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15 *Plaintiff Russell Marchewka*

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 RUSSELL MARCHEWKA, on behalf of himself
19 and all others similarly situated,

20 Plaintiff,

21 vs.

22 24 HOUR FITNESS USA, INC., a California
23 corporation,

24 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Russell Marchewka (“Plaintiff”), on behalf of himself and the proposed Class defined
2 herein, brings this class action suit against Defendant 24 Hour Fitness USA, Inc. (“Defendant” or “24
3 Hour Fitness”). In support of this Class Action Complaint, Plaintiff alleges, based on personal
4 information and the investigation of his counsel, including review of 24 Hour’s advertising and policies
5 and articles from reputable sources, as follows:

6 **NATURE OF THE ACTION**

7 1. 24 Hour Fitness is a privately owned fitness center chain with nearly 4 million members.
8 The company operates 400+ clubs, has 18,000 employees in the U.S.A.

9 2. To entice potential customers to purchase prepaid memberships, 24 Hour Fitness had a
10 uniform and longstanding policy and practice of representing to customers who purchased prepaid
11 memberships for either two or three years that thereafter, they would be locked into a fixed, annual
12 renewal rate for life (hereafter, “Lifetime Memberships”). Without the promise of lifetime membership
13 with a fixed, annual renewal rate, consumers otherwise had no incentive to prepay for two to three years
14 of membership in advance.

15 3. Beginning in or around 2014, however, 24 Hour Fitness began increasing the promised
16 annual renewal rates for those customers who had purchased Lifetime Memberships.

17 4. 24 Hour Fitness has increased many of its prepaid customers’ annual renewal rates by
18 more than 100%.

19 5. Plaintiff alleges claims on behalf of himself and all others similarly situated for violations
20 of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the Consumers Legal
21 Remedies Act, Cal. Bus. & Prof. Code §§ 1750, *et seq.*, the Health Studio Services Contract Law, Cal.
22 Civ. Code §§ 1812.80, *et seq.*, and fraud.

23 **THE PARTIES**

24 6. Plaintiff Russell Marchewka is a citizen of Washington, but at all relevant times, resided
25 in Orange County, California. In 2007, Marchewka bought a Lifetime Membership. He prepaid
26 approximately \$675.00 for three years of membership and was promised that he would only have to pay
27 a fixed annual fee of \$69 each year after January 2010 to maintain his membership. In December 2015,

1 however, he received a letter notifying him that his annual membership fee was increasing to \$119,
2 almost double the promised fixed annual fee.

3 7. Defendant 24 Hour Fitness USA, Inc. is a California corporation with its principal place
4 of business at 12647 Alcosta Blvd., Suite 500, San Ramon, California 94583. 24 Hour Fitness conducts
5 business in this district, and throughout California and the United States.

6 **JURISDICTION AND VENUE**

7 8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28
8 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million, exclusive of
9 interests and costs; the number of members of the proposed Class exceeds 100; and at least one member
10 of the Class is a citizen of a different state than the Defendant.

11 9. This Court has *in personam* jurisdiction over Defendant because Defendant is present and
12 licensed to do business in this Judicial District, regularly conducts business in this Judicial District,
13 and/or has extensive contacts with this forum.

14 10. Venue is proper in the United States District Court for the Northern District of California
15 pursuant to 28 U.S.C. § 1391. Defendant maintains its headquarters in this District and transacts
16 substantial business in this District (including sales and advertising).

17 **APPLICATION OF CALIFORNIA LAW TO THE CLASS IS APPROPRIATE**

18 11. Application of California law to the claims of Class members is appropriate because
19 Defendant is a California corporation and maintains its headquarters in San Ramon, California.

20 12. Defendant also made the decision from its headquarters in California to promote the
21 Lifetime Memberships described herein, and executed its training and promotional materials from
22 California.

23 **FACTUAL ALLEGATIONS**

24 ***24 Hour Fitness' Operations and Memberships Offered***

25 13. 24 Hour Fitness, originally 24 Hour Nautilus, is the largest privately owned and operated
26 fitness club chain (based on memberships). It is third in number of clubs after Gold's Gym and Fitness
27

1 First. 24 Hour Fitness serves over four million members and operates more than 400 clubs across the
2 United States, including 200 clubs in 139 cities in California.

