

1/4/2019

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
M. MERINO, DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

JUSTIN VORISE,

Plaintiff,

vs.

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

Defendants.

Case No. C15-02051

**ORDER APPROVING PAGA
SETTLEMENT**

Date: December 20, 2018

Dept: 9:00 a.m.

Judge: Hon. Edward Weil

Dept: 39

Plaintiff filed a Motion for Approval of PAGA Settlement, which came on for hearing on November 29, 2018 at 9:00 a.m. in Department 39 of the above-entitled Court, the Honorable Edward Weil presiding. Eric Meckley and Nicole Antonopoulos appeared on behalf of Defendant 24 Hour Fitness USA, Inc.; Carolyn Cottrell and David Leimbach appeared on behalf of Plaintiff Justin Vorise; Aashish Desai appeared on behalf of Plaintiff Alyssa Madrigal; and Eduardo Santos appeared on behalf of Plaintiffs Donna Holley and Paul Williams. The Parties thereafter submitted a Supplemental Brief to address certain issues the Court raised in its initial tentative ruling and at the November 29 hearing. The Court issued a second tentative ruling and the continued hearing on the Motion for Approval occurred on December 20, 2018 at 9:00 a.m. in

1 Department 39 of the above-entitled Court, the Honorable Edward Weil presiding. Eric Meckley
2 appeared on behalf of Defendant 24 Hour Fitness USA, Inc. and David Leimbach appeared on
3 behalf of Plaintiff Justin Vorise.

4 The Court has reviewed the materials and information submitted by the Parties and finds
5 and hereby ORDERS as follows:

6 **Procedure:**

7 1. Before the last hearing, the Court expressed substantial concerns about the
8 procedural context. The matters before this Court concern separate cases in different counties.
9 This very settlement was submitted to Judge Riemer in Riverside County, and when that Court
10 expressed reservations about whether the settlement could be entered as a judgment, the parties
11 withdrew the motion and filed it in this Court. Circumstances such as these are designed to be
12 addressed through the use of Coordinated Proceedings under Code of Civil Procedure section 404
13 and California Rule of Court 3.500. Nonetheless, such provisions have not been used here, and
14 there is nothing that precludes the parties from doing as they have done, at least where it is done
15 with notice to all concerned. The record indicates that, the notice of related case procedure has
16 been used where applicable here, and counsel in a separate related case has been given notice of
17 the pending motion.

18 **Legal Standards:**

19 2. The Legislature's express command that PAGA settlements be approved by the
20 court necessarily implies that there is some substantive dimension to the review. See Labor Code
21 Section 2699(l). The Court's review, however, is somewhat hampered by the lack of guidance in
22 the statute or case law concerning the basis upon which a settlement may be approved. In
23 contrast, significant guidance exists concerning standards for approval of class actions. (*Dunk v.*
24 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1891); other statutory public-interest settlement
25 provisions (Health & Safety Code Section 25249.7(d)), and "Proposition 65" settlements
26 approved only where the court finds the settlement provides "reasonable" warnings, attorney fees,
27 and civil penalties. (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006)
28 141 Cal.App.4th 46, 64.)

1 3. With respect to PAGA itself, the Court has found no binding authority, but one
2 federal District Court has addressed the issue. In *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016)
3 201 F.Supp.3d 1110, 1133, the court denied approval of class action settlements that included
4 PAGA claims in part because the plaintiffs' claims added up to as much as \$1 billion in PAGA
5 penalties but parties settled those claims for \$1 million, or 0.1% of their alleged maximum value.
6 As the court stated, "where plaintiffs bring a PAGA representative claim, they take on a special
7 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.
8 [citation omitted] Such a plaintiff also owes responsibility to the public at large; they act, as the
9 statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA
10 'for enforcement of labor laws . . . and for education of employers and employees about their
11 rights and responsibilities under this code.'" (*Id.*, at 1134.) In that case, the LWDA itself filed a
12 brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for
13 under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute
14 to benefit the public and, in the context of a class action, the court evaluate whether the settlement
15 meets the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the
16 public policies underlying the PAGA." (*Id.*, at 1133.) Since this case is not a class action, the
17 "fair, reasonable, and adequate" standard may not apply, but the LWDA's view that "the relief
18 provided for under the PAGA be genuine and meaningful" does apply. The *Uber Techs* court
19 noted that "a court may reduce the penalty when 'to do otherwise would result in an award that is
20 unjust, arbitrary and oppressive, or confiscatory.'" (*Id.*, at 1134, citing Labor Code § 2699(e)(2).)
21 Nonetheless, the court noted that the plaintiff had provided no "coherent analysis" to justify the
22 "relatively meager value" assigned to the PAGA claim.

23 4. California law provides some general guidance concerning judicial approval of
24 any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
25 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
26 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
27 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender
28 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet

1 in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
2 658, 664.) As a result, courts have specifically noted that Neary does not always apply, because
3 “[w]here the rights of the public are implicated, the additional safeguard of judicial review,
4 though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer*
5 *Advocacy Group, Inc. v. Kintetsu Enterprises of America, supra*, 141 Cal.App.4th at 63.) Thus, in
6 reviewing the settlement the Court must determine whether it is reasonable with respect to PAGA
7 claims (not individual claims not covered by the settlement); whether it is in the interest of the
8 public, as opposed to merely reflecting the individual plaintiff’s use of penalty claims in order to
9 obtain a private recovery; and whether it is in any respect either contrary to law or public policy.

