defendant

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

JUSTIN VORISE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

24 HOUR FITNESS USA, INC. (doing business
as 24 Hour Fitness), and DOES 1-50, inclusive,

Defendants.

Case No. C 15-02051

**STIPULATION AND [PROPOSED]
ORDER DISMISSING CASE WITHOUT
PREJUDICE**

Dept.: 17
Judge: Hon. Barry Goode

Complaint Filed: November 5, 2015
Trial Date: None Set

Plaintiff Justin Vorise ("Plaintiff") and Defendant 24 Hour Fitness USA, Inc. ("Defendant")
(collectively, "the Parties") submit this Stipulation and [Proposed] Order dismissing the case
without prejudice.

WHEREAS, on November 5, 2015, Plaintiff filed this action on behalf of himself and other
non-exempt employees of Defendant in California alleging that Defendant failed to provide meal

1 periods and rest periods and accurate itemized wage statements, and failed timely to pay wages
2 upon termination and maintain accurate payroll records. Plaintiff's original Complaint included
3 individual, class, and representative claims.

4 WHEREAS, on May 25, 2016, the Court entered an order compelling arbitration of
5 Plaintiff's individual claims, dismissing Plaintiff's putative class claims, severing Plaintiff's
6 representative Private Attorneys General Act ("PAGA") claims, and staying the action pending
7 arbitration.

8 WHEREAS, on June 17, 2016, Plaintiff requested dismissal of his individual claims without
9 prejudice and the Court entered the dismissal as requested. As a result, the remaining causes of
10 action pending before the Court are Plaintiff's Fifth and Sixth Causes of Action for civil penalties
11 under the PAGA.

12 WHEREAS, on February 27, 2018, the Parties mediated this case with Jeffrey Ross, Esq.,
13 an experienced wage and hour mediator. The mediation was a joint mediation with two other
14 pending PAGA-only actions against Defendant, *Holley, et al. v. 24 Hour Fitness USA, Inc.*
15 (Riverside County, Case No. RIC1602246) ("the Holley Action") and *Madrigal v. 24 Hour Fitness*
16 *USA, Inc.* (Orange County, Case No. 30-2014-00735568-CU-OE-CXC) ("the Madrigal Action")
17 (this Action, the Holley Action, and the Madrigal Action are collectively referred to as "the
18 Actions"), and the respective plaintiffs and counsel from those other actions participated in the
19 mediation.

20 WHEREAS, on _____, 2018, the parties executed a Private Attorneys General Act
21 Settlement Agreement and Release resolving all claims in the Actions on a representative basis.

22 WHEREAS, the parties presented the global PAGA settlement for review and approval by
23 the court in the Riverside County Superior Court, where the Holley action is pending. On
24 _____, 2018, the Riverside County Superior Court in the Holley action approved the PAGA
25 settlement. Attached as **Exhibit A** is a true and correct copy of the Approval Order that the Holley
26 court issued, which includes a copy of the PAGA Settlement Agreement. Pursuant to Labor Code §
27

1 2699(I)(2), the court in Holley reviewed the settlement and found the Settlement of PAGA claims
2 described therein to be fair, adequate and reasonable.

3 WHEREAS, the Riverside County Superior Court's approval of the PAGA settlement fully
4 resolves any and all claims pending in the Vorise action.

5 WHEREAS, the Parties in the pending action agreed that within five (5) court days of the
6 Riverside County Superior Court's approval of the PAGA Settlement that Plaintiff would file a
7 stipulated dismissal without prejudice of this action.

8 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
9 undersigned that the Court dismiss this case without prejudice and close the case.

10 **IT IS SO STIPULATED.**

11
12 Dated: _____, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs

13
14 By: _____
15 Carolyn H. Cottrell
16 David C. Leimbach
17 Attorneys for Plaintiff Justin Vorise

18
19 Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

20 By: _____
21 Eric Meckley
22 Andrew P. Frederick
23 Attorneys for Defendant 24 Hour Fitness USA,
24 Inc.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Proposed] Order

Pursuant to the Stipulation of the Parties, the Court hereby dismisses the above-captioned case without prejudice and orders the court clerk to enter the dismissal without prejudice. The case is now closed.

IT IS SO ORDERED.

Dated: _____, 2018

HONORABLE BARRY GOODE
JUDGE OF THE SUPERIOR COURT

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DONNA HOLLEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

v.

24 HOUR FITNESS USA, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. RIC1602246

[PROPOSED] JUDGMENT

Judge: Hon. Craig G. Riemer
Dept: 5

Pursuant to the Order Approving the PAGA Settlement (the "Order") entered in this
action on _____, 2018, and the subsequent dismissals of the actions against
Defendant entitled *Madrigal v. 24 Hour Fitness USA, Inc.* (Orange County, Case No. 30-
2014-00735568-CU-OE-CXC) ("Madrigal Action") and *Vorise v. 24 Hour Fitness USA, Inc.*
(Contra Costa County, Case No. CIV-MS15-02051) ("Vorise Action") (collectively, the
"Actions"), it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Judgment in this matter is hereby entered in accordance with the terms of the
Order and the Parties' PAGA Settlement Agreement ("Settlement Agreement"), which is
attached as **Exhibit 1** to the Order. Unless otherwise provided herein, all capitalized terms
used herein shall have the same meaning as defined in the Settlement Agreement.