3 14. 24 Hour Fitness is privately owned. In 2014, AEA Investors, Fitness Capital Partners,
4 Global Leisure Partners, and the Ontario Teachers' Pension Plan acquired 24 Hour Fitness. The
5 purchasers reportedly acquired the company for \$1.9 Billion from its previous owner, Forstman Little &
6 Co.

7 15. 24 Hour Fitness' profitability relies on a continuing stream of new members and gym
8 memberships.

9 16. The club offers two types of memberships: (1) month-to-month, in which the member's
10 bank account is automatically billed each month for membership until it is cancelled; and (2) prepaid
11 membership, in which the member prepays a significant lump sum for two to three years, followed by a
12 fixed, annual renewal fee every year thereafter for life.

13 17. The month-to-month membership costs less up front, but costs more on a per-year basis
14 than the prepaid membership. 24 Hour Fitness touts this membership option in its online advertisements
15 for its "freedom and flexibility."

16 18. While the prepaid membership costs more upfront, it offers a lower, fixed annual rate for
17 each year thereafter. Without the promise of a lower, fixed annual renewal rate, there really is no
18 incentive for customers to prepay for memberships.

19 ***Purchasers of Prepaid Memberships Were Uniformly Promised***

20 ***Fixed Annual Renewal Rates for Life***

21 19. In an effort to raise funds to expand its clubs (from one club in 1983 to 400+ at present),
22 24 Hour Fitness created Lifetime Memberships to collect significant money up front, followed by an
23 annual stream of income from its Lifetime Members.

24 20. 24 Hour Fitness uniformly trained its sales representatives to promise customers who
25 prepaid their membership for 2 or 3 years that after expiration of the prepaid period, they would receive
26 a fixed annual renewal rate for life. According to one former employee who also happened to buy a
27 Lifetime Membership: "[I] used to work in sales at 24 Hour Fitness back in college and we were trained

1 to tell people this is the price they would pay for the rest of their lives, hence ‘lifetime’[.]” See
2 <http://incomplaints.com/complaints-reviews/offender/24+Hour+Fitness/page/8/> (last visited April 13,
3 2016).

4 21. Another former employee stated: “I have been a member of 24 Hour Fitness for nearly 20
5 years. I even worked for them in the late 1990’s & early 2000’s. By working for them I knew the service
6 agreements like the back of my hand. Every section and every clause . . . This month, I was balancing
7 my account and noticed . . . my 24 Hour Fitness dues were increased? I was like . . . hold on, I know my
8 contract did not allow for a dues increase nor did I give 24 Hour Fitness the right to raise my dues.”

9 22. Plaintiff Russell Marchewka bought a pre-paid Lifetime Membership and paid
10 approximately \$675.00 for 3 years of membership. He was promised that, after the three-year period, he
11 would be charged a fixed, annual renewal rate of \$69 each year thereafter for life as long as he wished to
12 remain a member.

13 23. After Plaintiff completed payment of three years of prepaid membership in 2010,
14 Plaintiff renewed his membership for the next five years, through 2015, paying the promised annual
15 renewal rate of \$69 per year. However, on the sixth renewal, in December 2015, 24 Hour Fitness sent
16 Plaintiff a letter informing him that his annual renewal rate would increase from \$69 to \$119 per year,
17 despite the fact that it promised to keep his annual renewal rate at \$69 for life.

18 24. Marchewka’s experience was not unique. He is one of a multitude of consumers who
19 was exposed to a uniform marketing program and received similar promises, as also evidenced by the
20 abundance of similar reports on sites like www.consumeraffairs.com,
21 24-hour-fitness.pissedconsumer.com, complaintsboard.com, riporffreport.com, and change.org.

22 25. Below are some examples of complaints made by consumers from around the country:

- 23 • “In December 2006 I paid \$1,000 upfront for three years with the promise that after the three
24 years and for the rest of my life I would pay \$29 a year ONLY for an All Club/Super Sport
25 Membership.” (Mykael of Mountain House, CA on Dec. 4, 2015)
- 26 • “I paid a lump sum of \$600 in 2006. I was told I would only pay \$79 per year after that.” (Mark
27 of Southlake, TX on Nov. 3, 2015)