10 **Preclusive effect:**

11 5. The parties, understandably, are concerned about the extent to which the
12 settlement would preclude other claims. In *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 985-
13 986, the Supreme Court held that a judgment in a PAGA case “is binding not only on the named
14 employee plaintiff but also on government agencies and any aggrieved employee not a party to
15 the proceeding.” This has been the result under similar statutes that provide for citizen
16 enforcement suits “in the public interest.” (*Consumer Advocacy Group v. ExxonMobil Corp.*
17 (2008) 168 Cal.App.4th 675, 685, 692.) Moreover, as the court stated in that case, “A judgment
18 entered ... by consent or stipulation, is as conclusive a ... bar as a judgment rendered after trial.
19 (4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, § 170, p. 3312) (*Citizens for Open Access, etc.*
20 *[v. Seadrift Assn. v. Seadrift Assn.]* (1998) 60 Cal.App.4th 1053, 1065[.]” (*Id.*, at 694 [internal
21 quotation marks omitted].) In applying these authorities, however, care must be taken with
22 respect to two issues. First, the matter must involve plaintiffs “appearing in the public interest,”
23 not any individual claims for damages or restitution. Thus, to the extent that this claim does not
24 purport to resolve any individual claims for wages, but only the State’s claims, it can have
25 preclusive effect. As to individual wage claims, it cannot have preclusive effect absent notice and
26 an opportunity to be heard to the affected individuals. Second, as noted in *Consumer Advocacy*
27 *Group*, the preclusive effect is limited to those claims for which the plaintiff had properly
28 perfected its authority to bring the action, i.e., those properly identified in the mandated pre-suit

1 notice.

2 6. Accordingly, the Court has some concerns about which claims are purportedly
3 covered. Plaintiffs assert that the settlement, as set forth in Par. 4.12.1, by definition “does not
4 encompass non-PAGA claims for the underlying wage and hour violations under the Labor
5 Code.” (Cottrell Dec., Par. 37.) “PAGA Released Claims” is defined in Paragraph 2.21 as “any
6 and all claims against Releasees that have been or could have been asserted under the PAGA,
7 including under Labor Code Section 558, based upon alleged violations of the Labor Code, the
8 Industrial Welfare Commission Wage Order 2-2001 (“Wage Order”), and any other provision of
9 law as alleged in the complaint, amended complaints, LWDA letters, and amended LWDA letters
10 in the Actions, including claims based on...[a variety of specified provisions]”. Initially, the
11 Court was concerned that the claims encompassed in the settlement were broader than those that
12 were ever raised in the LWDA letter. The parties have demonstrated, however, that defendants
13 have aggressively litigated the issue the proper scope of the notices, seeking to narrow the claims
14 properly before the court, and have been rebuffed by more than one court at more than one level.
15 Accordingly, at this point it is appropriate for the settlement to cover the full breadth of the claims
16 as set forth in the complaint and in the proposed judgment.

17 7. In its initial tentative ruling, the Court also expressed its concern about the
18 application of the settlement to “statutory damages” under Labor Code provisions such as
19 sections 203 and 558, which the court addressed in *Esparza v. KS Industries, L.P.* (2017) 13 Cal.
20 App. 5th 1228, 1241. Reviewing the Supreme Court’s decision in *Iskanian*, the Court found that
21 these are statutory damages because they “could have been obtained by individual employees
22 suing in their individual capacities—that is, victim-specific relief.” (*Id.*, at 1243.) It then found
23 that such statutory damages were not public claims, and therefore did not fall within the
24 “nonarbitrability” rule adopted in *Iskanian*. (The Court is aware that a different Court of Appeal
25 took a different view in *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705. The Supreme Court,
26 however, granted review in *Lawson*, meaning that while it can be cited, *Esparza* is the controlling
27 authority. (C.R.C. 8.1115(e) and comment thereto).) While the issue here is not arbitration, the
28 underlying principle suggests (to this Court) that the “statutory damage” claims are not PAGA

1 penalties that can be resolved by these plaintiffs on behalf of all other employees, outside the
2 context of a class action.

3 8. In response, the parties have brought the Court's attention to *Thurman v. Bayshore*
4 *Transit Management Inc.* (2012) 203 Cal.App.4th 1112. In *Thurman*, the Court of Appeal held
5 that "underpaid wages" under Labor Code section 558(a)(1) are "civil penalties" as defined in the
6 statute. Importantly, the Court in *Esparza* specifically considered whether the interpretation of the
7 term "civil penalties" is the same for purposes of the arbitration issue as it would be for the
8 penalty issues considered in *Thurman*, and determined that it was not. Accordingly, it is clear that
9 PAGA plaintiffs can recover unpaid wages as a civil penalty under section 558(a)(1). The issue in
10 the Court's mind, however, has never been whether civil penalties can be recovered in this case, it
11 is the effect on other employees. *Thurman* did not address the extent to which the judgment in the
12 PAGA action would preclude individual wage claims by affected employees. In *Arias, supra*,
13 however, the Supreme Court expressly held that the result in the PAGA action is binding on any
14 aggrieved employee not a party to the proceeding. If *Ezparza* applies only to arbitration, it drops
15 out of this analysis. Thus, this Court is left with *Thurman's* uncontradicted conclusion that unpaid
16 wages are civil penalties, and *Arias's* flat statement that aggrieved employees who are not a party
17 to a PAGA proceeding are bound. The result is ineluctable, at least to a trial court.

18 9. The Court also has some concern about "releasing" claims, which is an appropriate
19 provision for a contract between individuals, but probably ought not to appear in a judgment.
20 While the Plaintiffs dispute this in their supplemental briefing, ultimately the preclusive effect of
21 the judgment will be determined by the proper application of the Labor Code and principles of
22 issue preclusion and claim preclusion, not by whether the term "release" has been used
23 unnecessarily in a judgment. Accordingly, the Court will not deny the motion based on that
24 concern.

