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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

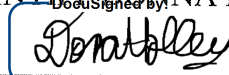
1 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
2 records, then they must provide a written representation to Defendant's counsel expressly
3 affirming that they have completed such destruction in its entirety.

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
7 _____, 2018

PLAINTIFF DONNA HOLLEY

By



Plaintiff Donna Holley

8 Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

By

Plaintiff Paul Williams

11 Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

By

Plaintiff Alyssa Madrigal

14 Dated: _____, 2018

PLAINTIFF JUSTIN VORISE

By

Plaintiff Justin Vorise

17 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.

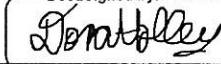
22 By _____
23 Name:
24 Title:

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

PLAINTIFF DONNA HOLLEY

By 

Plaintiff Donna Holley

8 Dated: _____, 2018

PLAINTIFF PAUL WILLIAMS

By _____

Plaintiff Paul Williams

10 Dated: _____, 2018

PLAINTIFF ALYSSA MADRIGAL

By _____

Plaintiff Alyssa Madrigal

12 Dated: _____, 2018

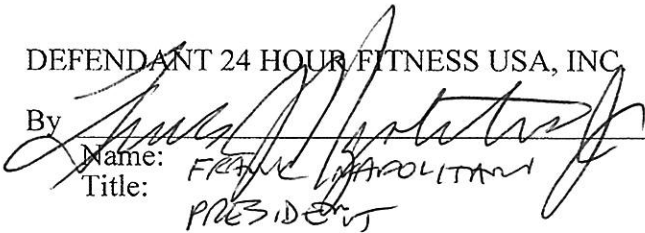
PLAINTIFF JUSTIN VORISE

By _____

Plaintiff Justin Vorise

14 Dated: 6/9/, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

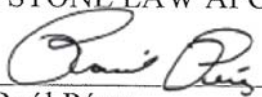
By 

Name: FRANK CAROLITANO
 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

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

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 WOTKYN

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

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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

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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

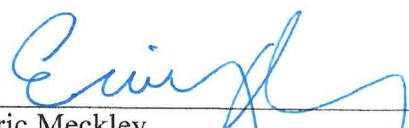
Dated: _____, 2018 GOLDSTEIN, BORGEN, DARDARIAN & HO
By: _____
David Borgen
Laura L. Ho
Attorneys for Plaintiff Alyssa Madrigal

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

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By: 
Eric Meckley

Attorneys for Defendant
24 Hour Fitness USA, Inc.



EXHIBIT A

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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.

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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
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adrienne@desai-law.com
9 3200 Bristol St., Suite 650
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11 GOLDSTEIN, BORGEN, DARDARIAN & HO
12 David Borgen, Bar No. 99354
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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.

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[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

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

6 Attorneys for Plaintiff

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

12 Attorneys for Defendant

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

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

17 Plaintiff,

18 vs.

19 24 HOUR FITNESS USA, INC. (doing business
as 24 Hour Fitness), and DOES 1-50, inclusive,

20 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

22
23 Plaintiff Justin Vorise ("Plaintiff") and Defendant 24 Hour Fitness USA, Inc. ("Defendant")
24 (collectively, "the Parties") submit this Stipulation and [Proposed] Order dismissing the case
25 without prejudice.

26 WHEREAS, on November 5, 2015, Plaintiff filed this action on behalf of himself and other
27 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(l)(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
David C. Leimbach
Attorneys for Plaintiff Justin Vorise

16
17 Dated: _____, 2018

MORGAN, LEWIS & BOCKIUS LLP

18
19 By: _____
20 Eric Meckley
Andrew P. Frederick
Attorneys for Defendant 24 Hour Fitness USA,
21 Inc.

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[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

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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).

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Sincerely,

[Administrator]