- 1 • “I bought a prepaid membership in 2008 for \$450 and the appeal was that I would pay 3 years of
2 membership upfront and I will be locked in at \$49 per year thereafter.” (Helen of Tustin, CA on
3 Jan. 13, 2016)
- 4 • “I also purchased a lifetime membership in 2008 with \$600 down and a \$29.99 annual renewal
5 fee (and I was locked in at this rate).” (Tawnee of Escondido, CA on Nov. 13, 2015)
- 6 • “I purchased a 3 year membership back in late 2006/early 2007 with the agreement that I would
7 be locked into a \$52.89/year lifetime membership yearly fee if I purchased 3 years that day.”
8 (Rosanna of Salt Lake City, UT on Jan. 11, 2016)
- 9 • “I paid \$700 for the 3-year lifetime membership with a promise of \$49.00/yr for the rest of my
10 life after the 3 years.” (Alex of Mission Viejo, CA on Jan. 10, 2016)
- 11 • “I was sold 2 ‘lifetime’ memberships in 2007 for \$1000 for the first 3 years and then \$29/year
12 each every year thereafter. I was just assessed a 240% increase in dues for next year’s
13 membership. At the time of purchase I explicitly asked the salesperson and the management if
14 the \$29/year dues would ever increase and was emphatically told ‘never would the yearly fee
15 increase, it’s a lifetime membership’.” (Lisa of Fullerton, CA on Nov. 14, 2015)
- 16 • “Same experience as others. Signed up for a lifetime membership deal. Paid for 3 years upfront
17 in 2006 to have my membership locked in at \$29/year after that. My rate has now increased to
18 \$104 without any prior warning.” (Charlene of San Jose, CA on Dec. 17, 2015)
- 19 • “Just like everyone else, I paid an upfront fee in 2006 and was told I was locked into a lifetime
20 rate of \$29/year. Just informed that the price is increased to \$129/year.” (Lydia of Castro Valley,
21 CA on Nov. 19, 2015)
- 22 • “I had basically the same experience as everyone else on this site. Prepaid \$600 for 3 years and
23 was told to pay \$49 per year for a lifetime. Just got an annual bill for \$124. Called them, waited
24 45 minutes on the phone only to have the guy telling me that they changed the ownership and the
25 policy and now the rate has increased.” (Gennadiy of Cupertino, CA on Nov. 11, 2015)

26 26. These promises were not made in isolated circumstances by individual members of 24
27 Hour Fitness’ staff; the same promises were indeed made by 24 Hour Fitness in all club locations across

1 the country. The remarkably similar accounts of consumers across the country show that 24 Hour
2 Fitness had uniform training and scripted sales promotions and reflected 24 Hour Fitness' companywide
3 policy of selling consumers on the prepaid membership by promising them fixed, lifetime renewal rates.

4 27. Consumer complaints about 24 Hour Fitness' cancellation of the lifetime contracts has
5 been so widespread that Kurtis Ming, a reporter with CBS Sacramento, did a segment on his news show,
6 "Call Kurtis," available at [http://sacramento.cbslocal.com/2016/01/11/24-hour-fitness-members-deal-](http://sacramento.cbslocal.com/2016/01/11/24-hour-fitness-members-deal-out-more-cash-than-they-expected/)
7 [out-more-cash-than-they-expected/](http://sacramento.cbslocal.com/2016/01/11/24-hour-fitness-members-deal-out-more-cash-than-they-expected/).

8 ***24 Hour Fitness Points to the Buried Language in its Contract***

9 28. In response to consumer complaints and the Call Curtis show, 24 Hour Fitness has not
10 denied that it offered Lifetime Memberships. Instead, it has pointed to fine print buried in standardized
11 member agreements that it claims purportedly allow it to raise the annual dues.

12 29. 24 Hour Fitness, however, has not provided Plaintiff with a copy of any purported
13 contract that bears his signature and contains a provision that allows 24 Hour Fitness to increase the
14 fixed annual rate.

15 **CLASS ACTION ALLEGATIONS**

16 30. Plaintiff brings this action on behalf of himself and all other members of the proposed
17 Class initially defined as follows:

18 All person who purchased a prepaid membership in the states where 24 Hour Fitness operates
19 fitness clubs (including California, Colorado, Florida, Hawaii, Kansas, Maryland, Missouri,
20 Nebraska, New Jersey, Nevada, New York, Oklahoma, Oregon, Texas, Utah, Virginia,
21 Washington) and whose fixed, annual renewal rate was increased.