25 **Reasonableness of the Penalties:**

26 10. The parties have provided an extensive analysis of the basis for the penalty
27 amounts for the variety of claims presented in the case. They appear to be rational, consistent, and
28 based on reasonable analysis of the law and facts. The Court has not found, however, anything

1 indicating an estimate of the actual payment that each employee will receive.

2 **Attorney fees:**

3 11. Plaintiffs seek one-third of the total settlement amount as fees, relying on the
4 “common fund” theory. This theory does apply here, and counsel have offered substantial bases
5 for the award, i.e., substantial risk in a contingency case, long and arduous litigation, and an
6 excellent result. While this case is not a class action, this Court believes that even a proper
7 common fund-based fee award should be reviewed through a lodestar cross-check. In *Lafitte v.*
8 *Robert Half International* (2016) 1 Cal. 5th 480, 503, the Supreme Court endorsed the use of a
9 lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It
10 stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or
11 low, the trial court should consider whether the percentage used should be adjusted so as to bring
12 the imputed multiplier within a justifiable range, but the court is not necessarily required to make
13 such an adjustment.” (*Id.*, at 505.) Counsel has provided such an analysis.

14 12. In reviewing the documentation of fees, the materials are largely summary in
15 nature, with some exceptions. Ms. Cottrell provides her own qualifications, but there is no
16 summary of the qualifications of the numerous other attorneys whose time has been billed to the
17 matter. The rates are relatively high (14 of the 16 attorneys are billed at \$600 per hour or more),
18 high enough that they likely would be justifiable for experienced attorneys, while perhaps not for
19 junior attorneys. Indeed, counsel’s declaration notes that while her rate has been approved, other
20 courts have approved rates of \$350 to \$500 per hour for other attorneys in the firm. (Cottrell Decl,
21 Par. 101.) At Mr. Desai’s firm, he did over 80% of the hourly billings, and the timesheets suggest
22 that much of it could have been done by a less experienced attorney. In contrast, the Perez
23 declaration and the Edgar declaration show somewhat lower rates for attorneys at those firms.

24 13. With respect to the total number of hours, the tasks are only broken down in the
25 most general categories (Cottrell Dec., Ho Dec., Perez Dec.) in contrast with the Desai
26 declaration, which provides a task-by-task timesheet. Based on the narrative history of the case,
27 however, the total number of hours seems to be a reasonable fit with the tasks necessarily carried
28 out.

1 14. But this is only a lodestar cross-check, not a lodestar award. Accordingly, the
2 documentation is sufficient for these purposes. Applying the lodestar to the actual fee award of
3 over \$2.9 million, results in a multiplier of 1.26. This is neither extremely high nor extremely low
4 and does not justify a departure in either direction. Indeed, it is sufficiently low that it is not
5 necessary to conduct further scrutiny of the lodestar amount.

6 15. The costs appear to be reasonable.

7 **Payments to Plaintiffs:**

8 16. The proposed settlement provides for payments of \$15,000 each named plaintiff,
9 Ms. Justin Vorise, Alyssa Madrigal, Donna Holley, and Paul Williams. Each provides a
10 declaration stating that they frequently consulted their attorneys, that their deposition was taken,
11 and that they executed a general release. Only Holley estimates the hours she spent on the case
12 (75 to 100). None of the declarants identify any particular plausible claim that would be a
13 valuable subject of a release. Each plaintiff takes some risk that if potential employers are award
14 that they participated in these cases, the employers will be less likely to hire them. While these
15 payments are on the high side of what is typical in a class action, the Court approves it.

16 **Settlement Administration Costs:**

17 17. The settlement administration costs appear to be reasonable. (Green Dec., par. 4,
18 capping costs at \$70,000 for administration to a group of 36,500 employees.)

19 **Conclusion:**

20 18. The Court hereby GRANTS the motion to approve the Settlement based on the
21 terms set forth in the Parties' Private Attorneys General Act Settlement Agreement and Release
22 (the "Settlement Agreement" or the "Settlement"). The Parties' Settlement Agreement is attached
23 hereto as **Exhibit 1**. The Settlement Agreement was executed by Plaintiffs, Plaintiffs' counsel,
24 Defendant, and Defendant's counsel. The Court finds that the Parties complied with Labor Code
25 § 2699(l)(2) by submitting a copy of the Settlement Agreement to the California LWDA. The
26 Court also finds that the LWDA has not objected to the terms of the Settlement. The Court
27 further finds that no other objection to the Settlement has been received by the Court.

28 19. The Court approves and confirms the release and waiver of claims as provided for

1 in the Settlement Agreement. As defined in the Settlement Agreement, the non-party employees
2 who are covered and bound by this Settlement and its waiver and release provisions are: (i) all
3 current and former Kids Club Attendants and Kids Club Supervisors Defendant has employed in
4 California at any time from June 19, 2013 through and including October 2, 2014; and (ii) all
5 current and former non-exempt employees, including Kids Club Attendants and Kids Club
6 Supervisors, Defendant has employed at fitness clubs in California at any time from October 3,
7 2014 through and including the date of this Order.

8 20. 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 fund
10 the Settlement—until and unless the following additional events occur (1) the *Madrigal* Action
11 and the *Holley* Action are dismissed and (2) this Court enters a final Judgment. The Parties shall
12 promptly submit to this Court copies of the orders of dismissal obtained in the *Madrigal* Action
13 and the *Holley* Action. Following receipt of those dismissals, it is the intent of this Court to enter
14 Judgment consistent with this Order.

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

20 22. The Court shall retain continuing jurisdiction over the Parties to this action to
21 ensure effectuation of the Settlement in accordance with the terms of the Settlement and this
22 Order.

23 23. Plaintiffs shall submit a copy of this Order to the LWDA within ten (10) days of
24 entry of this Order.