1 2. This Judgment shall be binding on Plaintiffs and the PAGA Settlement
2 Employees and on the State of California, who collectively are hereby barred by the doctrine
3 of *res judicata* from initiating, litigating, or proceeding in any way with respect to the PAGA
4 Released Claims. Pursuant to the California Supreme Court decision in *Arias v. Superior*
5 *Court* (2009) 46 Cal.4th 969, 986, “with respect to the recovery of civil penalties, nonparty
6 employees as well as the government [i.e., the State of California] are bound by the judgment
7 in an action brought under the [PAGA]” As defined in the Settlement Agreement, the
8 non-party PAGA Settlement Employees who are covered and bound by this Settlement and
9 its waiver and release provisions and this Judgment are: (i) all current and former Kids Club
10 Attendants and Kids Club Supervisors Defendant has employed in California at any time
11 from June 19, 2013 through and including October 2, 2014; and (ii) all current and former
12 non-exempt employees, including Kids Club Attendants and Kids Club Supervisors,
13 Defendant has employed at fitness clubs in California at any time from October 3, 2014
14 through and including the date of the Order.

15 3. The Parties, their Counsel, and the Settlement Administrator shall take all
16 steps necessary to implement and consummate the Settlement according to its terms and
17 provisions.

18 4. Without affecting the finality of the Judgment or the Settlement, the Court
19 shall retain exclusive and continuing jurisdiction over the above-captioned action and the
20 parties for purposes of enforcing the terms of the Judgment entered herein.

21 5. Neither this Judgment, the Order, the Parties’ PAGA Settlement Agreement,
22 any document referred to herein, any exhibit to any document referred to herein, any action
23 taken to carry out the settlement, nor any negotiations or proceedings related to the
24 settlement are to be construed as, or deemed to be evidence of, or an admission or concession
25 with regard to, the denials or defenses of Defendant (or any settling party), and shall not be
26 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
27 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of
28 the Order and Judgment.

1 6. The Settlement is not an admission by Defendant, nor is this Judgment a
2 finding of the validity of any allegations or of any wrongdoing by Defendant. This Judgment
3 may not be construed, or be used, as an admission of any fault, wrongdoing, omission,
4 concession, or liability whatsoever by or against Defendant.

5 7. The claims of Plaintiffs Donna Holley and Paul Williams individually and the
6 representative claims brought on behalf of all of the PAGA Settlement Employees employed
7 at Defendant's fitness clubs in California as proxies/agents for the State of California and the
8 Labor Workforce and Development Agency are hereby DISMISSED WITH PREJUDICE.

9 8. Except as otherwise provided by the Settlement, each side shall bear their own
10 attorneys' fees and costs.

11 9. This document shall constitute a judgment.

12 10. Pursuant to Labor Code § 2699(l)(3), Plaintiffs shall submit a copy of this
13 Judgment to the LWDA within ten (10) days of entry of this Order.

14
15 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

16 DATED: _____

Hon. Craig G. Riemer
Judge of the Superior Court

EXHIBIT E

Exhibit E

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Settlement Payment From *Holley v. 24 Hour Fitness*, *Madrigal v. 24 Hour Fitness*, and *Vorise v. 24 Hour Fitness* Lawsuits

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your settlement payment from the settlement of the lawsuits entitled *Holley v. 24 Hour Fitness USA, Inc.*, No. RIC1602246 (Riverside County Superior Court); *Madrigal v. 24 Hour Fitness USA, Inc.*, No. 30-2014-00735568-CU-OE-CXC (Orange County Superior Court); and *Vorise v. 24 Hour Fitness USA, Inc.*, No. CIVMSC15-02051 (Contra Costa County Superior Court) (collectively, the "Actions").

The Actions were filed against 24 Hour Fitness USA, Inc. ("24 Hour Fitness") pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The Actions were brought on behalf of the State of California and all "aggrieved employees" of 24 Hour Fitness for civil penalties for alleged wage and hour violations, including but not limited to the alleged failure to pay minimum wages, straight time wages and overtime wages, provide compliant meal periods and rest breaks, pay meal and rest period premium payments, provide compliant itemized and accurate wage statements, timely and fully pay all wages during employment and upon termination, failure to pay split shift premiums, maintain accurate employment records, unlawfully make deductions, and reimburse necessary business expenses. In addition, through these Actions, the plaintiffs sought to recover alleged unpaid wages on behalf of themselves and other alleged "aggrieved employees" under Labor Code section 558.

24 Hour Fitness denies that it has done anything wrong or that it owes any wages or penalties. The parties in these Actions have agreed to resolve the cases, and as part of the settlement, 24 Hour Fitness agreed to pay a certain amount of money categorized as PAGA penalties and Section 558 underpaid wages. Under the PAGA statute, the penalties are divided between the State and the employees. As a result of this settlement, the State of California's and your ability to seek penalties recoverable under the PAGA, including alleged underpaid/unpaid wages under Labor Code Section 558, for all of the claims ordered released by the Court and summarized above have been released.