22 31. Excluded from the Class are: Defendant, its affiliates, employees, agents and attorneys,
23 and any judge and its staff to whom this case is assigned.

24 32. Plaintiff reserves the right to amend the Class definition if discovery and further
25 investigation reveal that the Class should be expanded, divided into additional subclasses, or modified in
26 any other way.

1 33. All members of the proposed Class are readily ascertainable. 24 Hour Fitness has access
2 to contact information for most members of the Class, which can be used for providing notice to many
3 Class members.

4 34. This action has been properly brought and may properly be maintained as a class action
5 under Rule 23(a)(1-4), Rule 23(b)(1), (2) or (3) and Rule 23(c)(4) of the Federal Rules of Civil
6 Procedure and case law thereunder.

7 **Numerosity of the Class**
8 **(Fed. R. Civ. P. 23(a)(1))**

9 35. While the precise number of Class members has not yet been determined, 24 Hour
10 Fitness claims that it has approximately four million members. A significant number of these four
11 million members purchased the prepaid plans that advertised a fixed annual renewal rate. Thus, the
12 Class is so numerous that joinder of all members would be impractical.

13 **Predominance of Common Questions of Fact and Law**
14 **(Fed. R. Civ. P. 23(a)(2); 23(b)(3))**

15 36. Questions of law and fact common to all Class members exist and predominate over any
16 questions affecting only individual Class members, including, but not limited to the following:

- 17 a. Whether Defendant had a uniform policy and/or practice of representing fixed annual
18 renewal rates to purchasers of prepaid memberships;
- 19 b. Whether Defendant engaged in unlawful, unfair, or fraudulent conduct in violation of
20 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, ("UCL");
- 21 c. Whether Defendant engaged in conduct in violation of California's Consumers Legal
22 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
- 23 d. Whether Defendant engaged in conduct in violation of California's Health Studio
24 Services Contract Law, Cal. Civ. Code §§ 1812.80, *et seq.*;
- 25 e. Whether Plaintiff and Class members are entitled to damages, and if so, the proper
26 measure of those damages; and
- 27 f. Whether Plaintiff and Class members are entitled to equitable and/or injunctive relief.

1 **Typicality of Claims**
2 **(Fed. R. Civ. P. 23(a)(3))**

3 37. Plaintiff’s claims are typical of the claims of the Class. Plaintiff and all Class members
4 were injured through Defendant’s uniform misconduct described above and assert the same claims for
5 relief. The same events and conduct that give rise to Plaintiff’s claims are identical to those that give rise
6 to the claims of every other Class member because each Plaintiff and Class member is a person that has
7 suffered harm as a direct result of the same conduct engaged in (including omissions) by Defendant.

8 **Adequacy of Representation**
9 **(Fed. R. Civ. P. 23(a)(4))**

10 38. Plaintiff and his counsel will fairly and adequately represent the interests of the Class
11 members. Plaintiff has no interest antagonistic to, or in conflict with, the interests of the Class members.
12 Plaintiff’s lawyers are highly experienced in the prosecution of consumer class actions and complex
13 commercial litigation.

14 **Superiority of a Class Action**
15 **(Fed. R. Civ. P. 23(b)(3))**

16 39. A class action is superior to all other available methods for fairly and efficiently
17 adjudicating the claims of Plaintiff and the Class members.

18 40. Plaintiff and the Class members have been harmed by Defendant’s wrongful actions and
19 inaction. Litigating this case as a class action will reduce the possibility of repetitious litigation relating
20 to Defendant’s wrongful actions and inaction.

21 41. A class action is an appropriate method for the fair and efficient adjudication of this
22 controversy. There is no special interest in the members of the Class individually controlling the
23 prosecution of separate actions. The loss of money and other harm sustained by many individual Class
24 members will not be large enough to justify individual actions, especially in proportion to the significant
25 costs and expenses necessary to prosecute this action. The expense and burden of individual litigation
26 makes it impossible for many members of the Class individually to address the wrongs done to them.
27 Class treatment will permit the adjudication of claims of Class members who could not afford
individually to litigate their claims against Defendant. Class treatment will permit a large number of

1 similarly situated persons to prosecute their common claims in a single form simultaneously, efficiently
2 and without duplication of effort and expense that numerous individual actions would entail. No
3 difficulties are likely to be encountered in the management of this class action that would preclude its
4 maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of
5 this controversy. Furthermore, Defendant transacted substantial business in and perpetuated its unlawful
6 conduct in California. Defendant will not be prejudiced or inconvenienced by the maintenance of this
7 class action in this forum. Class certification, therefore, is appropriate under Fed. R. Civ. P. 23(a) and
8 (b)(3). The above common questions of law or fact predominate over any questions affecting individual
9 members of the Class, and a class action is superior to other available methods for the fair and efficient
10 adjudication of the controversy.