25 **IT IS SO ORDERED.**

26 DATED: January 4, 2019



Hon. Edward Weil
Judge of the Superior Court

28 **PDF Version Approved as to Form By All Counsel.**

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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

JUSTIN VORISE,

Plaintiff,

vs.

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

Defendants.

Case No. C 15-02051

**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 Contra Costa
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 Contra Costa Superior Court enters the
20 Approval Order.

21 2.4. "Approval Order" means the Contra Costa 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 Contra Costa Superior Court for Plaintiffs'
25 Counsel's litigation and resolution of the Actions.

26 2.6. "Contra Costa Superior Court" means the Superior Court of the State of California
27 for the County of Contra Costa.
28

1 2.7. “Database” means information in electronic form provided by Defendant to the
2 Settlement Administrator (as defined below) that for each PAGA Settlement Employee includes
3 his or her name, last known address, social security number, and the total number of pay periods
4 the PAGA Settlement Employee worked for Defendant in California during the PAGA Release
5 Period.

6 2.8. “Defendant’s Counsel” means Morgan, Lewis & Bockius LLP.

7 2.9. “Effective Date” means the latest of the following: (i) provided that no objection
8 is made or filed to the Settlement, the date on which *all* of the following events have occurred:
9 the Contra Costa Superior Court approves the Settlement and enters the Approval Order, both the
10 Madrigal Action and Holley Action are dismissed, and the Contra Costa Superior Court enters the
11 Judgment; (ii) if an objection is made or filed and the Approval Date occurs, but no appeal is
12 filed, then the date on which the deadline for any appeals expires (i.e., 60 days from when the
13 Judgment is entered), provided that both the Madrigal Action and Holley Action have been
14 dismissed and the Contra Costa Superior Court has entered the Judgment; and (iii) if an objection
15 is made or filed and the Approval Date occurs, and an appeal is filed, then the date on which the
16 appeal is finally resolved resulting in a final court order approving this Settlement, provided that
17 both the Madrigal Action and Holley Action have been dismissed and the Contra Costa Superior
18 Court has entered the Judgment.

19 2.10. “Funding Date” means twenty-one (21) calendar days after the Effective Date.

20 2.11. “General Release Payments” means the amounts to be paid to each of the Plaintiffs
21 as payment for general releases of all claims arising out of their employment with Defendant.

22 2.12. “General PAGA Penalties Fund” means sixty-three and one-half percent (63.5%)
23 of the Net Settlement Amount. The General PAGA Penalties Fund is currently estimated at Four
24 Million Five Hundred Ten Thousand Six Hundred Sixteen Dollars and Forty-Five Cents
25 (\$4,510,616.45).

26 2.13. “Holley Action” means the action entitled *Donna Holley, et al. v. 24 Hour Fitness*
27 *USA, Inc.*, Case No. RIC1602246, pending in Riverside Superior Court.
28

1 2.14. “Judgment” means the judgment that is executed and entered by the Contra Costa
2 Superior Court pursuant to this Agreement.

3 2.15. “LWDA” means the State of California Labor & Workforce Development Agency.

4 2.16. “Madrigal Action” means the action entitled *Madrigal v. 24 Hour Fitness USA,*
5 *Inc.*, Case No. 30-2014-00735568-CU-OE-CXC, pending in the Superior Court of the State of
6 California for the County of Orange.

7 2.17. “Maximum Settlement Amount” is the total gross sum of Eleven Million Dollars
8 and Zero Cents (\$11,000,000.00), which represents the maximum amount payable pursuant to
9 this settlement by Defendant, and which includes all payments to PAGA Settlement Employees,
10 Attorneys’ Fees and Costs, General Release Payments, Settlement Administration Costs, and the
11 payment to the LWDA

12 2.18. “Net Settlement Amount” is the amount remaining after deducting the Attorneys’
13 Fees and Costs, the General Release Payments, and Settlement Administration Costs from the
14 Maximum Settlement Amount.

15 2.19. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
16 Cal. Lab. Code §§ 2698 *et seq.*

17 2.20. “PAGA Release Period” means the periods (i) from June 19, 2013 through and
18 including October 2, 2014, with respect to all current and former employees of Defendant who
19 worked in the position(s) of Kids Club Attendant and/or Kids Club Supervisor in California; and
20 (ii) from October 3, 2014, through and including the Approval Date with respect to all current and
21 former non-exempt employees of Defendant, including but not limited to employees who worked
22 in the position(s) of Kids Club Attendants and/or Kids Club Supervisors, who worked in clubs in
23 California.

24 2.21. “PAGA Released Claims” means any and all claims against Releasees that have
25 been or could have been asserted under the PAGA, including under Labor Code Section 558,
26 based upon alleged violations of the Labor Code, the Industrial Welfare Commission Wage Order
27 2-2001 (“Wage Order”), and any other provision of law as alleged in the complaints, amended
28 complaints, LWDA letters, and amended LWDA letters in the Actions, including claims based on

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

15 2.22. "Plaintiffs' Released Claims" means any and all claims, demands, liens,
16 agreements, contracts, covenants, actions, suits, causes of action, grievances, obligations, debts,
17 expenses, damages, judgments, orders and liabilities of whatever kind or nature in state, federal or
18 local law, or based on any constitutional provision, statute or regulation, or in tort, or in contract,
19 equity or otherwise, whether known or unknown, which arose at any time up to and including the
20 Approval Date, including but not limited to any and all wage and hour and pay related claims
21 under California law, the Fair Labor Standards Act (FLSA), federal, state or local laws and/or
22 ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or
23 unanticipated, including unknown claims covered by California Civil Code Section 1542, as
24 quoted in Section 4.12.3, below, and that were or could have been asserted in these Actions,
25 including but not limited to claims based on meal periods, rest breaks, off-the-clock work,
26 minimum wage, straight time, overtime, double time, unlawful deductions, split shift pay,
27 premium pay, pay stubs/wage statements, final pay, timing of pay, record keeping/retention,
28 expense reimbursement, penalties, and/or liquidated damages under the FLSA, the Wage Order,

