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

KEVIN O'SHEA, MARK VITCOV, and  
ROD MORRIS, individually and on behalf of  
all others similarly situated,

Plaintiffs,

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

Defendant.

Case No. 4:16-cv-01668-JSW

**[PROPOSED] ORDER**

**(1) CONSOLIDATING CASES, AND  
(2) APPOINTING EDELSON PC AND  
FINKELSTEIN THOMPSON LLP AS  
INTERIM CO-LEAD CLASS COUNSEL,  
AND (3) VACATING HEARING  
AS MODIFIED**

Date: July 8, 2016

Time: 9:00 a.m.

Courtroom: 5, 2<sup>nd</sup> floor

1 This document also relates to:  
2 RUSSELL MARCHEWKA, on behalf of  
3 himself and all others similarly situated,  
4  
5 Plaintiff,  
6  
7 v.  
8  
9 24 HOUR FITNESS USA, INC., a California  
10 corporation,  
11  
12 Defendant.

Case No. 3:16-cv-02359-JSW

9 On July 8, 2016, at 9:00 a.m., the Court heard the motion of Plaintiffs Kevin O’Shea,  
10 Mark Vitcov, Rod Morris, and Russell Marchewka for an order: (1) consolidating cases; and (2)  
11 appointing Eve-Lynn J. Rapp of Edelson PC and Rosemary M. Rivas of Finkelstein Thompson  
12 LLP as Interim Co-Lead Class Counsel. The Court finds this matter suitable for disposition  
13 without oral argument and VACATES the hearing scheduled for July 8, 2016. *See* N.D. Cal.  
14 Civil L.R. 7-1(b). Having reviewed the parties’ papers ~~and heard oral argument~~, and good cause  
15 appearing, the Court GRANTS Plaintiffs’ motion.

16 IT IS HEREBY ORDERED:

17 1. The following cases meet the requirements of Rule 42(a) of the Federal Rules of  
18 Civil Procedure and are consolidated:

- 19 • *O’Shea, et al. v. 24 Hour Fitness USA, Inc.*, No. 16-cv-01668-JSW
- 20 • *Marchewka v. 24 Hour Fitness USA, Inc.*, No. 16-cv-02359-JSW

21 The Court finds that these cases involve common questions of law and fact, and involve  
22 substantially the same parties. Accordingly, for pre-trial purposes, the cases are hereby  
23 consolidated as *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668.

24 The terms of this Order shall apply to actions later instituted in, removed to, or  
25 transferred to this Court that involve the same or substantially similar issues of law and fact,  
26 subject to applicable rules and the provisions of this order. When a case related to the subject  
27

1 matter of the consolidated actions is filed in, removed to, or transferred to this Court (a “new  
2 action”), Plaintiffs’ counsel in this action shall promptly serve a copy of this order on all parties  
3 to the new action and file a proof of service. Plaintiff’s counsel shall also file and serve in this  
4 action and the new action a motion or stipulation, accompanied by a proposed order, seeking  
5 consolidation. Any party in the new action may timely oppose such a motion and/or seek relief  
6 from any provision of this order.

7 All parties must comply with Civil Local Rule 3-4(b) as well as all other applicable rules  
8 and standing orders when filing documents in these consolidated cases.

9 2. Pursuant to Fed. R. Civ. P. 23(g)(3), Eve-Lynn J. Rapp of Edelson PC and  
10 Rosemary M. Rivas of Finkelstein Thompson LLP are appointed as Interim Co-Lead Class  
11 Counsel based on the firms’: (1) work in identifying or investigating potential claims in the  
12 action; (2) experience in handling class actions, other complex litigation, and claims of the type  
13 asserted in the action; (3) knowledge of the applicable law; and (4) the resources the firms will  
14 commit to representing the proposed Class members. Edelson PC and Finkelstein Thompson  
15 LLP shall have responsibility for and authority over the following matters on behalf of all  
16 plaintiffs in the Consolidated Action:

- 17 a. Determining and presenting in motions, briefs, oral argument or such other  
18 fashion as may be appropriate, the position of all of the Plaintiffs as to all  
19 matters arising during all pretrial and trial proceedings;
- 20 b. Conducting or coordinating discovery on behalf of the Plaintiffs consistent  
21 with the Federal Rules of Civil Procedure, including the preparation of  
22 joint interrogatories, requests for production of documents, requests for  
23 admissions and the examination of witnesses in depositions;
- 24 c. Communicating with the Court;
- 25 d. Communicating with defense counsel;
- 26 e. Directing, supervising and monitoring the activities of Plaintiffs’ counsel
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- and implementing procedures to ensure that schedules are met and unnecessary expenditures of time and funds by counsel are avoided;
- f. Signing any consolidated complaint, motions, briefs, discovery requests or objections, subpoenas or notices on behalf of all Plaintiffs or those plaintiffs filing the particular papers;
  - g. Conducting all pre-trial proceedings on behalf of all Plaintiffs;
  - h. Employing and consulting with experts;
  - i. Calling meetings of all Plaintiffs' counsel when appropriate;
  - j. Conducting settlement discussions with defense counsel on behalf of the Plaintiffs and the proposed Class members;
  - k. Informing all Plaintiffs' and Plaintiffs' counsel of the progress of this litigation as necessary;
  - l. Making all work assignments to Plaintiffs' counsel in such a manner as to promote the orderly and efficient prosecution of this litigation and to avoid unnecessary duplication and unproductive efforts for all parties;
  - m. Ensuring that work assignments to all Plaintiffs' counsel are made in the best interests of the Plaintiffs and the proposed Class members and are made on the basis of the qualifications and expertise of the persons assigned particular tasks or responsibilities, counsel's knowledge of the law, facts and issues, efficiency and cost-effectiveness;
  - n. Assessing Plaintiffs' counsel common litigation costs in proportion to the work performed by counsel and to collect all assessments on a regular basis;
  - o. Collecting and reviewing time, lodestar and expense reports from each Plaintiffs' counsel, including paralegals and any other staff members; and
  - p. Otherwise coordinating the work of all Plaintiffs' counsel, and performing

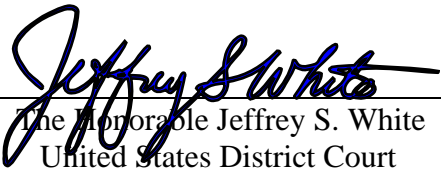
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such other duties as necessary or as authorized by further order of the Court.

3. Within 7 days after the date of this order, the parties shall meet and confer and file a stipulation and proposed order regarding the schedule for the filing of a consolidated complaint and the response thereto.

**IT IS SO ORDERED.**

Dated: June 27, 2016

  
The Honorable Jeffrey S. White  
United States District Court