11 42. Class certification is also appropriate under Fed. R. Civ. P. 23(a) and (b)(2), because
12 Defendant has acted or has refused to act on grounds generally applicable to the Class, so that final
13 injunctive relief or corresponding declaratory relief is appropriate as to the Class as a whole.

14 43. The expense and burden of litigation will substantially impair the ability of Plaintiff and
15 Class members to pursue individual lawsuits to vindicate their rights. Absent a class action, Defendant
16 will retain the benefits of its wrongdoing despite its serious violations of the law.

17 **Risk of Inconsistent or Dispositive Adjudications and the**
18 **Appropriateness of Final Injunctive or Declaratory Relief**
19 **(Fed. R. Civ. P. 23(b)(1) and (2))**

20 44. In the alternative, this action may properly be maintained as a class action, because:

21 (a) the prosecution of separate actions by individual Class members would create a risk of
22 inconsistent or varying adjudication with respect to individual Class members, which would establish
23 incompatible standards of conduct for Defendant; or

24 (b) the prosecution of separate actions by individual Class members would create a risk
25 of adjudications with respect to individual members of the Class which would, as a practical matter, be
26 dispositive of the interests of other Class members not parties to the adjudications, or substantially
27 impair or impede their ability to protect their interests; or

1 (c) Defendant has acted or refused to act on grounds generally applicable to the Class,
2 thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class
3 as a whole.

4 **Issue Certification**
5 **(Fed. R. Civ. P. 23(c)(4))**

6 45. In the alternative, the common questions of fact and law, set forth above, are appropriate
7 for issue certification on behalf of the proposed Class.

8 **FIRST CAUSE OF ACTION**

9 **(For Unlawful Business Practices in Violation of the Unfair Competition Law, Cal. Bus. &**
10 **Prof. Code §§ 17200, *et seq.*)**

11 46. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
12 fully stated herein.

13 47. Defendant's practices constitute unlawful business practices in violation of the UCL
14 because, among other things, they violate the Consumers Legal Remedies Act, California Civil Code §§
15 1750, *et seq.* and the Health Studio Services Contract Law, California Civil Code §§ 1812.80, *et seq.*

16 48. As a result of Defendant's alleged misconduct, Plaintiff has suffered injury in fact and
17 lost money or property.

18 49. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, seeks
19 equitable relief in the form of an order prohibiting Defendant from continuing to collect dues in amounts
20 that exceed the promised fixed annual renewal rates and requiring Defendant to pay Plaintiff and Class
21 members restitution for amounts paid above the promised fixed annual renewal rates.

22 **SECOND CAUSE OF ACTION**

23 **(For Unfair Business Practices in Violation of the Unfair Competition Law, Cal. Bus. &**
24 **Prof. Code §§ 17200, *et seq.*)**

25 50. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
26 fully stated herein.
27

1 51. The conduct and actions of Defendant complained of herein constitute unfair business
2 practices in violation of the Unfair Competition Law.

3 52. Defendant's practices constitute unfair business practices in violation of the UCL
4 because, among other things, they are immoral, unethical, oppressive, unscrupulous or substantially
5 injurious to consumers, and/or any utility of such practices is outweighed by the harm caused to
6 consumers. Defendant's practices caused substantial injury to Plaintiff and Class members, are not
7 outweighed by any benefits, and Plaintiff and Class members could not have reasonably avoided their
8 injuries.

9 53. As a result of Defendant's alleged misconduct, Plaintiff has suffered injury in fact and
10 lost money or property.

11 54. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, seeks
12 equitable relief in the form of an order prohibiting Defendant from continuing to collect dues in amounts
13 that exceed the promised fixed annual renewal rates and requiring Defendant to pay Plaintiff and Class
14 members restitution for amounts paid above the promised fixed annual renewal rates.