1 and/or claims under the Labor Code, including but not limited to Sections 201, 202, 203, 204,
2 204b, 210, 221, 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 510, 512, 558, 1174,
3 1174.5, 1175, 1182 *et seq.*, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and
4 including claims for penalties under the Private Attorneys General Act, 2698 *et seq.*, claims under
5 any and all city and county living wage ordinances, any waiting time penalties that could have
6 been sought, other penalties, related tort, contract, and punitive damages claims, claims for
7 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
8 declaratory relief, and violations of the California Civil Code, the California Government Code,
9 the California Business & Professions Code, section 17200 *et seq.*, and/or 29 U.S.C. §§ 206,
10 211(c) and 215(a).

11 2.23. "PAGA Settlement Employees" mean and include (i) all current and former
12 employees of Defendant who worked in the position(s) of Kids Club Attendant and/or Kids Club
13 Supervisor in California at any time from June 19, 2013 through and including October 2, 2014;
14 and (ii) all current and former non-exempt employees of Defendant, including but not limited to
15 employees who worked in the position(s) of Kids Club Attendants and/or Kids Club Supervisors,
16 who worked in clubs in California from October 3, 2014, through and including the Approval
17 Date.

18 2.24. "Plaintiffs" mean Plaintiffs Donna Holley, Paul Williams, Alyssa Madrigal, and
19 Justin Vorise.

20 2.25. "Plaintiffs' Counsel" means, collectively, Capstone Law APC, Schneider Wallace
21 Cottrell Konecky Wotkyns LLP, Edgar Law Firm LLC, Goldstein, Borgen, Dardarian & Ho, and
22 the Desai Law Firm.

23 2.26. "Releasees" means Defendant 24 Hour Fitness USA, Inc., and its parents,
24 subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and
25 present, and each of their respective trustees, directors, officers, agents, joint employers,
26 attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons
27 acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of
28 them.

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 County Superior Court, alleging a PAGA-
18 only 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. On or around August 27, 2018,
15 Defendant filed and served updated Notices of Related Cases reflecting an additional PAGA
16 action entitled, *Melissa O'Brien v. 24 Hour Fitness USA, Inc.*, Case No. 34-2018-00233556-CU-
17 OE-GDS (Sacramento County Superior Court, filed on May 23, 2018).

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

26 3.8. Following nearly eight years of combined vigorous litigation and at the strong
27 urging of the courts overseeing the Actions, the Parties agreed to participate in a joint mediation
28 of the Actions. The mediation took place on February 27, 2018 in Oakland, California before

1 Jeffrey Ross, Esq., an experienced and respected wage and hour mediator. At the conclusion of
2 mediation, Mr. Ross presented the parties with a “mediator’s proposal,” which outlined the
3 principal terms of a global settlement of all the Actions, which the Parties later accepted, subject
4 to certain conditions, including approval of the settlement by Defendant’s Board of Directors. On
5 March 20, 2018, Defendant’s Board of Directors approved the settlement.

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

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

17 3.11. The Parties and their counsel recognize the continuing expense and significant
18 length of continued proceedings necessary to litigate the disputes through trial and any
19 subsequent appeals. The Parties have also taken into account the uncertainty and risk of the
20 outcome of further litigation, and the difficulties and delays inherent in such litigation. The
21 Parties and their respective counsel are aware of the burdens of proof necessary to establish
22 liability for the claims alleged, the affirmative and other defenses asserted, and the risk that the
23 court could significantly reduce civil penalties, if any, awarded under Labor Code section
24 2699(e)(2). Thus, reaching this Settlement now has the potential for achieving a higher value
25 today than it might have later if the litigation were to continue. Based on the all of the foregoing,
26 Plaintiffs have determined that the settlement is fair and reasonable and promotes the PAGA’s
27 objectives.
28

1 3.12. Under California law, the State of California may assess and collect civil penalties
2 from employers for violations of certain provisions of the Labor Code. See Cal. Lab. Code §§
3 2699 *et seq.* Under PAGA, however, if an “aggrieved employee” “give[s] written notice by
4 certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged
5 to have been violated,” and the State thereafter decides not to investigate, the employee may, “as
6 an alternative” to enforcement by the State, act as a proxy or agent of the state’s labor law
7 enforcement agencies and bring a civil action under PAGA to recover civil penalties “on behalf of
8 himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by
9 aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the
10 aggrieved employees.” *Id.*

11 3.13. Along with the aforementioned PAGA penalties, Plaintiffs contend that “an
12 aggrieved employee acting as the LWDA’s proxy or agent by bringing a PAGA action may
13 likewise recover underpaid wages as a civil penalty under section 558.” *Thurman v. Bayshore*
14 *Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1148 (2012); *Lawson v. ZB, N.A.*, 18 Cal.
15 App. 5th 705, 722-25 (2017), *petition for review granted*, Case No. S246711, 2018 WL 1440035
16 (Mar. 21, 2018). Plaintiffs further contend that Labor Code section 558 provides for a “civil
17 penalty that consists of both the \$50 or \$100 penalty amount and [an amount sufficient to
18 recover] underpaid wages, with the underpaid wages going entirely to the affected employee or
19 employees[.]” See *Thurman*, 203 Cal. App. 4th at 1145. Plaintiffs contend that under *Thurman*
20 and *Lawson*, all remedies provided by Labor Code section 558 are treated as civil penalties. See
21 *Thurman*, 203 Cal. App. 4th at 1145 (“[t]hese statements show that the Supreme Court viewed the
22 recovery of underpaid wages under section 558, subdivision (a) as being part of, rather than in
23 addition to, the civil penalty provided by that subdivision”); *Lawson*, 18 Cal. App. 5th at 722
24 (“Section 558, by its terms and as we interpreted it in *Thurman*, expressly provides for civil
25 penalties and hence claims under section 558, including claims for underpaid wages, are
26 cognizable under the PAGA”). Plaintiffs assert that pursuant to *Thurman*, Labor Code section
27 558 is “an express exception to the general rule that civil penalties recovered in a PAGA action
28

are distributed 75 percent to the [LDWA] and 25 percent to the aggrieved employees.” See *Thurman*, 203 Cal. App. 4th at 1145.

3.14. With respect to Plaintiffs’ contentions as reflected in Paragraph 3.13, Defendant disagrees with the characterization of the recovery of underpaid wages under Labor Code section 558 as a “civil penalty” and notes that there currently exists a split in authority as to whether the recovery of wages under Labor Code section 558 constitutes a civil penalty. *Compare Lawson*, 18 Cal. App. 5th at 722, with *Esparza v. KS Industries, L.P.*, 13 Cal. App. 5th 1228, 1234 (2017) (finding that the recovery of wages under Labor Code section 558 constitutes “statutory damages,” not “civil penalties”). Defendant does not accept or agree with the contentions stated in Paragraph 3.13 and expressly reserves any and all rights it may have to challenge the assertion that the recovery of wages under Labor Code section 558 constitutes a “civil penalty” in the Actions and/or in other pending or future actions.

4. OPERATIVE TERMS OF THE PAGA SETTLEMENT

The Parties to the Actions agree as follows:

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

4.2. Court Approval of the Settlement. The Parties will present this Settlement Agreement to the Contra Costa Superior Court for approval via a formally noticed motion at the

1 same time they submit a copy of the Agreement to the LWDA. Plaintiffs' Counsel will prepare a
2 draft of the motion for approval of the Settlement. Defendant will have five (5) business days to
3 review and comment on the draft for approval prior to it being filed with the Court. The Parties
4 will request that the Contra Costa Superior Court issue the Approval Order, in the form attached
5 hereto as **Exhibit A**, approving and incorporating by reference the terms and conditions of the
6 Settlement Agreement. If the Contra Costa Superior Court enters the Approval Order, then
7 Plaintiffs' counsel in accordance with Labor Code Section 2699(l)(3) will submit a copy of the
8 Approval Order to the LWDA within ten (10) days of the entry of the Approval Order.

9 4.3. **Dismissals without Prejudice of the Madrigal Action and the Holley Action.**

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

18 4.4. **Entry of Final Judgment.** Within five (5) court days of the date on which both the

19 Madrigal Action and the Holley Action have been dismissed without prejudice, Plaintiff Vorise
20 will file a proposed Judgment with the Contra Costa County Superior Court that incorporates by
21 reference the terms and conditions of the Approval Order and Settlement Agreement and
22 dismisses the Vorise Action with prejudice. Plaintiff also will file with the Contra Costa County
23 Superior Court copies of the dismissals entered by the courts in the Holley Action and the
24 Madrigal Action. Attached hereto as **Exhibit D** is a copy of the proposed Judgment that Plaintiff
25 Vorise will file in the Vorise Action, provided that the Settlement has been approved and
26 provided that the Madrigal Action and the Holley Action each have been dismissed without
27 prejudice. If the Contra Costa Superior Court enters the Judgment, then Plaintiffs' counsel in
28

1 accordance with Labor Code Section 2699(l)(3) will submit a copy of the Judgment to the LWDA
2 within ten (10) days of the entry of the Judgment.

3 4.5. Maximum Settlement Amount. Provided that and conditioned upon the Effective
4 Date occurring, Defendant shall pay a Maximum Settlement Amount of Eleven Million Dollars
5 and Zero Cents (\$11,000,000.00) pursuant to the terms of this Agreement.

6 4.6. Settlement Administrator.

7 4.6.1. The Settlement Administrator shall be CPT Group, Inc. The Settlement
8 Administrator will be responsible for administering the Settlement, including establishing a
9 qualified settlement fund (“QSF”) and issuing payments and appropriate tax forms to PAGA
10 Settlement Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement
11 Administration Costs will all be paid from the Maximum Settlement Amount; Defendant shall
12 neither owe nor be responsible for paying any administration costs outside of the Maximum
13 Settlement Amount.

14 4.6.2. Based on the Parties’ estimates that there are currently approximately
15 Thirty-Six Thousand Five Hundred (36,500) PAGA Settlement Employees, Settlement
16 Administration Costs are estimated at approximately Seventy Thousand Dollars (\$70,000).

17 4.6.3. The actions of the Settlement Administrator shall be governed by the terms
18 of this Agreement, any orders from the Contra Costa Superior Court, and any agreement by
19 counsel of record regarding communications with the Settlement Administrator.

20 4.6.4. In the event that either Defendant’s Counsel or Plaintiffs’ Counsel takes the
21 position that the Settlement Administrator is not acting in accordance with the terms of the
22 Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary with
23 the Settlement Administrator or the Riverside Superior Court to attempt to resolve the issue.

24 4.7. General PAGA Penalties Fund. The General PAGA Penalties Fund will be paid to
25 PAGA Settlement Employees and the LWDA. Pursuant to the PAGA, seventy-five percent
26 (75%), of the General PAGA Penalties Fund will be paid to the LWDA, and the remaining
27 twenty-five percent (25%), will be paid to all PAGA Settlement Employees according to the
28 formula in Section 4.9.