This settlement includes and applies to: (i) all current and former employees of 24 Hour Fitness who worked in the position(s) of Kids Club Attendant and/or Kids Club Supervisor in California at any time from June 19, 2013 through and including October 2, 2014; and (ii) all current and former non-exempt employees of 24 Hour Fitness, including but not limited to employees who worked in the position(s) of Kids Club Attendants and/or Kids Club Supervisors, who worked in clubs in California from October 3, 2014, through and including the _____ [insert Approval Date] _____, 2018. You have been identified as a current or former 24 Hour Fitness employee to whom this settlement applies and who is included in this settlement. Enclosed is a check made out to you. The check represents your share of the settlement for PAGA civil penalties and underpaid/unpaid wages under Labor Code section 558.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sincerely,

[Administrator]

1 Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
2 Arnab Banerjee (SBN 252618)
Arnab.Banerjee@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
4 Ruhandy Glezakos (SBN 307473)
Ruhandy.Glezakos@capstonelawyers.com
5 Capstone Law APC
1875 Century Park East, Suite 1000
6 Los Angeles, CA 90067
7 Telephone: (310) 556-4811
8 Facsimile: (310) 943-0396

9 Attorneys for Plaintiffs Donna Holley and Paul Williams

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE
13

14 DONNA HOLLEY, and PAUL WILLIAMS, as
15 aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

16 Plaintiff,

17 v.

18 24 HOUR FITNESS USA, INC., a California
19 corporation; and DOES 1 through 10, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28
29
30
31
32

Case No.: RIC1602246

CLASS ACTION

**PROOF OF SERVICE REGARDING
MOTION TO APPROVE SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: July 11, 2018
Time: 8:30 a.m.
Judge: Hon. Craig G. Riemer
Dept.: Department 5

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **June 18, 2018**, I served the documents described as:

SEE ATTACHED DOCUMENT LIST

on the interested parties in this action by sending ☐ the original ☐ ☒ a true copy thereof ☒ to interested parties as follows ☐ ☐ as stated on the attached service list:

SEE ATTACHED SERVICE LIST

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

[] **BY PERSONAL SERVICE:** I caused DDS Legal to deliver the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[✓] **BY OVERNIGHT TWO DAY DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight two day delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

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

Executed this **June 18, 2018**, at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature

DOCUMENT LIST

1. **NOTICE OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
3. **DECLARATION OF RAUL PEREZ IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
4. **DECLARATION OF LAURA HO IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
5. **DECLARATION OF AASHISH Y. DESAI IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
6. **DECLARATION OF CAROLYN HUNT COTTRELL IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
7. **DECLARATION OF DONNA HOLLEY IN SUPPORT OF MOTION FOR COURT APPROVAL OF THE PARTIES' PAGA SETTLEMENT**
8. **DECLARATION OF PAUL WILLIAMS IN SUPPORT OF MOTION FOR COURT APPROVAL OF THE PARTIES' PAGA SETTLEMENT**
9. **DECLARATION OF ALYSSA MADRIGAL IN SUPPORT OF MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
10. **DECLARATION OF JUSTIN VORISE IN SUPPORT OF MOTION FOR COURT APPROVAL OF THE PARTIES' PAGA SETTLEMENT**
11. **DECLARATION OF JULIE GREEN ON BEHALF OF CPT GROUP, INC., THE PROPOSED SETTLEMENT ADMINISTRATOR**
12. **[PROPOSED] ORDER APPROVING PAGA SETTLEMENT**
13. **PROOF OF SERVICE REGARDING MOTION TO APPROVE SETTLEMENT PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**

SERVICE LIST

Eric Meckley
Jennifer Svanfeldt
Nicole L. Antonopoulos
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, California 94105-1596
Telephone: +1.415.442.1000
Facsimile: +1.415.442.1001
eric.meckley@morganlewis.com
jennifer.svanfeldt@morganlewis.com
nicole.antonopoulos@morganlewis.com
Attorneys for 24 Hour Fitness USA, Inc.

Carolyn H. Cottrell
David C. Leimbach
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
dleimbach@schneiderwallace.com
ccottrell@schneiderwallace.com
Attorneys for Plaintiff Justin Vorise

John F. Edgar
EDGAR LAW FIRM LLC
1032 Pennsylvania Avenue
Kansas City, Missouri 64105
Tel: (816) 531-0033
Fax: (816) 531-3322
jfe@edgarlawfirm.com
Attorneys for Plaintiff Justin Vorise

David Borgen
Laura Ho
GOLDSTEIN BORGEN DARDARIAN & HO
300 Lakeside Drive, Suite 100
Oakland, CA 94612
dborgen@gbdhlegal.com
lho@gbdhlegal.com
Attorneys for Plaintiff Alyssa Madrigal

Aashish Desai
Adrienne De Castro
DESAI LAW FIRM, P.C.
3200 Bristol Street, Suite 650
Costa Mesa, CA 92626
aashish@desai-law.com
adrienne@desai-law.com
Attorneys for Plaintiff Alyssa Madrigal