15 **THIRD CAUSE OF ACTION**

16 **(For Fraudulent Business Practices in Violation of the Unfair Competition Law, Cal. Bus.**
17 **& Prof. Code §§ 17200, et seq.)**

18 55. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
19 fully stated herein.

20 56. The conduct and actions of Defendant complained of herein constitute fraudulent
21 business practices in violation of the Unfair Competition Law.

22 57. Plaintiff relied on Defendant's representations that if he paid for a prepaid membership,
23 after the expiration of the prepaid membership period, he would only be required to pay the \$69 fixed
24 annual renewal rate for each year thereafter as long as he wished to remain a member. Defendant's
25 practices constitute fraudulent business practices in violation of the UCL because, among other things,
26 they are likely to deceive reasonable consumers.

27 58. As a result of Defendant's alleged misconduct, Plaintiff has suffered injury in fact and

1 lost money or property.

2 59. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, seeks
3 equitable relief in the form of an order prohibiting Defendant from continuing to collect dues in amounts
4 that exceed the promised fixed annual renewal rates and requiring Defendant to pay Plaintiff and Class
5 members restitution for amounts paid above the promised fixed annual renewal rates.

6 **FOURTH CAUSE OF ACTION**

7 **(Violation of the Consumers Legal Remedies Act (“CLRA”),**
8 **California Civil Code §§ 1750, et seq.)**

9 60. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
10 fully stated herein.

11 61. Plaintiff and each Class member is a “consumer” within the meaning of Civil Code
12 §1761(d).

13 62. Plaintiff’s purchase of a 24 Hour Fitness membership is a “transaction” within the
14 meaning of Civil Code § 1761(e) and Defendant’s memberships are “services” within the meaning of
15 Civil Code § 1761(b).

16 63. Defendant violated and continues to violate the CLRA, including Civil Code §§
17 1770(a)(5), (a)(9), and (a)(14), in that Defendant represented that consumers who purchased prepaid
18 memberships would be locked into a fixed annual renewal rate after the expiration of the prepaid
19 membership period. Defendant had no intent to lock Plaintiff and Class members into a fixed annual
20 renewal rate after the expiration of the prepaid membership period since it is denying the benefits and
21 rights it promised Plaintiff and Class members in connection with their prepaid membership based on
22 contractual provisions it claims allow it to increase annual renewal rates.

23 64. Defendant’s representations were material to Plaintiff and Class members and were likely
24 to deceive reasonable consumers.

25 65. Plaintiff has attached hereto the declaration of venue required by Civil Code § 1780(d).

26 66. Plaintiff seeks an order enjoining Defendant from continuing to collect dues in amounts
27 that exceed the promised fixed annual renewal rates, and awarding attorneys’ fees and costs. Plaintiff

1 will amend this complaint to seek damages under the CLRA if Defendant does not cure in response to
2 Plaintiff's notice of CLRA violations.

3 **FIFTH CAUSE OF ACTION**

4 **(Fraud)**

5 67. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
6 fully stated herein.

7 68. Defendant provided Plaintiff and the Class members with false or misleading material
8 information.

9 69. Defendant misrepresented that the benefits and rights of its prepaid, Lifetime
10 Memberships to Plaintiff and members of the Class. Specifically, Defendant represented to Plaintiff and
11 Class members that after the prepaid membership period expired, they would be entitled to a fixed,
12 annual renewal rate for as long as they wished to remain members. Moreover, Defendant failed to
13 disclose to Plaintiff and Class members that it would retract its promise and increase the annual renewal
14 rate.

15 70. The representations by the Defendant were false. Defendant made the foregoing
16 misrepresentations and omissions in knowing disregard of their falsehood.

17 71. The misrepresentations and omissions made by Defendant, upon which Plaintiff and the
18 Class reasonably and justifiably relied, were intended to induce and did induce Plaintiff and the Class to
19 prepay for gym membership to their detriment.

20 72. The fraudulent actions of Defendant caused damage to Plaintiff and the Class, who are
21 entitled to damages, punitive damages, and other legal and equitable relief as a result.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of California's Health Studio Services Contract Law, Cal. Civ. Code §§ 1812.80, et seq.)**

24 73. Plaintiff hereby incorporates by reference each and every allegation set forth above as if
25 fully stated herein.