1 4.8. Section 558 Civil Penalties Fund. The entire 558 Civil Penalties Fund,
2 approximately \$2,592,716.55, will be paid to PAGA Settlement Employees according to the
3 formula in Section 4.9.

4 4.9. Calculation of Settlement Payments. Payments to PAGA Settlement Employees
5 from the General PAGA Penalties Fund and 558 Civil Penalties Fund will be calculated and
6 issued as follows:

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

12 4.9.2. To determine each individual PAGA Settlement Employee's payment from
13 the General PAGA Penalties Fund and 558 Civil Penalties Fund, the Settlement Administrator
14 will use the following formula: Settlement Payment = [25% of General PAGA Penalties Fund +
15 100% of 558 Civil Penalties Fund] × [pay periods worked by individual PAGA Settlement
16 Employee during PAGA Release Period ÷ total pay periods worked by all PAGA Settlement
17 Employees during the PAGA Release Period].

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

1 4.11. General Release Payments. For general releases of all claims Plaintiffs may have
2 against Releasees arising out of their employment with Defendant, Defendant agrees to pay each
3 Plaintiff the sum of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for a total of Sixty
4 Thousand Dollars and Zero Cents (\$60,000.00). Because the General Release Payments are in
5 compromise and settlement of both wage and non-wage claims, a portion of these payments will
6 be subject to withholding and deduction. Each Plaintiff therefore will receive two payments: (1)
7 one payment in the gross amount of Five Thousand Hundred Dollars and Zero Cents (\$5,000.00),
8 less applicable withholdings and taxes, for alleged unpaid wages for which the Settlement
9 Administrator will issue an IRS Form W-2 and (2) a second payment in the amount of Ten
10 Thousand Dollars and Zero Cents (\$10,000.00) for alleged non-wage damages, including alleged
11 damages for expense reimbursement, penalties and statutory interest, for which the Settlement
12 Administrator will issue an IRS Form 1099. The Settlement Administrator will report these
13 payments to the pertinent taxing authorities as required by law. Plaintiffs assume full
14 responsibility for paying all taxes, federal and state, if any, due as a result of the General Release
15 Payments and agree to indemnify Releasees for any penalties, costs, expenses, and fees associated
16 with the failure to withhold and deduct with respect to the non-wage payments to them for which
17 a Form 1099 is issued. Notwithstanding the foregoing, the terms and recitals herein are not
18 intended to provide, and should not be relied on for, tax, legal, or accounting advice. Plaintiffs
19 should consult their own tax advisors regarding the payments described herein. Defendant will be
20 responsible for employer payroll taxes on the portions of the General Release Payments allocated
21 to wages. The Settlement Administrator will pay the General Release Payments to Plaintiffs no
22 later than fourteen calendar (14) days following the Funding Date.

23 4.12. Releases

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

1 4.12.2. Upon the Effective Date, Plaintiffs Donna Holley, Paul Williams, Alyssa
2 Madrigal, and Justin Vorise shall be deemed to have fully, finally, and forever released Releasees
3 from all Plaintiffs' Released Claims through the Approval Date.

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

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

12 4.13. Settlement Payment Procedures.

13 4.13.1. Seven (7) calendar days after the Effective Date, the Settlement
14 Administrator shall send counsel for Defendant electronic wiring instructions to fund the
15 Maximum Settlement Amount.

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

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

27 4.13.4. Because this is a PAGA settlement and not a class action settlement, and
28 because there is no claims procedure and no ability to "opt out," there will be no procedure by

1 which the PAGA Settlement Employees must submit claims in order to receive a settlement
2 payment and no prior notice provided to the PAGA Settlement Employees advising them of the
3 PAGA settlement. Fourteen (14) calendar days following the Settlement Administrator's receipt
4 of the settlement funds from Defendant, the Settlement Administrator shall mail a Letter
5 (substantially in the form attached hereto as **Exhibit E**) and a settlement check to each PAGA
6 Settlement Employee in the amount of his or her combined share of the 558 Civil Penalties Fund
7 and General PAGA Penalties Fund.

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

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

21 4.14. Attorneys' Fees and Costs. The Settlement Administrator shall pay to Plaintiffs'
22 Counsel from the Maximum Settlement Amount the amount of attorney's fees (not to exceed
23 Three Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars and Zero Cents
24 (\$3,666,667.00)) and costs (not to exceed One Hundred Thousand Dollars and Zero Cents
25 (\$100,000.00)) that are approved and awarded by the Contra Costa County Superior Court.
26 Defendant's Counsel will not oppose Plaintiffs' Counsel's request for attorneys' fees not to
27 exceed \$3,666,667 and for costs not to exceed \$100,000. An award by the Contra Costa County
28 Superior Court of less than the amount of requested attorneys' fees and/or costs shall not be a

1 basis upon which Plaintiffs' Counsel may void this Agreement, and any amounts of requested
2 attorneys' fees or costs not awarded shall be included the Net Settlement Fund. The Settlement
3 Administrator will issue an IRS Form 1099 to Plaintiffs' Counsel as required by IRS regulations.
4 The Settlement Administrator shall pay the amount awarded by the Contra Costa County Superior
5 Court to Plaintiffs' Counsel no later than fourteen calendar (14) days following the Funding Date.
6 This payment shall include and satisfy all past and future fees and costs incurred to prosecute,
7 settle, and administer this action, including obtaining approval of the settlement and securing
8 dismissals required by the settlement. Plaintiffs and Plaintiffs' Counsel expressly represent that
9 they are not aware of and have no knowledge of any liens filed or placed on this Action by any
10 person or entity.

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

15 4.16. Non-Reversionary. This settlement is non-reversionary. Any portion(s) of the
16 requested Attorneys' Fees and Costs not awarded by the Court shall become part of the Net
17 Settlement Fund.

18 4.17. Impact of Non-Approval by Court. Should the Contra Costa County Superior
19 Court not approve the settlement, the Parties shall meet and confer to make reasonable efforts to
20 address any issues raised by the Court in order to obtain the Court's approval, except that
21 Defendant will not be required under any circumstances to increase the Maximum Settlement
22 Amount or to diminish or lessen the scope and time period of the PAGA Released Claims. If the
23 Parties cannot obtain approval from the Contra Costa County Superior Court, or if the Effective
24 Date does not occur, then the Parties shall be restored to their litigation positions as of March 1,
25 2018, and this Agreement shall be deemed null and void, shall be of no force or effect
26 whatsoever, and shall not be referred to or used in this or any other action.

27 4.18. No Right to Object or Opt Out. Because this Settlement is not a class action
28 settlement, but rather a PAGA settlement involving claims on behalf of the State of California, no

1 person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out
2 from being covered by PAGA Released Claims at any time before or after the Approval Order is
3 made.

4 4.19. The Parties agree to work cooperatively to comply with the notice requirements to
5 the LWDA pursuant to Labor Code sections 2699(l)(2) and 2699(l)(3).

6 4.20. Miscellaneous Provisions.

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

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

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

27 4.20.4. No Credit Toward Benefit Plans. Payments to PAGA Settlement
28 Employees as referenced herein will not be used to calculate any additional benefits under any

1 benefit plans to which any PAGA Settlement Employee may be eligible, including, but not
2 limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
3 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that
4 this Settlement Agreement will not affect any rights, contributions, or amounts to which any
5 PAGA Settlement Employee may be entitled under any benefit plans.

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

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

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

1 4.20.8. Acknowledgement that the Settlement is Fair, Adequate and Reasonable.

2 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the
3 PAGA Released Claims and have arrived at this Settlement after significant and extensive
4 litigation and discovery and due diligence and arm's-length negotiations by experienced counsel
5 with the involvement of a neutral third-party mediator. The Parties further acknowledge that they
6 are each represented by competent counsel and that they have had an opportunity to consult with
7 their respective counsel regarding the fairness, adequacy, and reasonableness of this Settlement

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

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

21 4.20.11. Binding on Successors and Assigns. This Agreement shall be binding
22 upon and inure to the benefit of the Parties hereto, and their respective heirs, trustees, executors,
23 administrators, successors, and assigns.

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

1 4.20.13. Captions. Paragraph titles or captions contained in the Agreement are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement, or any provision thereof.

4 4.20.14. Mutual Preparation. This Agreement shall be construed and interpreted
5 as if all of its language were prepared jointly by the Parties. No language in this Agreement shall
6 be construed against a Party on the ground that such Party drafted or proposed that language.

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

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

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

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

3 4.20.19. Waiver. No waiver of any condition or covenant contained in this
4 Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
5 considered to imply or constitute a further waiver by such party of the same or any other
6 condition, covenant, right or remedy.

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

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

1 4.20.22. Destruction of PAGA Settlement Employee Contact Information.

2 Plaintiffs and Plaintiffs' Counsel agree that within ten (10) calendar days after the Effective Date,
3 they and each of them will either return to Defendant's counsel or destroy all lists, documents,
4 data, compilations and other records that contain any PAGA Settlement Employees' names and
5 contact information. To the extent any Plaintiff or Plaintiffs' Counsel chooses to destroy such
6 records, then they must provide a written representation to Defendant's counsel expressly
7 affirming that they have completed such destruction in its entirety.

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

10 Dated: September 17, 2018

PLAINTIFF DONNA HOLLEY

11 By /s/ Donna Holley
12 Plaintiff Donna Holley

13 Dated: September 12, 2018

PLAINTIFF PAUL WILLIAMS

14 By /s/ Paul Williams
15 Plaintiff Paul Williams

16 Dated: September 10, 2018

PLAINTIFF ALYSSA MADRIGAL

17 By /s/ Alyssa Madrigal
18 Plaintiff Alyssa Madrigal

19 Dated: October 1, 2018

PLAINTIFF JUSTIN VORISE

20 By /s/ Justin Vorise
21 Plaintiff Justin Vorise

22 Dated: October 9, 2018

DEFENDANT 24 HOUR FITNESS USA, INC.

23 By /s/ Frank Napolitano
24 Name: Frank Napolitano
25 Title: President

APPROVED AS TO FORM AND CONTENT

Dated: September 17, 2018

CAPSTONE LAW APC

By: /s/ Raúl Pérez

Raúl Pérez

Attorneys for Plaintiffs Donna Holley and
Paul Williams

Dated: September 10, 2018

DESAI LAW FIRM, P.C.

By: /s/ Aashish Y. Desai

Aashish Y. Desai

Attorneys for Plaintiff Alyssa Madrigal

Dated: September 10, 2018

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: /s/ Laura L. Ho

David Borgen

Laura L. Ho

Attorneys for Plaintiff Alyssa Madrigal

Dated: October 1, 2018

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS

By: /s/ Carolyn H. Cottrell

Carolyn H. Cottrell

Attorneys for Plaintiff Justin Vorise

Dated: October 4, 2018

EDGAR LAW FIRM LLC

By: /s/ John F. Edgar

John F. Edgar

Attorneys for Plaintiff Justin Vorise

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Dated: October 9, 2018

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Eric Meckley
Eric Meckley

Attorneys for Defendant
24 Hour Fitness USA, Inc.

Exhibit E

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

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

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

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