26 74. Defendant provides health studio services as defined in Cal. Civ. Code § 1812.81.
27

1 75. All health studio contracts must be in writing. Cal. Civ. Code § 1812.82. Defendant
2 violated Cal. Civ. Code § 1812.82 by not reducing its oral representations and promises to Plaintiff and
3 Class members that they would receive a fixed, annual renewal rate for each year they wished to remain
4 24 Hour Fitness members after the term of the prepaid membership period expired.

5 76. All health studio contracts must also state the length of the contract term in a size equal to
6 at least 14-point type, above the place for a member's signature. Cal. Civ. Code § 1812.84(b). Defendant
7 violated Cal. Civ. Code § 1812.84(b) by not providing a contract in writing reflecting its oral
8 representations and promises to Plaintiff and Class members and containing the length of the contract
9 term in a size equal to at least 14-point type above the place for the member's signature.

10 77. Health studio service providers are prohibited from inducing consumers to sign a health
11 studio services contract by using willfully false or misleading information, representations or
12 advertising. Cal. Civ. Code § 1812.92. 24 Hour Fitness made willfully false and misleading
13 representations and advertising to Plaintiff and Class members in violation of Cal. Civ. Code § 1812.92.
14 24. To the extent Plaintiff and Class members executed any standardized agreements with Defendant,
15 Plaintiff and Class members relied on Defendant's willfully false and misleading representations that
16 they would receive a fixed, annual renewal rate after the expiration of the prepaid membership period.

17 78. Defendant's violations of California's Health Studio Contract Law, as alleged herein,
18 render any purported agreement void and unenforceable and entitle Plaintiff and Class members to
19 damages, including three times their actual amount of damages, plus reasonable attorney fees.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of himself and the Class set forth herein, respectfully request
22 the following relief:

23 A. That the Court certify this case as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(1),
24 (b)(2), (b)(3), and (c)(4), and pursuant to Fed. R. Civ. P. 23(g), appoint the named Plaintiff to be the
25 Class representative and his undersigned counsel as Class counsel;

26 B. That the Court award Plaintiff and the Class appropriate relief, including actual damages,
27 restitution and disgorgement;

1 C. That the Court award Plaintiff and the Class equitable, injunctive and declaratory relief as
2 may be appropriate under applicable state laws. Plaintiff, on behalf of the Class, seeks appropriate
3 injunctive relief that would include, without limitation, an order and judgment directing Defendant not
4 to raise annual renewal rates for the Class members;

5 D. That the Court award Plaintiff and the Class pre-judgment and post-judgment interest;

6 F. That the Court award Plaintiff and the Class reasonable attorney fees and costs as
7 allowable by law;

8 G. Such additional orders or judgments as maybe necessary to prevent these practices and
9 to restore any interest or any money or property which may have been acquired by means of the
10 violations set forth in this Complaint; and

11 H. That the Court award Plaintiff and the Class such other, favorable relief as allowable
12 under law or at equity.

13 **JURY TRIAL DEMANDED**

14 Plaintiff demands a trial by jury on all issues so triable.

15 DATED: April 29, 2016

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*Counsel for Individual and Representative
Plaintiff Russell Marchewka*

**DECLARATION OF ROSEMARY M. RIVAS
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Rosemary M. Rivas, declare as follows:

1. I am an attorney with the law firm Finkelstein Thompson LLP, counsel of record for Plaintiff Russell Marchewka. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge, and if called upon to do so, could and would testify competently thereto.

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

I declare under penalty of perjury under the laws of the United States and the State of California this 29th day of April 2016 in San Francisco, California that the foregoing is true and correct.

/s/ Rosemary M. Rivas
Rosemary M. Rivas

CIVIL COVER SHEET

JS 44 (Rev. 12/12) cand rev (1/15/13)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS RUSSELL MARCHEWKA, on behalf of himself and all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Clark County (Washington)</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Rosemary M. Rivas, FINKELSTEIN THOMPSON LLP, 1 California Street, Suite 900, San Francisco, CA 94111, (415) 398-8700</p>	<p>DEFENDANTS 24 HOUR FITNESS USA, INC., a California corporation</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)

Brief description of cause:
Violations of consumer protection statutes.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: April 28, 2016 SIGNATURE OF ATTORNEY OF RECORD: s/Rosemary M. Rivas

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA