

EXHIBIT A

Elizabeth L. Deeley (SBN 230798)
Christopher W. Keegan (SBN 232045)
Austin L. Klar (SBN 292271)
KIRKLAND & ELLIS LLP
555 California Street, 27th Floor
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
Email: edeeley@kirkland.com
Email: chris.keegan@kirkland.com

Attorneys for Defendant
24 Hour Fitness USA, Inc.

Timothy N. Mathews
Catherine Pratsinakis
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
Tel: (610) 642-8500
Fax: (610) 649-3633
TimothyMathews@chimicles.com

TYCKO & ZAVAREEI LLP
Kristen L. Sagafi
483 Ninth Street, Suite 200
Oakland, CA 94607
Tel: (520) 254-6810
ksagafi@tzlegal.com

Attorneys for Plaintiffs and the Putative Class

Rafey S. Balabanian (admitted *pro hac vice*)
rbalabanian@edelson.com
Eve-Lynn Rapp* (admitted *pro hac vice*)
erapp@edelson.com
EDELSON PC
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: (415) 212-9300
Facsimile: (415) 373-9435

Gordon M. Fauth, Jr. (SBN 190280)
gfauth@finkelsteinthompson.com
Of Counsel to
FINKELSTEIN THOMPSON LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 398-8700
Direct: (510) 238-9610
Facsimile: (415) 398-8704

Attorneys for Plaintiffs and the Putative Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

*In re 24 Hour Fitness Prepaid Memberships
Litigation*

CASE NO. 4:16-cv-01668

CONSOLIDATED CASES:
No. 3:16-cv-01668-JSW
No. 3:16-cv-02359-JSW

Judge: Jeffrey S. White

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by, between and among Plaintiffs KEVIN O'SHEA, MARK VITCOV, ROD MORRIS, MICHAEL LOSQUADRO, DIPTI SHAH, AND RUSSELL MARCHEWKA, in their individual and representative capacities (collectively, "Representative Plaintiffs"), on the one hand, and Defendant 24 Hour Fitness USA, Inc. ("24 Hour Fitness"), on the other hand, through their duly authorized counsel, that the causes of action and matters raised by and related to the lawsuits, captioned *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW (N.D. Cal.) and *Shah v. 24 Hour Fitness, Inc.*, Case No. RG16818048 (Superior Court of California, County of Alameda), are hereby settled and compromised, and shall be dismissed with prejudice on the terms and conditions set forth in this Joint Stipulation and Settlement Agreement and the release set forth herein, subject to the final approval of the Court.

I. THE PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and among the following Parties: (i) Representative Plaintiffs, on behalf of themselves and each of the Settlement Class Members, with the assistance of Settlement Class Counsel; and (ii) 24 Hour Fitness, with the assistance of its counsel of record in the Litigation. The Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof.

II. THE CONDITIONAL NATURE OF THIS STIPULATION

This Agreement is made for the sole purpose of settlement of the Litigation on a class-wide basis. The Agreement and the Settlement it evidences are made in compromise of disputed claims. Because this Litigation was pleaded as a class action, this Settlement must receive preliminary and final approval by the Court. Accordingly, 24 Hour Fitness and the Representative Plaintiffs enter into this Agreement on a conditional basis. In the event that the Court does not execute and enter the Order and Judgment, or in the event that the Final Settlement Date does not occur for any reason, this Agreement shall be deemed null and void, except as to Paragraphs 11.7, 11.15 and 11.16, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of Rule 408 of the Federal Rules of Evidence and California Evidence Code Sections 1119 and 1152, and shall be inadmissible as evidence in any proceeding. Notwithstanding the foregoing, this Agreement sets forth the exclusive

1 conditions upon which this Agreement is terminable.

2 24 Hour Fitness denies all of the claims as to liability, damages, penalties, interest, fees,
3 restitution and all other forms of relief as well as to the class allegations asserted in the Litigation. 24
4 Hour Fitness has agreed to resolve this Litigation via this Agreement, but to the extent that this
5 Agreement is deemed void or the Final Settlement Date does not occur, 24 Hour Fitness does not waive,
6 but rather expressly retains and reserves, all rights it had prior to the execution of this Agreement to
7 challenge all claims and allegations in the Litigation upon all procedural and factual grounds, including,
8 without limitation, the ability to challenge class treatment on any grounds, and to assert any and all other
9 potential defenses or privileges that were available to them at that time. The Representative Plaintiffs
10 and Settlement Class Counsel agree that 24 Hour Fitness retains and reserves these rights, and agree not
11 to take a position to the contrary.

12 The Parties retain and reserve any right they had prior to execution of this Agreement to oppose
13 any position or argument that the other Parties should take in the event that this Agreement is deemed
14 void or the Final Settlement Date does not occur. The Parties agree not to argue or present any
15 argument, and hereby waive any argument, that this Agreement is an admission, concession or evidence
16 of, the infirmity or strength of any claims asserted in the Litigation, the truth or falsity of any fact
17 alleged by the Representative Plaintiffs, or the availability or lack of availability of meritorious defenses
18 to the claims raised in the Litigation. Each of the Parties will be restored to the place it was in as of the
19 date this Agreement was signed with the right to assert in the Litigation any argument or defense that
20 was available to it at that time.

21 **III. THE LITIGATION**

22 Representative Plaintiffs Kevin O'Shea, Mark Vitcov, and Rod Morris filed a putative class
23 action complaint against 24 Hour Fitness on April 1, 2016, captioned *Kevin O'Shea, et al. v. 24 Hour*
24 *Fitness USA, Inc.*, Case No. 3:16-cv-1668-EDL. Representative Plaintiff Russell Marchewka filed a
25 putative class action complaint against 24 Hour Fitness on April 29, 2016, captioned *Russell Marchewka*
26 *v. 24 Hour Fitness USA, Inc.*, Case No. 3:16-cv-02359-MEJ. Those matters were consolidated on June
27 28, 2016, and captioned *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-
28 01668-JSW. Representative Plaintiffs Kevin O'Shea, Mark Vitcov, Rod Morris, and Russell

1 Marchewka filed a Consolidated Class Action Complaint on July 26, 2016, adding Representative
 2 Plaintiff Michael Losquadro, and a First Amended Consolidated Class Action Complaint on December
 3 9, 2016 (the “First Amended Complaint”).

4 On January 13, 2017, 24 Hour Fitness moved to dismiss the First Amended Complaint on several
 5 grounds and, on September 1, 2017, the Court granted the motion, without prejudice. Representative
 6 Plaintiffs filed a Second Amended Consolidated Class Action Complaint on September 22, 2017 (the
 7 “Second Amended Complaint”).

8 On behalf of themselves and all others similarly situated, the Second Amended Complaint asserts
 9 the following causes of action: (1) reformation; (2) restitution; (3) violation of the California Consumers
 10 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”); (4) violation of California’s Unfair
 11 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”); (5) violation of California’s False
 12 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”); (6) fraud; (7) violation of
 13 California’s Health Studio Services Contract Law, Cal. Civ. Code §§ 1812.80, *et seq.* (“HSSCL”); (8)
 14 violation of Oregon’s Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.638, *et seq.* (“UTPA”); (9)
 15 violation of Texas’s Health Spa Act, Tex. Occ. Code §§ 702.001, *et seq.* (“THSA”); (10) violation of
 16 Texas’s Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.50, *et seq.* (“DTPA”); (11)
 17 violation of Washington’s State Consumer Protection Act, RCW 19.86, *et seq.* (“SCPA”), and (12) a
 18 cause of action for declaratory relief equitably estopping 24 Hour Fitness from asserting a statute-of-
 19 limitations defense.

20 Representative Plaintiff Dipti Shah filed a putative class action Complaint in the Superior Court
 21 for the State of California for the County of Alameda on June 2, 2016, captioned *Dipti Shah v. 24 Hour*
 22 *Fitness USA, Inc.*, Case No. RG16818048 (the “State Court Action”). On behalf of herself and all others
 23 similarly situated, she asserted the following causes of action: (1) violation of the CLRA; (2) violation
 24 of the UCL; (3) violation of the HSSCL; (4) violation of the FAL; (5) fraud; (6) reformation; and (7)
 25 restitution. Pursuant to this Agreement, Plaintiff Dipti Shah will join the Federal Action as a named
 26 representative plaintiff in a Conditional Third Amended Complaint to be filed in *In re 24 Hour Fitness*
 27 *Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW. In the event that this Agreement is
 28 finally approved by the Court and becomes effective, Ms. Shah will voluntarily dismiss the State Court

1 Action with prejudice within five (5) business of the Final Settlement Date.

2 Representative Plaintiffs allege that, in selling them a Prepaid Membership, 24 Hour Fitness
3 employees represented to them that the Annual Renewal Amount would be fixed as long as they
4 remained members in good standing. Plaintiffs also allege that 24 Hour Fitness's advertising and other
5 marketing materials to prospective members promised fixed Annual Renewal Amounts. They further
6 allege that, contrary to these alleged representations by 24 Hour Fitness employees, their Prepaid
7 Memberships did not guarantee that annual renewal amounts would be fixed for the duration of their
8 memberships. Plaintiffs contend that buried in the fine print, the Prepaid Memberships stated: "The
9 initial annual renewal amount...is for the first 12 month renewal term only immediately following
10 expiration of your prepaid term..." and "24 Hour...may increase all subsequent annual renewal
11 amounts..." 24 Hour Fitness agrees that the Prepaid Memberships state that, but dispute that the
12 provision is buried in the fine print because it is on the first page of each Prepaid Membership under the
13 bold heading: "Prepaid Initial Annual Renewal Amount (Optional Renewal)," directly under each
14 Prepaid Member's signature. The Representative Plaintiffs allege that 24 Hour Fitness began increasing
15 Annual Renewal Amounts for certain members beginning June 2015. 24 Hour Fitness maintains that the
16 increases in Annual Renewal Amounts at issue in this Litigation were appropriate and permissible under
17 the terms of its Prepaid Memberships and consistent with representations made by 24 Hour Fitness sales
18 representatives and in advertising and marketing materials.

19 On several occasions following the filing of the above-referenced complaints, Settlement Class
20 Counsel and counsel of record for 24 Hour Fitness met and conferred regarding ways to potentially
21 narrow or resolve the claims in the Litigation. The Parties engaged in an informal exchange of
22 documents and information, including at an in-person meeting on October 5, 2016, two JAMS mediation
23 sessions on January 23 and 31, 2017 with the JAMS Mediator, John B. Bates, Jr. and several follow-on
24 discussions with Mr. Bates.

25 During the time in which 24 Hour Fitness's motion to dismiss was pending, and while the Parties
26 engaged in informal discovery, the parties to *In re 24 Hour Fitness Prepaid Memberships Litigation*
27 engaged in formal discovery, including by responding to document and information requests concerning
28 24 Hour Fitness's contracts and sales and marketing policies and practices, and responding to

1 interrogatories. In that formal discovery, 24 Hour Fitness produced over 7,000 documents consisting of
2 nearly 50,000 pages.

3 Dipti Shah and 24 Hour Fitness stayed formal discovery and the deadline to respond to her
4 complaint in the State Court Action while all Representative Plaintiffs and 24 Hour Fitness engaged in
5 the above-referenced informal discovery and settlement negotiations. Settlement Class Counsel
6 coordinated their efforts with respect to informal discovery from 24 Hour Fitness, and participated in the
7 mediation and settlement-negotiation process that resulted in this Agreement for the common benefit of
8 the Settlement Class.

9 Following extensive arm's-length negotiations, 24 Hour Fitness and the Representative Plaintiffs
10 reached the terms and conditions reflected in this Agreement.

11 **IV. THE PARTIES' EVALUATION OF THE LITIGATION**

12 Before commencing this Litigation, as well as during the Litigation and negotiation of the
13 Agreement, Settlement Class Counsel conducted a thorough investigation, reviewed and analyzed
14 documents and information provided by 24 Hour Fitness, participated in numerous settlement
15 negotiations and discussions with 24 Hour Fitness, interviewed witnesses, and evaluated the relevant
16 law and facts to assess the merits of Representative Plaintiffs' asserted and potential causes of action as
17 well as how best to serve the interests of Representative Plaintiffs and Settlement Class Members.

18 Representative Plaintiffs and Settlement Class Counsel believe that the claims asserted in the
19 Litigation have merit and that they would have prevailed at summary judgment and/or trial.
20 Nevertheless, Representative Plaintiffs and Settlement Class Counsel recognize and acknowledge the
21 risks and uncertainty inherent in protracted complex litigation, as well as the expense and length of the
22 proceedings necessary to prosecute the Litigation against 24 Hour Fitness to completion. The
23 Representative Plaintiffs and Settlement Class Counsel believe that the Agreement confers substantial
24 benefits upon the Settlement Classes. Based on their evaluation, Settlement Class Counsel have
25 determined that the Settlement set forth in this Agreement is in the best interests of the Settlement Class
26 Members and that the Agreement is adequate, fair and reasonable to the Settlement Class Members.

27 During the course of this Litigation and negotiation of the Agreement, 24 Hour Fitness
28 conducted a thorough investigation, reviewed and analyzed documents and information provided by

Representative Plaintiffs, participated in numerous settlement negotiations and discussions with Settlement Class Counsel, and evaluated the relevant law and facts to assess the merits of Representative Plaintiffs' asserted and potential causes of action and to determine the strength of both of the defenses and liability for relief sought in the Litigation.

24 Hour Fitness contends that the claims asserted in the Litigation are without merit. 24 Hour Fitness specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the claims and makes no concessions or admissions of liability of any sort. Nonetheless, 24 Hour Fitness has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. 24 Hour Fitness has also taken into account the uncertainty and risks inherent in any litigation. 24 Hour Fitness has therefore determined that it is desirable and beneficial to it that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement, and believes that the Agreement is adequate, fair and reasonable to the Settlement Class Members.

V. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

1. Definitions

Capitalized terms in this Agreement are defined herein:

1.1 "Agreement" means this Joint Stipulation and Settlement Agreement, including its attached exhibits (which are incorporated herein by reference), duly executed by the Parties.

1.2 "Annual Renewal Amount" means the amount that must be paid to renew a Prepaid Membership for a period of one year.

1.3 "Claims" means all suits, causes of action, claims, cross-claims, counter-claims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), including Unknown Claims, of every nature, character, and description, whether in law, contract, statute or in equity, or of whatever legal theory, including but not limited to causes of action for reformation, restitution, fraud, declaratory relief, or violations of the CLRA, UCL, FAL, HSSCL, UTPA, THSA, DTPA, SCPA, or any other state or federal statute, rule or regulation, whether direct or indirect, known or unknown, foreseen or not foreseen,

1 accrued or not yet accrued, or present or contingent, for any injury, damage, obligation or loss
2 whatsoever, including but not limited to compensatory damages, statutory liquidated damages,
3 exemplary damages, punitive damages, losses, costs, expenses, or attorneys' fees arising out of or based
4 upon the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to
5 act that were alleged or asserted in the Litigation.

6 1.4 "Claim Form and Declaration" means the form (subject to formatting and
7 typographical changes) attached hereto as Exhibit 1.

8 1.5 "Class Website" means a website to be created, launched and maintained by the
9 Settlement Administrator, and which will include: (a) the Notice; (b) the Conditional Third Amended
10 Complaint; (c) information about the submission of the Claim Form and Declaration; and (d) other
11 relevant documents, including downloadable versions of the Claim Form and Declaration. The Class
12 Website will also allow for the uploading of hand-signed copies of the Claim Form and Declaration.

13 1.6 "Confidential Information" means material designated as "Confidential" in
14 accordance with the terms of the Stipulated Protective Order on file in the Litigation dated February 6,
15 2017, ECF No. 75.

16 1.7 "Court" means the United States District Court for the Northern District of
17 California.

18 1.8 "Declaration Under Penalty of Perjury" means Part II of the Claim Form and
19 Declaration entitled "Declaration Under Penalty of Perjury."

20 1.9 "Fairness Hearing" means the hearing to be held at a date and time to be
21 scheduled by the Court to consider and determine whether the proposed settlement of the Litigation as
22 contained in this Agreement should be finally approved as fair, reasonable, and adequate, the amount of
23 reasonable attorneys' fees and expenses to be awarded to Settlement Class Counsel and incentive awards
24 to the Representative Plaintiffs, and whether the Order and Judgment approving the Settlement should
25 be entered.

26 1.10 "Family Add-On Member" means a Prepaid Member whose Prepaid Membership
27 is or at any point was linked to a Primary Member's membership in 24 Hour Fitness's membership
28 records system.

1.11 “Final Approval Date” means the date on which the Court enters the Order and Judgment.

1.12 “Final Settlement Date” means the date on which the Order and Judgment becomes final, which shall be the latest of: (a) the date of final affirmance on any appeal of the Order and Judgment; (b) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the award or attorneys’ fees to Settlement Class Counsel, and/or incentive awards to the Representative Plaintiffs, the date of final dismissal with prejudice of the last pending appeal from the Order and Judgment; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any appeal from the Order and Judgment.

1.13 “Increase Difference” means the amount equal to the Increased Annual Renewal Amount minus the Initial Annual Renewal Amount.

1.14 “Increased Annual Renewal Amount” means an Annual Renewal Amount that is greater than the Initial Annual Renewal Amount.

1.15 “Initial Annual Renewal Amount” means the Annual Renewal Amount printed on page one (1) of the Prepaid Membership, which excludes applicable taxes if any.

1.16 “Last Known Email Address” means the most recently recorded address for receiving electronic mail, if any, for a Prepaid Member as such information is contained in 24 Hour Fitness’s membership records system.

1.17 “Last Known Mailing Address” means the most recently recorded mailing address for a Prepaid Member as such information is contained in 24 Hour Fitness’s membership records system.

1.18 “Litigation” means the cases captioned *Kevin O’Shea, et al. v. 24 Hour Fitness USA, Inc.*, Case No. 3:16-cv-1668 and *Marchewka v. 24 Hour Fitness USA, Inc.*, Case No. 3:16-cv-02359, consolidated as *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW, in the United States District Court for the Northern District of California, and *Dipti Shah v. 24 Hour Fitness USA, Inc.*, Case No. RG16818048, in the Superior Court for the State of California for the County of Alameda.

1.19 “Notice” means the notice of this proposed Agreement and the Fairness Hearing,

1 which is to be sent to Persons on the Notice List substantially in the manner set forth in this Agreement,
2 fulfills the requirements of Due Process and Federal Rule of Civil Procedure 23, and is substantially in
3 the form of Exhibit 2 attached hereto.

4 1.20 “Notice Date” means the date on which the Settlement Administrator finishes
5 mailing by first-class mail the Class Notice, which shall be no later than twenty (20) days after the
6 Notice List Date.

7 1.21 “Notice List” means the list of all Prepaid Members as indicated in 24 Hour
8 Fitness’s membership records system as of the Notice List Date, excluding: (a) any current employees
9 or agents of 24 Hour Fitness, (b) any officers or employees of the Court, the mediator, and their
10 respective immediate family members, and (c) counsel for all Parties and members of their immediate
11 family, and (d) any Person whose Prepaid Membership was terminated but who did not receive a notice
12 of Increased Annual Renewal Amount, as indicated in 24 Hour Fitness’s membership records system.
13 The Notice List will contain, to the extent available in 24 Hour Fitness’s membership records system,
14 the name of each such Person, as well as each such Person’s club of enrollment, date of enrollment,
15 name of 24 Hour Representative who enrolled such Person in the Prepaid Membership, Last Known
16 Mailing Address, Last Known E-mail Address, if any, last known phone number, Prepaid Membership
17 agreement number, 24 Hour Fitness member number, status of Prepaid Membership as either current
18 (*i.e.*, not terminated) or terminated, date of notice of Increased Annual Renewal Amount if applicable,
19 indication of payment of Increased Annual Renewal Amount if applicable, and date of Prepaid
20 Membership termination if applicable.

21 1.22 “Notice List Date” means the date on which 24 Hour Fitness creates the Notice
22 List and provides it to Settlement Class Counsel and the Settlement Administrator, which will be no
23 later than twenty (20) days after the Preliminary Approval Date.

24 1.23 “Opt Out” means a written and signed request by a Person on the Notice List to
25 be excluded from the Settlement Class, which is submitted in the manner and within the time set forth in
26 Paragraph 6.2 of this Agreement and the Notice.

27 1.24 “Order and Judgment” means the Court’s order fully and finally approving the
28 Settlement, entering final judgment, and dismissing the above-captioned litigation with prejudice.

1.25 “Parties” means, collectively, the Representative Plaintiffs and 24 Hour Fitness.

1.26 “Person” means an individual, corporation, general partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.27 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

1.28 “Preliminary Approval Order” means an order preliminarily approving the proposed Settlement in accordance with Paragraph 7.3 of this Agreement, certifying the Settlement Class for settlement purposes, and approving the form of Notice attached hereto as Exhibit 2. The Preliminary Approval Order may be modified by the Court, provided, however, that any changes altering the terms of the Agreement must be approved by the Parties.

1.29 “Prepaid Member” means a Person who enrolled in a Prepaid Membership as indicated in 24 Hour Fitness’s membership records system, and who maintained their Prepaid Membership on or after April 1, 2015.

1.30 “Prepaid Membership” means a 24 Hour Fitness membership agreement marketed or sold on or after April 1, 2006, substantially in the form of the v.04.06 form attached hereto as Exhibit 3, including provision 3(c), or the v.05.08 form attached hereto as Exhibit 4, which allows a Prepaid Member to prepay between one and three years of dues and renew annually for an Annual Renewal Amount, and includes a section that contains language as provided in section 3(c) of Exhibits 3 and 4.

1.31 “Primary Member” means a Person with a 24 Hour Fitness membership who is or at any point was linked in 24 Hour Fitness’s membership records system to a Family Add-On Prepaid Membership.

1.32 “Prepaid Sport Member” means a Prepaid Member with Prepaid Membership that provides access to clubs designated by 24 Hour Fitness as Sport, Active, Express or Fitlite.

1.33 “Prepaid Super-Sport Member” means a Prepaid Member with a Prepaid Membership that provides access to clubs designated by 24 Hour Fitness as Super-Sport, Sport, Active, Express or Fitlite.

1 1.34 “Prepaid Ultra-Sport Member” means a Prepaid Member with a Prepaid
2 Membership that provides access to clubs designated by 24 Hour Fitness as Ultra-Sport, Super-Sport,
3 Sport, Active, Express or Fitlite.

4 1.35 “Reduced Annual Renewal Amount” means an amount equal to the Initial Annual
5 Renewal Amount plus ninety (90) percent of the Increase Difference, and applicable taxes if any. For
6 example, if the Initial Annual Renewal Amount is \$150 and the Increase Difference equals \$100, the
7 Reduced Annual Renewal Amount is \$240 plus applicable taxes if any.

8 1.36 “Refund Amount” means, for each Settlement Class Member who submits a Valid
9 Declaration Under Penalty of Perjury, the sum of all Increase Differences paid, including any applicable
10 taxes paid on the Increase Difference, minus any refunds of Increase Differences, including any
11 applicable taxes thereon, already received, if any, as reflected in 24 Hour Fitness’s membership records
12 system as of the Settlement Class List Date.

13 1.37 “Reinstatement Payment” means the amount certain Settlement Class Members
14 must pay for their Prepaid Membership to be reinstated.

15 1.38 “Reinstatement Payment Deadline” means the date by which certain Settlement
16 Class Members who request on their Valid Claim Form and Declaration that they wish to be reinstated
17 must submit their Reinstatement Payment to 24 Hour Fitness to reinstate their Prepaid Membership.
18 Such date shall be ninety (90) days from the date of the invoice from 24 Hour Fitness for the
19 Reinstatement Payment.

20 1.39 “Released Claims” means any and all Claims asserted, that could have been
21 asserted or that hereafter may be asserted in the Litigation arising out of or based upon the facts,
22 transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act that were or
23 could have been alleged in the Litigation arising out of, or based upon allegations that 24 Hour Fitness
24 (a) deceived any Person into enrolling in a Prepaid Membership, such as, for example, by representing
25 to a prospective member, whether in sales pitches, advertisements, marketing materials, or otherwise,
26 that Annual Renewal Amounts were fixed, guaranteed, lifetime, for life, or could not ever be increased;
27 (b) improperly increased Annual Renewal Amounts; (c) sold “lifetime memberships”; (d) promised
28 Persons with Prepaid Memberships a “Lifetime Fee Guarantee”; or (e) breached any Persons Prepaid

1 Membership by increasing the Annual Renewal Amount.

2 1.40 “Released Persons” means 24 Hour Fitness and its past, present and future
3 divisions, parents, subsidiaries, affiliates, predecessors, successors, shareholders, owners, creditors,
4 officers, directors, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees,
5 executors, partners, agents, attorneys, insurers, and/or privies.

6 1.41 “Releasing Parties” means the Representative Plaintiffs and each Settlement Class
7 Member on behalf of themselves and their respective agents, heirs, relatives, representatives, attorneys,
8 successors, insurers, trustees, subrogees, executors, assignees, administrators, and all other Persons or
9 entities acting by, through, under or in concert with any of them.

10 1.42 “Response Deadline” means the date by which each Claim Form and Declaration
11 must be postmarked or uploaded to the Class Website to be considered timely, and shall be no later than
12 sixty (60) days after the Notice Date. Such Response Deadline shall be clearly set forth in the
13 Preliminary Approval Order, in the Notice and on the Claim Form and Declaration. To the extent that
14 the Settlement Administrator resends Notice by first-class mail or emails Notice to the Last Known
15 Email Address as provided in Paragraph 4.2 of this Agreement, the Response Deadline shall be extended
16 and such Prepaid Members must, to be considered timely, submit Claim Form and Declarations
17 postmarked or uploaded to the Class Website on or before the date that is sixty (60) days from the date
18 of such re-mailed notice or the date that the Settlement Administrator sent an email with the Notice to
19 the Last Known Email Address.

20 1.43 “Settlement” means the settlement between the Parties pursuant to the terms of
21 this Agreement.

22 1.44 “Settlement Administrator” means, subject to the Court’s approval, the third-party
23 entity chosen by the Parties to administer the Settlement, Rust Consulting, Inc.

24 1.45 “Settlement Class” means all Persons in the United States who are Prepaid
25 Members as indicated in 24 Hour Fitness’s membership records system, excluding: (a) any officers or
26 employees of the Court, the mediator, and their respective immediate family members, (b) counsel for
27 all Parties and members of their immediate family members, (c) any current employees or agents of 24
28 Hour Fitness, (d) any Person whose Prepaid Membership was terminated but who did not receive a

notice of Increased Annual Renewal Amount, as indicated in 24 Hour Fitness's membership records system, and (e) any Persons who properly submit an Opt Out.

1.46 "Settlement Class Counsel" means: (i) Eve-Lynn Rapp of Edelson PC, 123 Townsend Street, Suite 100, San Francisco, CA 94107; (ii) Gordon Fauth, of counsel to Finkelstein Thompson LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111; (iii) Timothy Mathews and Catherine Pratsinakis of Chimicles & Tikellis LLP, 361 West Lancaster Avenue, Haverford, PA 19401; and (iv) Kristen Sagafi of Tycko & Zavareei LLP, 483 Ninth Street, Suite 200, Oakland, CA 94607.

1.47 "Settlement Class List" means the list of Prepaid Members in the Settlement Class, which includes for each Prepaid Member in the Settlement Class, to the extent available in 24 Hour Fitness's membership records system and the Settlement Administrator's records, as of the Settlement Class List Date, the first and last name, Last Known Mailing Address, last known phone number, Last Known Email Address, if any, Prepaid Membership agreement number, Prepaid Member number, status of Prepaid Membership as either current (*i.e.*, not terminated) or terminated, date of notice of Increased Annual Renewal Amount if applicable, indication of payment of Increased Annual Renewal Amount (if applicable), the date on which the Prepaid Membership was terminated (if applicable), whether or not a reinstatement has been requested (if applicable), and the date the Claim Form and Declaration was received by the Settlement Administrator (if applicable).

1.48 "Settlement Class List Date" means the date on which the Settlement Administrator shall create the Settlement Class List.

1.49 "Settlement Class Member" means any Prepaid Member included in the Settlement Class.

1.50 "Unknown Claims" means any Claims asserted, that might have been asserted or that hereafter may be asserted in the Litigation arising out of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act that were alleged in the Litigation that Representative Plaintiffs or any Settlement Class Members does not know or suspect to exist in his, her or its favor at the time of the entry of the Order and Judgment, and which if known by him or her might have affected his, her or its decision to opt out of or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Final Settlement Date, Representative

1 Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Order and
 2 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
 3 provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
 5 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
 6 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED
HIS OR HER SETTLEMENT WITH THE DEBTOR.

7 The Representative Plaintiffs and Settlement Class Members, upon the Final Settlement Date, shall be
 8 deemed to have, and by operation of the Order and Judgment shall have, waived any and all provisions,
 9 rights, and benefits conferred by any law of any state or territory of the United States, or principle of
 10 common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

11 The Representative Plaintiffs and Settlement Class Members acknowledge that they may discover facts
 12 in addition to or different from those that they now know or believe to be true with respect to the subject
 13 matter of the Released Claims, but the Representative Plaintiffs and each Settlement Class Member,
 14 upon the Final Settlement Date, shall be deemed to have, and by operation of the Order and Judgment
 15 shall have, fully, finally and forever settled and released any and all Released Claims, known or
 16 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden,
 17 which now exist, or heretofore have existed upon any theory of law or equity now existing that were or
 18 could have been alleged in the Litigation without regard to the subsequent discovery or existence of such
 19 different or additional facts, including, but not limited to, conduct that is negligent, intentional, with or
 20 without malice, or a breach of any duty, law, or rule.

21 1.51 “Valid Claim Form and Declaration” means a Claim Form and Declaration
 22 received by the Settlement Administrator postmarked or uploaded to the Class Website on or before the
 23 Response Deadline that is completed and signed by hand in accordance with the instructions therein and
 24 that includes all pages of the Claim Form a Declaration. For the avoidance of any doubt, any Claim
 25 Form and Declaration received by the Settlement Administrator that contains fewer than all pages,
 26 partial pages, or illegible or unreadable pages shall not be a Valid Claim Form and Declaration.

27 1.52 “Valid Declaration Under Penalty of Perjury” means either (a) for Settlement
 28 Class Members, a Declaration Under Penalty of Perjury received by the Settlement Administrator

postmarked or uploaded to the Class Website on or before the Response Deadline that is completed and signed by hand in accordance with the instructions in the Claim Form and Declaration and includes all pages of the Declaration Under Penalty of Perjury, or (b) for Primary Members who are not Persons listed on the Notice List, a Declaration Under Penalty of Perjury submitted on behalf of a Family Add-On Member that is postmarked or uploaded to the Class Website, within sixty (60) days after the Settlement Administrator mails such Declaration Under Penalty of Perjury to such Primary Member and that is completed and signed by hand in accordance with the instructions in the Claim Form and Declaration and includes all pages of the Declaration Under Penalty of Perjury. For the avoidance of any doubt, any Declaration Under Penalty of Perjury received by the Settlement Administrator that contains fewer than all pages, partial pages or illegible or unreadable pages shall not be a Valid Declaration Under Penalty of Perjury.

2. Settlement Relief

2.1 Automatic Relief to Settlement Class Members Who Do Not Submit a Valid Declaration Under Penalty of Perjury:

(a) Current Members Who Have Not Yet Been Notified of an Increased Annual Renewal Amount: For Settlement Class Members who, as reflected in the Settlement Class List, maintain a current Prepaid Membership and have not yet been notified of an Increased Annual Renewal Amount, in the event that 24 Hour Fitness notifies such Settlement Class Member of an increase in Annual Renewal Amounts at any time after the Final Settlement Date:

(i) for Prepaid Sport Members, the first such increase shall not exceed \$45 per year above the Initial Annual Renewal Amount, and shall not be further increased for the next two (2) consecutive annual renewal periods, provided that such Settlement Class Member timely pays the increased Annual Renewal Amount and remains a Prepaid Member in good standing consistent with the terms of his, her or its Prepaid Membership;

(ii) for Prepaid Super-Sport Members or Prepaid Ultra-Sport Members, the first such increase shall not exceed \$90 per year above the Initial Annual Renewal Amount, and shall not be further increased for the next two (2) consecutive annual renewal periods, provided that such Settlement Class Member timely pays the increased Annual Renewal Amount and remains a Prepaid

1 Member in good standing consistent with the terms of his, her or its Prepaid Membership; and

2 (iii) 24 Hour Fitness may increase any such Settlement Class Members'
3 Annual Renewal Amounts thereafter in its sole and absolute discretion. No Claim Form and Declaration
4 shall be required to entitle such Settlement Class Members to this relief if such Settlement Class
5 Members meet the criteria described in this Paragraph 2.1(a).

6 (b) Current Members Who Have Been Notified of an Increased Annual Renewal
7 Amount: Settlement Class Members who, as reflected in the Settlement Class List, maintain a current
8 Prepaid Membership and have been notified of an Increased Annual Renewal Amount, shall be entitled
9 to renew their Prepaid Memberships for the Reduced Annual Renewal Amount for the next three (3)
10 consecutive annual renewal periods, starting with the first annual renewal period following the Final
11 Settlement Date, provided that such Settlement Class Member timely pays the Reduced Annual Renewal
12 Amount and remains a Prepaid Member in good standing consistent with the terms of his, her or its
13 Prepaid Membership. 24 Hour Fitness may increase any such Settlement Class Members' Annual
14 Renewal Amounts after expiration of the third annual renewal period following the Final Settlement
15 Date in its sole and absolute discretion. No Claim Form and Declaration shall be required to entitle a
16 Settlement Class Member to this relief if such Settlement Class Member meets the criteria described in
17 this Paragraph 2.1(b).

18 (c) Members Who Terminated Membership After Being Notified of an Increased
19 Annual Renewal Amount: Settlement Class Members who, as reflected in the Settlement Class List,
20 were notified of an Increased Annual Renewal Amount and whose Prepaid Membership terminated after
21 the date of such notice, shall be entitled to reinstate their Prepaid Membership following receipt of the
22 Reinstatement Payment, which shall be equal to the Reduced Annual Renewal Amount plus applicable
23 taxes, if any. 24 Hour Fitness will not increase the Annual Renewal Amounts for such Settlement Class
24 Members above the Reduced Annual Renewal Amount for the next two (2) consecutive annual renewal
25 periods following reinstatement, provided that such Settlement Class Member timely pays the Reduced
26 Annual Renewal Amount and remains a Prepaid Member in good standing consistent with the terms of
27 his, her or its Prepaid Membership. 24 Hour Fitness may increase any such Settlement Class Members'
28 Annual Renewal Amounts after expiration of the third annual renewal period following the Final

Settlement Date in its sole and absolute discretion. To receive the benefits described in this Section 2.1(c), a Settlement Class Member must check the box requesting reinstatement in Part III (Request Reinstatement) of the Valid Claim Form and Declaration to receive an invoice for the Reinstatement Payment with payment instructions from 24 Hour Fitness following the Final Settlement Date and must pay the Reinstatement Payment to 24 Hour Fitness by the Reinstatement Payment Deadline. Notwithstanding anything in this Paragraph 2.1(c), Prepaid Members whose Prepaid Memberships were terminated for cause as defined in Section 6(g) of their Prepaid Memberships shall not be entitled to reinstatement of their Prepaid Memberships.

2.2 Relief to Settlement Class Members who Submit a Valid Declaration Under Penalty of Perjury:

(a) Refunds to Current and Terminated Members: Each Settlement Class Member who submits a Valid Declaration Under Penalty of Perjury shall be entitled to reimbursement of the Refund Amount to the extent that the Settlement Class Member already paid any Increased Annual Renewal Amount.

(b) Renewal Rates for Current Members: In addition to the relief described in Paragraph 2.2(a), Settlement Class Members who (i) submit a Valid Declaration Under Penalty of Perjury, and (ii) as reflected in the Settlement Class List, maintain a current Prepaid Membership status, shall be entitled to renew their Prepaid Memberships for the Initial Annual Renewal Amount plus applicable taxes, if any, in the future, provided that such Settlement Class Member timely pays the Annual Renewal Amount and remains a Prepaid Member in good standing consistent with the terms of his, her or its Prepaid Membership.

(c) Reinstatement and Renewal Rates for Members Who Terminated Their Membership After Being Notified of an Increased Annual Renewal Amount: In addition to the relief described in Paragraph 2.2(a), Settlement Class Members (i) who submit a Valid Declaration Under Penalty of Perjury, and (ii) as reflected in the Settlement Class List, whose Prepaid Membership terminated after notice of an Increased Annual Renewal Amount, shall be entitled to, at each such Settlement Class Member's option, reinstatement of the Settlement Class Member's Prepaid Membership following receipt of the Reinstatement Payment, which shall be equal to the Initial Annual

Renewal Amount plus applicable taxes, if any. For any such reinstated Settlement Class Members, 24 Hour Fitness will not increase their Initial Annual Renewal Amount in the future, provided that the Settlement Class Member timely pays their Initial Annual Renewal Amount plus applicable taxes, if any, and remains a Prepaid Member in good standing consistent with the terms of the Prepaid Membership. To receive the reinstatement benefits described in this Paragraph 2.2(c), a Settlement Class Member must check the box requesting reinstatement in Part III (Request Reinstatement) of a Valid Claim Form and Declaration to receive an invoice for the Reinstatement Payment with payment instructions from 24 Hour Fitness following the Final Settlement Date and must pay the Reinstatement Payment to 24 Hour Fitness by the Reinstatement Payment Deadline. Notwithstanding anything in this Paragraph 2.2(c), Prepaid Members whose Prepaid Memberships were terminated for cause as defined in Section 6(g) of their Prepaid Memberships shall not be entitled to reinstatement of their Prepaid Memberships.

(d) Family Add-On Members: Family Add-On Members are entitled to the relief in this Section 2.2 provided that the Family Add-On Member (i) submits a Valid Declaration Under Penalty of Perjury, completing the “Declaration” portion of Part II (Declaration Under Penalty of Perjury) of the Valid Claim Form and Declaration, or (ii) their Primary Member submits a Valid Declaration Under Penalty of Perjury, completing the “Family Add-On Declaration” portion of Part II (Declaration Under Penalty of Perjury) of the Valid Claim Form and Declaration and identifying such Family Add-On Member in Paragraph 2 thereof.

2.3 Within fifteen (15) days after the Final Settlement Date, the Settlement Class List will be created. The Settlement Administrator will mail checks for the applicable Refund Amount to Settlement Class Members within thirty (30) days following creation of the Settlement Class List. Any unclaimed checks shall escheat in accordance with applicable escheat laws.

3. Releases and Waivers

3.1 The obligations incurred pursuant to this Agreement shall be a full and final disposition of the Litigation and any and all Released Claims, as against all Released Parties.

3.2 Upon the Final Settlement Date, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, dismissed

1 with prejudice, relinquished, waived and discharged the Released Persons of and from all Released
2 Claims.

3 **4. Notice to Settlement Class Members**

4 4.1 No later than the Notice Date, unless otherwise agreed by counsel for the Parties
5 or ordered by the Court, the Settlement Administrator has agreed to complete mailing of the Notices and
6 Claim Form and Declarations to Prepaid Members on the Notice List by first-class mail to Prepaid
7 Members' Last Known Mailing Addresses provided in the Notice List, together with a postage prepaid
8 return envelope.

9 4.2 The Settlement Administrator has agreed to run an update of the Last Known
10 Mailing Addresses in the Notice List through the National Change of Address database before initially
11 mailing the Notice. If a Notice is returned to the Settlement Administrator as undeliverable, the
12 Settlement Administrator will endeavor to: (a) re-mail any Notice so returned with a forwarding address,
13 and (b) make reasonable efforts to attempt to find an address for any returned Notice that does not
14 include a forwarding address. The Settlement Administrator has agreed to endeavor to re-mail the
15 Notice to every Prepaid Member in the Notice List for which it obtains an updated address. If the
16 Settlement Administrator is unable to find an updated address for re-mailing a Notice to a Prepaid
17 Member, the Settlement Administrator has agreed to email a Notice to the Last Known Email Address
18 provided in the Notice List for such Prepaid Member, if there is such email address.

19 4.3 No later than ten (10) days after the Preliminary Approval Date, the Settlement
20 Administrator has agreed to establish, maintain and update a Class Website, which will be located at at
21 an address to be designated by the Settlement Administrator. By the Notice Date, the Class Website
22 shall also include the ability to access and print the Claim Form and Declaration, which will be pre-
23 populated with each respective Prepaid Member's membership information, as provided in 24 Hour
24 Fitness's membership records system, which may be accessed by entering their respective Prepaid
25 Membership agreement numbers on the Class Website. The Class Website shall also include the ability
26 to upload the fully completed Claim Form and Declaration to the Class Website.

27 4.4 The Settlement Administrator has agreed to maintain a toll-free settlement
28 assistance number, which shall include the access to live operators and Interactive Voice Response,

1 which will contain information approved by the Parties.

2 4.5 Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is
3 filed with the Court, the Settlement Administrator has agreed to serve upon the Attorneys General of
4 each U.S. State in which Settlement Class Members reside, the Attorney General of the United States,
5 and other required government officials, notice of the proposed settlement as required by the Class
6 Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(d)(b).

7 4.6 The receipt of a Notice by a Person who does not meet the definition of Prepaid
8 Member or Settlement Class Member, shall not render such Person a Prepaid Member or Settlement
9 Class Member or otherwise entitle such Person to participate in this Settlement.

10 4.7 24 Hour Fitness will deliver the Notice List to the Settlement Administrator and
11 Settlement Class Counsel within twenty (20) days after the Preliminary Approval Date. The Settlement
12 Class List and the Notice List shall be designated Confidential Information. The Parties agree and
13 understand that if more time is needed to prepare the Notice List, they will cooperate to agree on another
14 date for delivering the Notice List to the Settlement Administrator, unless otherwise ordered by the
15 Court, and so long as it does not otherwise alter other dates or deadlines imposed by the Court or this
16 Settlement.

17 4.8 If a Family Add-On Member checks the box requesting that a Declaration Under
18 Penalty of Perjury be sent to the Primary Member in Part IV of his, her or its Valid Claim Form and
19 Declaration, and the Primary Member identified in the Family Add-On Member’s Valid Claim Form
20 and Declaration is not a Prepaid Member, then the Settlement Administrator will send by first-class mail
21 a Declaration Under Penalty of Perjury to that Primary Member, along with a description of why that
22 Primary Member is receiving the Declaration Under Penalty of Perjury, and instructions for completing
23 the Declaration Under Penalty of Perjury and submitting it to the Settlement Administrator.

24 4.9 24 Hour Fitness agrees to pay for all costs of the Notice, as well as all costs of
25 settlement administration incurred by the Settlement Administrator.

26 4.10 24 Hour Fitness reserves the right to communicate with, and to respond to,
27 inquiries directed to them from Settlement Class Members, orally and/or in writing, regarding matters
28 not involving the Litigation or the Agreement in ordinary course of business, and may do so through any

appropriate agents or agencies. If, however, 24 Hour Fitness receives any inquiry from a Settlement Class Member specifically relating to the Litigation or the Settlement, 24 Hour Fitness shall refer the Settlement Class Member to the Settlement Administrator or Settlement Class Counsel, as 24 Hour Fitness deems appropriate. Nothing in this Paragraph shall preclude 24 Hour Fitness's counsel from communicating with attorneys representing any Settlement Class Member.

5. Settlement Administration

5.1. The Settlement Administrator has agreed, under the supervision of the Court, to administer the relief provided by this Agreement, as follows:

(a) process Claim Forms and Declarations;

(b) forward to 24 Hour Fitness's counsel, with copies to Settlement Class Counsel, all documents and other materials received in connection with the administration of the Agreement within thirty (30) days after the date on which all Claim Form and Declaration have been finally approved or disallowed per the terms of the Agreement;

(c) receive Opt Outs from the Settlement Class Members and provide copies of such to Settlement Class Counsel and 24 Hour Fitness's counsel within two (2) business days of receipt. If the Settlement Administrator receives any Opt Outs or other requests from Settlement Class Members after the objection/exclusion deadline as set forth in Paragraph 6.2, the Settlement Administrator shall promptly provide copies thereof to Settlement Class Counsel and 24 Hour Fitness's counsel;

(d) provide weekly reports to Settlement Class Counsel and 24 Hour Fitness's counsel, including without limitation, reports regarding the number of Claim Form and Declarations, the current number thereof approved by the Settlement Administrator, and the number of Opt Outs and objections received;

(e) in conjunction with the Parties, submit a timely report to the Court of any requested information to the extent the Settlement Administrator has such information;

(f) make available for inspection by Settlement Class Counsel or 24 Hour Fitness's counsel Claim Form and Declarations received, any documentation submitted in support thereof, and any correspondence received by the Settlement Administrator at any time upon reasonable

1 notice;

2 (g) respond to questions about the Agreement from Settlement Class
3 Members by the use of live operators and Interactive Voice Response, which contains information
4 approved by the Parties; and

5 (h) distribute the Refund Amount to Settlement Class Members within forty-
6 five (45) days of the Final Settlement Date.

7 5.2. The Settlement Administrator shall employ reasonable procedures to screen claims for
8 abuse or fraud, and that, after consultation with Settlement Class Counsel and 24 Hour Fitness's counsel,
9 the Settlement Administrator shall reject Claim Form and Declarations received, or any part of a claim
10 for a payment reflected therein (a) where there is evidence of abuse or fraud, or (b) that do not contain
11 all requested information. The proposed preliminary approval order shall also provide Settlement Class
12 Members with an opportunity to cure within twenty-one (21) days. If the Settlement Class Member fails
13 to cure within the required time, the Claim Form and Declaration shall be rejected.

14 5.3. In the exercise of their duties outlined in this Agreement, the Settlement
15 Administrator shall have the right to reasonably request additional information from the Settlement
16 Class Members.

17 5.4. The Fairness Hearing shall be set for a date no less than ninety (90) days after the
18 notice required pursuant to CAFA, 28 U.S.C. § 1715(d)(b), is provided.

19 5.5. The Settlement Administrator has agreed to maintain Declarations Under Penalty
20 of Perjury with signatures received by it for a period of one (1) year following the Final Settlement Date.
21 After that period, the Settlement Administrator shall provide the original Declarations Under Penalty of
22 Perjury to 24 Hour Fitness, and shall provide scanned copies thereof to Settlement Class Counsel.

23 **6. Opt-Outs, Objections, and Motion for Final Settlement Approval**

24 6.1 Settlement Class Members have the option to participate in this Litigation at their
25 own expense by obtaining their own attorney(s). Settlement Class Members who choose this option will
26 be responsible for any attorneys' fees or costs incurred as a result of this election. The Notice will advise
27 Settlement Class Members of this option.
28

6.2 Persons in the Notice List may elect to “Opt Out” of the Settlement Class and thus exclude themselves from the Litigation and Settlement. Those Persons who wish to exercise this option must fully complete, execute and timely mail to the Settlement Administrator a written statement as described herein and in the Notice on or before forty-five (45) days after the Notice Date, or as otherwise determined by the Court. Each written Opt Out must include: (a) the name of the lawsuit, *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW; (b) such Person’s full name, address, Prepaid Membership agreement number, Prepaid Member number, telephone number and email address, if any; (c) a statement that such Person wishes to be excluded from the Settlement Class and from participating in the proposed Agreement; and (d) such Person’s signature.

6.3 If a fully completed and properly executed Opt Out is not received by the Settlement Administrator from a Person in the Notice List wishing to opt out of the Settlement Class postmarked on or before forty-five (45) days after the Notice Date, then that Person wishing to opt out will be deemed to have forever waived his, her or its right to opt out of the Settlement and the releases described in Section 3 hereof shall apply to such Person. Persons in the Notice List who do not properly submit Opt Outs shall be deemed Settlement Class Members and will be bound by this Agreement and all subsequent proceedings, orders and judgments in this Litigation.

6.4 Persons in the Notice List who properly submit Opt Outs shall have no further role in the Litigation and shall not be entitled to any Agreement benefits resulting from this Litigation, including, without limitation, the right to object to the Agreement.

6.5 “Mass” or “class” requests for exclusion shall not be allowed. The Settlement Administrator shall submit a declaration before the Fairness Hearing that provides the Court with the names of all Persons who have properly and timely opted out of the Settlement Class.

6.6 Settlement Class Members may object to the Agreement by filing a written objection with the Court and serving any such written objection on counsel for the respective Parties (as identified in the Notice) on or before forty-five (45) days after the Notice Date, or as otherwise directed by the Court. Unless otherwise ordered by the Court, the written objection must contain: (a) the full name, address, telephone number and email address, if any, of the Settlement Class Member; (b) the Settlement Class Member’s Prepaid Membership agreement number and Prepaid Member number, as

1 printed in the Notice; (c) the name and contact information of any and all attorneys representing,
 2 advising, or in any way assisting the objector in connection with the preparation or submission of the
 3 objection or who may profit from the pursuit of the objection; (d) a written statement of all grounds for
 4 the objection accompanied by any legal support for the objection, if any; (e) copies of any papers, briefs,
 5 or other documents upon which the objection is based; (f) a statement of whether the Settlement Class
 6 Member intends to appear at the Fairness Hearing either personally or through counsel, who must file an
 7 appearance or seek *pro hac vice* admission; and (g) the signature of the Settlement Class Member.

8 6.7 In addition, upon the filing of an objection, Settlement Class Counsel or 24 Hour
 9 Fitness may request to take the deposition of the objecting Class member pursuant to the Federal Rules
 10 of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the
 11 objection. Settlement Class Counsel or 24 Hour Fitness may also request that an objector be required to
 12 make himself or herself available for a deposition and/or comply with expedited discovery. In addition,
 13 any Settlement Class Member objecting to the Settlement shall provide a list of all other objections
 14 submitted by the objector, or the objector's counsel, to any class action settlements in any court in the
 15 United States in the previous five years. If the objecting Settlement Class Member or his, her, or its
 16 counsel has not objected to any other class action settlement in the United States in the previous five
 17 years, he, she, or it shall so state in the objection.

18 6.8 Unless otherwise ordered by the Court, Settlement Class Members who do not
 19 timely make their objections will be deemed to have waived all objections and shall not be heard or have
 20 the right to appeal approval of the Settlement. The Notice shall advise Prepaid Members of their right to
 21 object and the manner required to do so.

22 6.9 The Parties may serve and file responses to written objections not later than 14
 23 days prior to the Fairness Hearing, or as otherwise directed by the Court.

24 **7. Preliminary and Final Approval and Order of Dismissal**

25 7.1 Prior to filing a motion for entry of the Preliminary Approval Order and approval
 26 of the Notice plan, the Representative Plaintiffs shall file a Conditional Third Amended Complaint (the
 27 "Conditional Third Amended Complaint") in the Court, which shall include Plaintiff Dipti Shah as a
 28 named representative plaintiff, and the parties in the State Court Action shall agree to a stay of the State

1 Court Action pending final approval of the Agreement. In the event that this Agreement is finally
2 approved by the Court and becomes effective, Ms. Shah will voluntarily dismiss with prejudice the State
3 Court Action within five (5) business days of the Final Settlement Date. In the event that this
4 Agreement does not receive final approval, the Conditional Third Amended Complaint shall be
5 withdrawn.

6 7.2 The Parties agree that the Representative Plaintiffs shall move for entry of the
7 Preliminary Approval Order of this Agreement and approval of the Notice plan consistent with terms in
8 Section 4 of this Agreement. By this submission, and a supporting motion, the Representative Plaintiffs,
9 through Settlement Class Counsel, will request that the Court enter the Preliminary Approval Order and
10 schedule the Fairness Hearing for the purposes of determining the fairness of the Settlement,
11 determining the amount of reasonable attorneys' fees and expenses to be awarded to Settlement Class
12 Counsel and any incentive award to the Representative Plaintiffs, granting final approval of the
13 Settlement in this Agreement and entering the Order and Judgment.

14 7.3 The Preliminary Approval Order shall include, but not be limited to, the
15 following: (a) preliminary approval of this Agreement and direction to the Parties to implement the
16 terms of this Agreement forthwith; (b) for settlement purposes only, certification of the Settlement
17 Class; and (c) for settlement purposes only, the appointment of Representative Plaintiffs as the
18 Settlement Class representatives and their chosen counsel as Settlement Class Counsel.

19 7.4 Settlement Class Counsel agrees to file a motion for final approval of the
20 Agreement on a date set by the Court, but no later than fourteen (14) days prior to the Fairness Hearing.
21 The motion for final approval of the Settlement will include a proposed Order and Judgment in a form
22 agreed to by the Parties.

23 7.5 Settlement Class Counsel agrees to file a motion for reasonable attorneys' fees
24 and expenses to be awarded to Settlement Class Counsel and an incentive award to the Representative
25 Plaintiffs on a date set by the Court, but no later than fourteen (14) days prior to the deadline to submit
26 an objection as set forth in Paragraph 6.6. Such motion will be available on the Class Website.

27 7.6 The Order and Judgment proposed by the Parties shall, among other things, (1)
28 approve the Agreement as fair, reasonable, and adequate, (2) dismiss the Litigation with prejudice and

on the merits with jurisdiction retained to enforce the terms of this Agreement, and (3) award reasonable attorneys' fees and expenses to be awarded to Settlement Class Counsel and any incentive award to the Representative Plaintiffs. Notwithstanding, the approval of the Settlement is not conditioned on the Court's approval of the payment of Settlement Class Counsel's fees, costs and expenses.

8. Conditional Certification of the Settlement Class

24 Hour Fitness hereby consents, solely for purposes of the Settlement, to the conditional certification of the Settlement Class, to the conditional appointment of Settlement Class Counsel for the Settlement Class, and to the conditional approval of Representative Plaintiffs as representatives of the Settlement Class; provided, however, that if there is no Final Settlement Date or if this Agreement or the Settlement is terminated, fails to be approved, fails to become effective, or otherwise fails to be consummated, the Court shall vacate the aforementioned conditional certification of the Settlement Class, the aforementioned conditional appointment of Settlement Class Counsel for the Settlement Class, and the aforementioned conditional approval of Representative Plaintiffs as representatives of the Settlement Class. In addition, in the event that there is no Final Settlement Date or if this Agreement or the Settlement is terminated, fails to be approved, fails to become effective, or otherwise fails to be consummated, the Parties specifically reserve all rights as more specifically set forth in Paragraph 11.7, and Paragraphs 11.7, 11.15 and 11.16 shall survive.

9. Attorneys' Fees and Expenses and Incentive Awards

9.1 Subject to approval by the Court, 24 Hour Fitness agrees to pay attorneys' fees, costs and expenses together totaling no more than one million, five-hundred thousand dollars (\$1,500,000.00) to Settlement Class Counsel's law firms, specifically, Edelson PC, Finkelstein Thompson, LLP, Chimicles & Tikellis LLP, and Tycko & ZavareeI, LLP, care of the Interest on Lawyer Trust Account ("IOLTA") of Edelson PC.

9.2 No later than twenty (20) business days after the Final Settlement Date, 24 Hour Fitness will pay by wire transfer to the IOLTA of Edelson PC, and in accordance with instructions to be provided by Settlement Class Counsel, the approved attorneys' fees, costs, and expenses not to exceed the amount provided in Paragraph 9.1, provided that not later than five (5) business days following the Final Settlement Date, 24 Hour Fitness's counsel receives from Settlement Class Counsel a Form W-9

1 for Edelson PC and written confirmation of all information needed to complete the wire transfer.

2 9.3 Settlement Class Counsel will, in their sole and absolute discretion, allocate and
3 distribute the fees and costs that they receive pursuant to this Agreement among Settlement Class
4 Counsel and any and all other counsel, if applicable. Disagreements, if any, between Settlement Class
5 Counsel and any such other counsel relating to any such fees and costs, or to their individual shares of
6 any such fees and costs, will have no impact on the effectiveness or the implementation of this
7 Agreement, nor will such disagreements increase, modify or otherwise affect the obligations imposed
8 upon 24 Hour Fitness by this Agreement.

9 9.4 The Parties shall not be liable or obligated to pay any fees, expenses, costs or
10 disbursements to any Person, either directly or indirectly, in connection with the Litigation, this
11 Agreement, or the proposed Settlement, other than those expressly provided in this Agreement as being
12 payable by such party.

13 9.5 The Parties agree that the Settlement is not conditioned on the Court's approval of
14 the payment of Settlement Class Counsel's fees, costs and expenses. If an objection and appeal is filed
15 as to Settlement Class Counsel's fees, costs and expenses, but not to any other term of the Agreement,
16 then such appeal shall not delay implementation of the Agreement except as to the payment of
17 Settlement Class Counsel fees, costs and expenses. Notwithstanding the foregoing, the Parties agree
18 that the under no circumstances shall 24 Hour Fitness be obligated to pay attorneys' fees, costs,
19 expenses or reimbursements of any kind or to Settlement Class Counsel for any amount exceeding a
20 total of one million, five-hundred thousand dollars (\$1,500,000.00).

21 9.6 In addition to any payment and relief to which they may be entitled under this
22 Agreement on account of submission of a Valid Claim Form and Declaration, and in recognition of the
23 time and effort they expended on behalf of the Settlement Class, Representative Plaintiffs shall seek
24 incentive awards in the amount of three thousand dollars (\$3,000.00) each, subject to the Court's
25 approval. 24 Hour Fitness agrees to pay such amounts as are approved by the Court.

26 9.7 The Representative Plaintiffs shall be paid the incentive awards by 24 Hour
27 Fitness, as determined by the Court. Payment of the incentive award to the Representative Plaintiffs
28 shall be made by 24 Hour Fitness via check to the Representative Plaintiffs, such checks to be sent care

1 of Settlement Class Counsel no later than twenty (20) business days after the Final Settlement Date and
2 receipt of a Form W-9 for each Representative Plaintiff.

3 **10. Tax Reporting**

4 Any Person receiving any payment or consideration pursuant to this Agreement shall
5 alone be responsible for the reporting and payment of any federal, state and/or local income or other
6 form of tax on any payment or consideration made pursuant to this Agreement, and 24 Hour Fitness
7 shall have no obligations to report or pay any federal, state and/or local income or other form of tax on
8 any payment or consideration made pursuant to this Agreement. Representative Plaintiffs and
9 Settlement Class Counsel acknowledge that neither 24 Hour Fitness nor its counsel have provided any
10 tax advice or offered any representations concerning taxes, and each of the Parties is relying upon the
11 advice of its own tax consultants with regard to any tax consequences that may arise as a result of the
12 execution of this Agreement.

13 **11. Miscellaneous Provisions**

14 11.1 The Parties (a) acknowledge that it is their intent to consummate this Agreement,
15 (b) agree to cooperate in good faith to the extent reasonably necessary to effect and implement all terms
16 and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and
17 conditions of the Agreement, (c) agree to recommend acceptance of the Agreement by all Settlement
18 Class Members, and (d) agree to cooperate in good faith to obtain preliminary and final approval of the
19 Settlement and to finalize the Agreement.

20 11.2 Representative Plaintiffs: (a) agree to serve as representatives of the Settlement
21 Class; (b) remain willing, able and ready to perform all of the duties and obligations of representatives
22 of the Settlement Class; (c) are familiar with the allegations in the Litigation, or have had such
23 allegations described or conveyed to them; (d) have consulted with Settlement Class Counsel about the
24 Litigation (including discovery conducted in the Litigation), this Agreement, and the obligations of
25 representatives of the Settlement Class; and (e) shall remain and serve as representatives of the
26 Settlement Class until the terms of this Agreement are effectuated and fully implemented, this
27 Agreement is terminated in accordance with its terms, or, the Court at any time determines that the
28 Representative Plaintiffs cannot represent the Settlement Class.

1 11.3 The Parties agree that the amounts paid in Settlement and the other terms of the
2 Settlement were negotiated in good faith and at arm's-length by the Parties, and reflect a settlement that
3 was reached voluntarily after consultation with competent legal counsel.

4 11.4 No Person shall have any claim against Settlement Class Counsel, the Settlement
5 Administrator, 24 Hour Fitness's counsel or any of the Released Parties based on actions taken
6 substantially in accordance with the Agreement and the Settlement contained therein or further orders of
7 the Court.

8 11.5 24 Hour Fitness specifically and generally denies any and all liability or
9 wrongdoing of any sort with regard to any of the claims or allegations in the Litigation and makes no
10 concessions or admissions of liability of any sort. Neither this Agreement nor any drafts or
11 communications related thereto, nor any act performed or document executed pursuant to, or in
12 furtherance of, the Agreement: (a) is, may be deemed, or shall be used, offered or received against 24
13 Hour Fitness, Representative Plaintiffs or the Settlement Class, or each or any of them, or against the
14 Released Parties, or each or any of them, as an admission, concession or evidence of, the infirmity or
15 strength of any claims asserted in the Litigation, the truth or falsity of any fact alleged, or the availability
16 or lack of availability of meritorious defenses to the claims raised in the Litigation; (b) is, may be
17 deemed, or shall be construed, against 24 Hour Fitness, Representative Plaintiffs or the Settlement Class,
18 or each or any of them, or against the Released Parties, or each or any of them, as an admission or
19 concession that the consideration to be given hereunder represents an amount equal to, less than or
20 greater than that amount that could have or would have been recovered after trial; and (c) is, may be
21 deemed, or shall be construed as or received in evidence as an admission or concession against 24 Hour
22 Fitness Representative Plaintiffs or the Settlement Class, or each and any of them, or against the
23 Released Parties, or each or any of them, that any of Representative Plaintiffs' claims or 24 Hour
24 Fitness's defenses are with or without merit or that damages recoverable in the Litigation would have
25 exceeded or would have been less than any particular amount.

26 11.6 24 Hour Fitness shall have the option in its sole discretion to terminate this
27 Agreement if more than seven hundred and fifty (750) Persons in the Settlement Class properly submit a
28 timely Opt Out, as described in Paragraph 6.2.

1 11.7 Representative Plaintiffs and Settlement Class Counsel agree that if this
2 Agreement or the Settlement is terminated, fails to be approved, fails to become effective, or otherwise
3 fails to be consummated, or if there is no Final Settlement Date, 24 Hour Fitness does not waive, but
4 rather shall expressly retains and reserve, any and all of the rights it had prior to the execution of this
5 Agreement, including, without limitation, to challenge all claims and allegations in the Litigation upon
6 all procedural and factual grounds, and to assert all potential defenses and privileges and to object to the
7 maintenance of the Litigation as a class action by Settlement Class Counsel and Representative
8 Plaintiffs. Representative Plaintiffs and Settlement Class Counsel agree that nothing in this Agreement
9 or other papers or proceedings related to the Agreement shall be used as evidence or argument
10 concerning whether or not the Litigation may properly be maintained as a class action, whether the
11 purported class is ascertainable, or whether Settlement Class Counsel or Representative Plaintiffs can
12 adequately represent class members under applicable law. If the Agreement is deemed void or the Final
13 Settlement Date does not occur, Representative Plaintiffs and Settlement Class Counsel agree not to
14 argue or present any argument, and hereby waive any argument, that 24 Hour Fitness could not contest
15 (or is estopped from contesting) class certification as a result of this Agreement or based on any grounds
16 it had prior to the execution of this Agreement; and this Agreement shall not be deemed an admission
17 by, or ground for estoppel against, 24 Hour Fitness that class certification or any claims brought in the
18 Litigation are proper or that such class certification or claims cannot be contested on any grounds that 24
19 Hour Fitness had prior to the execution of this Agreement. Representative Plaintiffs and Settlement
20 Class Counsel retain and reserve any and all rights and arguments they had prior to execution of this
21 Agreement to oppose 24 Hour Fitness's positions and arguments, in the event the Agreement is declared
22 void or the Final Settlement Date does not occur. If the Agreement is deemed void or the Final
23 Settlement Date does not occur, Representative Plaintiffs, Settlement Class Counsel and 24 Hour Fitness
24 agree not to argue or present any argument, and hereby waive any argument, that this Agreement is an
25 admission, concession or evidence of, the infirmity or strength of any claims asserted in the Litigation,
26 the truth or falsity of any fact alleged in the Litigation, or the infirmity or strength of defenses to the
27 claims raised in the Litigation. Each of the Parties will be restored to the place it was in as of the date
28 this Agreement was signed with the right to assert in the Litigation any argument or defense that was

1 available to it at that time.

2 11.8 The exclusive conditions upon which this Agreement is terminable are set out
3 specifically in this Agreement.

4 11.9 The Parties agree, to the extent permitted by law, that all agreements made and
5 orders entered during the course of the Litigation relating to confidentiality of information, including,
6 without limitation, the Stipulated Protective Order on file in the Litigation, ECF No. 75, shall survive
7 this Agreement.

8 11.10 The Agreement may be amended or modified only by a written instrument signed
9 by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this
10 Agreement or consent to any departure by either party therefrom shall be effective unless the same shall
11 be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective
12 only in the specific instance and for the purpose for which given. No amendment or modification made
13 to this Agreement pursuant to this Paragraph 11.10 shall require any additional notice to the Settlement
14 Class, including written or publication notice, unless ordered by the Court. Representative Plaintiffs and
15 Settlement Class Counsel agree not to seek such additional notice. The Parties may provide updates on
16 any amendments or modifications made to this Agreement on the Class Website.

17 11.11 Each Person executing the Agreement on behalf of any party hereto hereby
18 warrants that such Person has the full authority to do so.

19 11.12 The Agreement may be executed in one or more counterparts. All executed
20 counterparts and each of them shall be deemed to be one and the same instrument. Furthermore, digital,
21 pdf, or copies of original signatures required for execution of this Agreement may be accepted as actual
22 signatures, and will have the same force and effect as the original. A complete set of executed
23 counterparts shall be filed with the Court.

24 11.13 The Agreement shall be binding upon, and inure to the benefit of, the successors,
25 heirs, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any
26 third-party beneficiaries either express or implied, except the Settlement Class Members.

27 11.14 The language of all parts of this Agreement shall in all cases be construed as a
28 whole, according to its fair meaning, and not strictly for or against either party. No party shall be

1 deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are
2 contractual and are the product of arm's-length negotiations between the Parties and their counsel. Each
3 party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction
4 to be made of the Agreement, the Agreement shall not be construed against any party.

5 11.15 Other than necessary disclosures made to the Court or the Settlement
6 Administrator, this Agreement and all related information and communication shall be held strictly
7 confidential by Representative Plaintiffs, Settlement Class Counsel, 24 Hour Fitness, their counsel of
8 record, and their agents until such time as the Parties file this Agreement with the Court.

9 11.16 The Parties and their counsel further agree that their discussions and the
10 information exchanged in the course of negotiating this Settlement are confidential under the terms of
11 the mediation agreement signed by the Parties in connection with the mediation sessions with the JAMS
12 Mediator, John B. Bates, and any follow-up negotiations between the Parties' counsel. Such exchanged
13 information was made available on the condition that neither the Parties nor their counsel may disclose it
14 to third parties, that it not be the subject of public comment, and that it not be publicly disclosed or used
15 by the Parties or their counsel in any way in the Litigation should it not settle, or in any other
16 proceeding.

17 11.17 All provisions of this Agreement shall be governed by and interpreted in
18 accordance with the laws of the State of California, without reference to its choice of law or conflict of
19 laws rules.

20 11.18 No party shall be deemed the prevailing party for any purposes of this Litigation.

21 11.19 Nothing in this Agreement shall in any way impair or limit any of 24 Hour
22 Fitness's rights to sell, transfer, assign, lease, license, pledge, encumber or otherwise dispose of any
23 interest in any 24 Hour Fitness Club, it being expressly acknowledged and agreed by the Parties that any
24 determination to sell, transfer, assign, lease, license, pledge, encumber or otherwise dispose of any such
25 interest shall be made by 24 Hour Fitness in its sole and absolute discretion.

26 11.20 The Parties and their counsel shall only respond to inquiries by the press and
27 shall not initiate contact with the press.

28 11.21 All exhibits to this Agreement are material and integral parts hereof and are fully

1 incorporated herein by reference.

2 11.22 The Agreement and the exhibits attached hereto constitute the entire agreement
3 among the Parties hereto. The Parties represent that they have not relied upon any representations,
4 warranties or inducements other than those contained herein. The Parties represent that no
5 representations, warranties or inducements have been made to any party concerning the Agreement or its
6 exhibits other than the representations, warranties and covenants contained and memorialized in such
7 documents. Except as otherwise provided herein, each party shall bear its own costs.

8 11.23 Settlement Class Counsel, on behalf of the Settlement Class, are expressly
9 authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be
10 taken by the Settlement Class pursuant to the Agreement to effect its terms, and also are expressly
11 authorized to enter into any modifications or amendments to the Agreement on behalf of the Settlement
12 Class which they deem appropriate.

13 11.24 The Court shall retain jurisdiction with respect to implementation and
14 enforcement of the terms of the Agreement and any discovery sought from or concerning objectors to
15 this Agreement. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing
16 and enforcing the Settlement embodied in the Agreement. Any action to enforce this Agreement shall be
17 commenced and maintained only in the Court.

18 11.25 Whenever this Agreement requires or contemplates that one party shall or may
19 give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturday and
20 Sunday) express delivery service as follows:

21 (a) If to 24 Hour Fitness, then to:
22 Elizabeth L. Deeley
23 Austin L. Klar
24 KIRKLAND & ELLIS LLP
25 555 California Street
26 San Francisco, CA 94104
27 Telephone: (415) 439-1400
28 elizabeth.deeley@kirkland.com
 austin.klar@kirkland.com

(b) If to Representative Plaintiffs, then to:

Eve-Lynn Rapp
EDELSON PC
123 Townsend Street, Suite 100
San Francisco, CA 94107
Facsimile: (415) 373-9435
erapp@edelson.com

Gordon M. Fauth, Jr.
Of Counsel to Finkelstein Thompson LLP
100 Pine Street, Suite 1250
San Francisco, California 94111
Facsimile: (415) 398-8704
gfauth@finkelsteinthompson.com

Timothy N. Mathews
Catherine Pratsinakis
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
Facsimile: (610) 649-3633
TimothyMathews@chimicles.com
cp@chimicles.com

Kristen L. Sagafi
TYCKO & ZAVAREEI LLP
483 Ninth Street, Suite 200
Oakland, CA 94607
ksagafi@tzlegal.com

11.26 The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

11.27 None of the proposed settlement relief shall include or constitute, or be deemed to include or constitute, punitive or exemplary damages.

11.28 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Each other day of the period to be computed shall be included, including the last day thereof, unless such last day is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court on a day in which the court is closed during regular business hours. In any event, the period runs until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or a day on which the court is closed. When a time period is less than seven

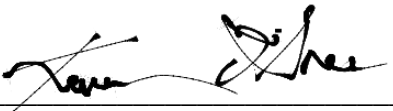
1 business days, intermediate Saturdays, Sundays, legal holidays, and days on which the court is closed
2 shall be excluded from the computations. As used in this Paragraph, “legal holiday” includes New
3 Year’s Day, Martin Luther King, Jr. Day, Good Friday, Primary Election Day, Presidents’ Day,
4 Memorial Day, Independence Day, Labor Day, Columbus Day, General Election Day, Veterans Day,
5 Thanksgiving Day, Lincoln’s Birthday, Washington’s Birthday, Christmas Day and any other day
6 appointed as a holiday by federal law or California law.

7 *[Signature Pages to Follow]*
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5 
6 _____
By: Kevin O'Shea

Dated: 10/27/17

8 **RUSSELL MARCHEWKA**

9 _____
10 By: Russell Marchewka

Dated: _____

12 **MARK VITCOV**

13 _____
14 By: Mark Vitcov

Dated: _____

16 **ROD MORRIS**

17 _____
18 By: Rod Morris

Dated: _____

20 **MICHAEL LOSQUADRO**

21 _____
22 By: Michael Losquadro

Dated: _____

24 **DIPTI SHAH**

25 _____
26 By: Dipti Shah

Dated: _____


1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5
6 _____ Dated: _____
7 By: Kevin O'Shea

8 **RUSSELL MARCHEWKA**

9 
10 _____ Dated: 11/1/2017
11 By: Russell Marchewka

12 **MARK VITCOV**

13
14 _____ Dated: _____
15 By: Mark Vitcov

16 **ROD MORRIS**

17
18 _____ Dated: _____
19 By: Rod Morris

20 **MICHAEL LOSQUADRO**

21
22 _____ Dated: _____
23 By: Michael Losquadro

24 **DIPTI SHAH**

25
26 _____ Dated: _____
27 By: Dipti Shah

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5
6 _____
7 By: Kevin O'Shea

Dated: _____

8 **RUSSELL MARCHEWKA**

9
10 _____
11 By: Russell Marchewka

Dated: _____

12 **MARK VITCOV**

13 
14 _____
15 By: Mark Vitcov

Dated: 10/26/2017

16 **ROD MORRIS**

17
18 _____
19 By: Rod Morris

Dated: _____

20 **MICHAEL LOSQUADRO**

21
22 _____
23 By: Michael Losquadro

Dated: _____

24 **DIPTI SHAH**

25
26 _____
27 By: Dipti Shah

Dated: _____

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5
6 _____
7 By: Kevin O'Shea

Dated: _____

8 **RUSSELL MARCHEWKA**

9
10 _____
11 By: Russell Marchewka


Dated: _____

12 **MARK VITCOV**

13
14 _____
15 By: Mark Vitcov

Dated: _____

16 **ROD MORRIS**

17 
18 _____
19 By: Rod Morris

Dated: 10/27/2017

20 **MICHAEL LOSQUADRO**

21
22 _____
23 By: Michael Losquadro

Dated: _____

24 **DIPTI SHAH**

25
26 _____
27 By: Dipti Shah

Dated: _____

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5
6 _____
7 By: Kevin O'Shea

Dated: _____

8 **RUSSELL MARCHEWKA**

9
10 _____
11 By: Russell Marchewka

Dated: _____

12 **MARK VITCOV**

13
14 _____
15 By: Mark Vitcov

Dated: _____

16 **ROD MORRIS**

17
18 _____
19 By: Rod Morris

Dated: _____

20 **MICHAEL LOSQUADRO**

21 
22 _____
23 By: Michael Losquadro

Dated: 10-26-17

24 **DIPTI SHAH**

25
26 _____
27 By: Dipti Shah

Dated: _____

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be
2 executed, by their duly authorized representatives.

3 **PLAINTIFFS**

4 **KEVIN O'SHEA**

5
6 _____
7 By: Kevin O'Shea

Dated: _____

8 **RUSSELL MARCHEWKA**

9
10 _____
11 By: Russell Marchewka

Dated: _____

12 **MARK VITCOV**

13
14 _____
15 By: Mark Vitcov

Dated: _____

16 **ROD MORRIS**

17
18 _____
19 By: Rod Morris

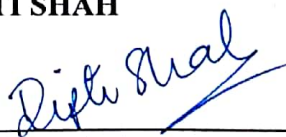
Dated: _____

20 **MICHAEL LOSQUADRO**

21
22 _____
23 By: Michael Losquadro

Dated: _____

24 **DIPTI SHAH**

25 
26 _____
27 By: Dipti Shah

Dated: 10/31/2017

1 **DEFENDANT**

2
3 **24 HOUR FITNESS USA, Inc.**

4
5 By: 

6 Its:

Frank J. Napolitano
President

Dated: 10/31/2017

APPROVED AS TO FORM

EDELSON PC



By:
Attorneys for Plaintiffs

Dated: 11/1/17

FINKELSTEIN THOMPSON LLP

By: Gordon M. Fauth, Jr.
Of Counsel, Finkelstein Thompson LLP
Attorneys for Plaintiffs

Dated: _____

TYCKO & ZAVAREEI LLP

By: Kristen L. Sagafi
Attorneys for Plaintiffs

Dated: _____

CHIMICLES & TIKELLIS LLP

By: Timothy N. Mathews
Attorneys for Plaintiffs

Dated: _____

KIRKLAND & ELLIS LLP

By: Elizabeth L. Deeley
Attorneys for Defendant

Dated: _____

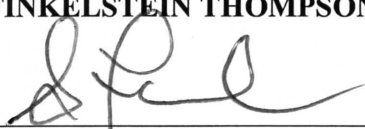
APPROVED AS TO FORM

EDELSON PC

By:
Attorneys for Plaintiffs

Dated: _____

FINKELSTEIN THOMPSON LLP



By: Gordon M. Fauth, Jr.
Of Counsel, Finkelstein Thompson LLP
Attorneys for Plaintiffs

Dated: 11/1/17

TYCKO & ZAVAREEI LLP

By: Kristen L. Sagafi
Attorneys for Plaintiffs

Dated: _____

CHIMICLES & TIKELLIS LLP

By: Timothy N. Mathews
Attorneys for Plaintiffs

Dated: _____

KIRKLAND & ELLIS LLP

By: Elizabeth L. Deeley
Attorneys for Defendant

Dated: _____

1 APPROVED AS TO FORM

2
3 EDELSON PC

4
5 By: _____
6 Attorneys for Plaintiffs

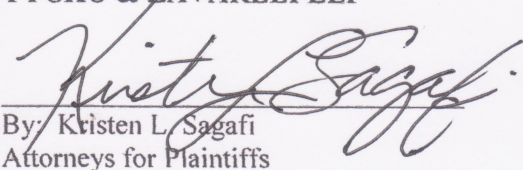
Dated: _____

7 FINKELSTEIN THOMPSON LLP

8
9
10 By: Gordon M. Fauth, Jr.
11 Of Counsel, Finkelstein Thompson LLP
Attorneys for Plaintiffs

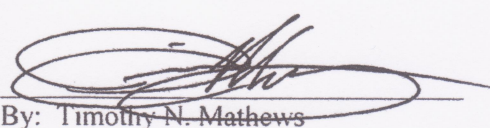
Dated: _____

12 TYCKO & ZAVAREEI LLP

13
14 
15 By: Kristen L. Sagafi
16 Attorneys for Plaintiffs

Dated: 11/1/17

17 CHIMICLES & TIKELLIS LLP

18
19 
20 By: Timothy N. Mathews
Attorneys for Plaintiffs

Dated: 10-31-17

21 KIRKLAND & ELLIS LLP

22
23
24 By: Elizabeth L. Deeley
25 Attorneys for Defendant

Dated: _____

APPROVED AS TO FORM

EDELSON PC

By:
Attorneys for Plaintiffs

Dated: _____

FINKELSTEIN THOMPSON LLP

By: Gordon M. Fauth, Jr.
Of Counsel, Finkelstein Thompson LLP
Attorneys for Plaintiffs

Dated: _____

TYCKO & ZAVAREEI LLP

By: Kristen L. Sagafi
Attorneys for Plaintiffs


Dated: _____

CHIMICLES & TIKELLIS LLP

By: Timothy N. Mathews
Attorneys for Plaintiffs

Dated: _____

KIRKLAND & ELLIS LLP



By: Elizabeth L. Deeley
Attorneys for Defendant

Dated: 11-1-17

EXHIBIT 1

24 Hour Fitness USA, Inc.
Prepaid Memberships Settlement
c/o [_____]
Toll-Free Phone: 1-800-[_____]
Facsimile: [_____]
Website: [_____]

CLAIM FORM AND DECLARATION

DEADLINE: SUBMIT NO LATER THAN [DATE]

INSTRUCTIONS

1. **You should complete this Claim Form if one (or more than one) of the following applies to you:**
 - (A) You can truthfully attest, under penalty of perjury, that a 24 Hour Fitness representative told you at the time you entered into a Prepaid Membership that the Annual Renewal Amount listed on the first page of your Prepaid Membership was guaranteed for life or that it would not increase in future years (Part II below); or
 - (B) After receiving notice of an Increased Annual Renewal Amount, you terminated your Prepaid Membership and you now wish to reinstate it (Part III below); or
 - (C) You are a Family Add-On Prepaid Member, you severed your Prepaid Membership from the Primary Member, and you wish to request (Part IV below) that a Declaration be sent to the Primary Member previously linked to your Prepaid Membership so that the Primary Member may submit a Declaration on your behalf; or
 - (D) You would like to update or correct information in Part I below.
2. If none of the above applies to you, you do not need to complete this Claim Form and Declaration. You will still receive the benefits offered to all Settlement Class Members as described in the Notice. If 1(A) applies to you, you need to complete this Claim Form and Declaration to get full relief afforded under the Settlement Agreement.
3. **DEADLINE:** The deadline to submit a Claim Form and Declaration is **[DATE]**. You can mail the Claim Form and Declaration in the self-addressed postage-paid envelope provided with the Notice, or upload a hand-signed copy of the Claim Form and Declaration that includes all pages thereof to the Class Website at **[WEB ADDRESS]**.
4. For more information, you can review the Notice of Proposed Class Action Settlement or the Settlement Agreement in the Class Action case, and the Judgment in the Government Settlement.

I. PREPAID MEMBER INFORMATION

Part I lists your name, contact, and membership information. You only need to make changes in the space provided below if any of your information is incorrect.

Name: [ALL AUTO-POPULATED]

Address:

City, State, Zip Code:

Telephone Number:

E-mail Address:

24 Hour Fitness Member Number:

Enter any necessary corrections here:

II. DECLARATION UNDER PENALTY OF PERJURY

Complete the Declaration section below if you can truthfully attest, under penalty of perjury, that a 24 Hour Fitness representative told you at the time you entered into a Prepaid Membership that the Annual Renewal Amount listed on the first page of your Prepaid Membership was guaranteed for life or that it would not increase in future years.

As set forth more fully in the Notice, if you complete the Declaration, you will be entitled to a refund of the difference between your Initial Annual Renewal Amount and any Increased Annual Renewal Amounts already paid, and (i) if you maintain a current Prepaid Membership status, to renew your Prepaid Membership for the Initial Annual Renewal Amount in the future, as long as you timely pay and remain a Prepaid Member in good standing, or (ii) if your Prepaid Membership was terminated, to reinstate your Prepaid Membership and renew it for the Initial Annual Renewal Amount in the future, as long as you timely pay and remain a Prepaid Member in good standing.

Complete the Family Add-On Declaration section below if you can truthfully attest that a 24 Hour Fitness representative told you at the time you purchased the Family Add-On Prepaid Membership that the Annual Renewal Amount listed on the first page of the Family Add-On Prepaid Membership was guaranteed for life or that it would not increase in future years.

1. Please print or type your responses in ink. All responses must be clear, legible, and complete.
2. Place your initials in the space provided next to a numbered paragraph ***only*** if you remember the facts provided in that paragraph and can attest that the facts provided in that paragraph are true.

DECLARATION

Complete this Declaration if you purchased a Prepaid Membership on your own behalf. If you purchased Family Add-On Prepaid Memberships, complete the Family Add-On Declaration on the next page.

I, _____, declare under penalty of perjury the following is true and correct:
[Print Name]

1. ____ I have personal knowledge of and remember the matters stated herein, and I could and would testify competently to these matters if called upon to do so.

2. ____ **I remember that a 24 Hour Fitness representative told me that the Annual Renewal Amount listed on the first page of my Prepaid Membership was guaranteed for life or that it would not increase in future years, so long as the Annual Renewal Amount was paid on time and I remained a Prepaid Member in good standing.**

3. I declare under penalty of perjury that the foregoing is true and correct and I understand that the penalty for perjury may include fines, imprisonment, or both.

4. I understand that my Declaration may be shared with other persons, including the court, Settlement Administrator, Parties, California District Attorneys Offices for Contra Costa and Orange Counties, and Counsel for the Parties.

Executed in _____, _____ on this ____ of _____, 2018.
[City] [State] [Day] [Month]

Signature

FAMILY ADD-ON DECLARATION

Complete this Family Add-On Declaration if you purchased one or more Family Add-On Prepaid Memberships.

I, _____, declare under penalty of perjury the following is true and correct:
[Print Name]

1. _____ I have personal knowledge of and remember the matters stated herein, and I could and would testify competently to these matters if called upon to do so.

2. _____ I purchased a Family Add-On Prepaid Membership from 24 Hour Fitness for the following persons:

[PRINT FULL NAMES OF FAMILY MEMBERS]

3. _____ **I remember that a 24 Hour Fitness representative told me that the Annual Renewal Amount listed on the first page of each Family Add-On Prepaid Membership was guaranteed for life or that it would not increase in future years, so long as the Annual Renewal Amount for the Family Add-On Prepaid Membership was paid on time and the individual with such Family Add-On Prepaid Membership remained a Prepaid Member in good standing.**

4. I declare under penalty of perjury that the foregoing is true and correct and I understand that the penalty for perjury may include fines, imprisonment, or both.

5. I understand that my Declaration may be shared with other persons, including the court, Settlement Administrator, Parties, California District Attorneys Offices for Contra Costa and Orange Counties, and Counsel for the Parties.

Executed in _____, _____ on this ____ of _____, 2018.
[City] [State] [Day] [Month]

Signature

III. REQUEST REINSTATEMENT

☐ Check this box if your Prepaid Membership terminated after receiving notice of an Increased Annual Renewal Amount *and you wish to request reinstatement*.

24 Hour Fitness will send you an invoice with instructions for payment of the Reinstatement Payment, which you must pay within ninety (90) days of the invoice date.

If you also complete Part II, you will be entitled to reinstatement at your Initial Annual Renewal Amount.

If you do not also complete Part II, you will still be entitled to reinstatement at an amount that will be provided on the invoice, which will be sent to you.

IV. REQUEST DECLARATION TO BE SENT TO PRIMARY MEMBER FOR FAMILY ADD-ON PREPAID MEMBERSHIP

☐ Check this box if you are a Family Add-On Prepaid Member, severed your Prepaid Membership from the Primary Member, and would like to provide that Primary Member the opportunity to submit a Declaration on your behalf. *If you checked this box, please print the Primary Member's information in the spaces below.*

Name:

Address:

City:

State:

Zip:

Phone:

Email:

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re 24 Hour Fitness Prepaid Memberships Litigation, Case No. 4:16-cv-01668-JSW (N.D. Cal.)

You are receiving this Notice because you purchased or updated* a Prepaid Membership Agreement with 24 Hour Fitness on or after April 1, 2006. VERY IMPORTANT: Your Prepaid Membership agreement states that 24 Hour Fitness may increase your Annual Renewal Amount. If, when you purchased your Prepaid Membership, a 24 Hour Fitness representative told you that your Annual Renewal Amount would not increase, you may be entitled to a payment or other benefits, from class action and government lawsuit settlements.

You may be entitled to benefits from these settlements whether or not your Annual Renewal Amounts have already been raised. IF YOU DO NOT TAKE FURTHER ACTION, as directed herein, 24 Hour Fitness may increase your Annual Renewal Amounts in the future even if they have not yet been increased.

A federal court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- Settlements have been reached in class action lawsuits (the “Class Settlement”) and a government lawsuit (“Government Settlement” and together with the Class Settlement, the “Settlements”) against 24 Hour Fitness USA, Inc. (“24 Hour Fitness”) involving Prepaid Memberships. A Prepaid Membership is a 24 Hour Fitness membership agreement entered into on or after April 1, 2006, where members prepaid one to three years of dues up front, and had the option to renew their agreement each year after expiration of the prepaid term in exchange for a payment.
- The lawsuit alleges that 24 Hour Fitness represented that by signing up for a Prepaid Membership, the Annual Renewal Amount listed on the first page of their Prepaid Memberships would be guaranteed for life or would not increase in future years, but that 24 Hour Fitness nonetheless increased some of its Prepaid Members’ Annual Renewal Amounts beginning in April 2015.
- * If you purchased a membership with a prepaid amount prior to April 2006 on a contract form that guaranteed your Annual Renewal Amount would not be increased in the future, and you subsequently updated your contract to a Prepaid Membership on or after April 2006, your updated Prepaid Membership states that your Annual Renewal Amount may be increased. If you updated your membership to a Prepaid Membership on or after April 2006 and a 24 Hour Fitness representative told you that your Annual Renewal Amount would not be increased in the future, you are entitled to benefits under the Settlements. If you do not take further action as

directed in this Notice, the Annual Renewal Amount for your Prepaid Membership may be increased at a future time, even if it has not yet been increased. If you are receiving this Notice, the written contract for your latest Prepaid Membership states that your Annual Renewal Amount may be increased.

- If the Court approves the Class Settlement, current and former members of 24 Hour Fitness will be entitled to receive benefits, including:

If you submit a Valid Claim Form and Declaration (attached to this Notice or available at **[WEB ADDRESS]**) the following applies:

If your Annual Renewal Amount has already been increased, (1) it will revert back to the Initial Annual Renewal Amount, (2) you will receive a refund of any increased amounts already paid, plus applicable taxes if any, and (3) you shall be entitled to renew your Prepaid Membership for the Initial Renewal Amount plus applicable taxes, if any, in the future, as long as you timely pay the Annual Renewal Amount and remain a Prepaid Member in good standing.

Important: To secure this benefit, you **MUST** submit a Claim Form and Declaration **even if your Annual Renewal Amount has not been increased**. The filing of a Valid Claim Form and Declaration is the only way to ensure that your Annual Renewal Amount will remain fixed at the Initial Annual Renewal Amount. Otherwise, 24 Hour Fitness **may increase** your Annual Renewal Amount after a period of two (2) to three (3) consecutive annual renewal periods at its discretion. **In addition, if you already paid any increase over the Initial Annual Renewal Amount, you will receive a full refund of the amount of any increase paid above the Initial Annual Renewal Amount plus applicable taxes if any.**

You will also be provided the right to reinstate your Prepaid Membership if it was terminated after your Annual Renewal Amount increased.

If you choose to do nothing and do not submit a Valid Claim Form and Declaration, the following applies:

If 24 Hour Fitness already increased your Annual Renewal Amount, your Annual Renewal Amount will be discounted for the next three (3) consecutive annual renewal periods by 10% of the amount of the Increase Difference. You will also be provided the right to reinstate your Prepaid Membership if it was terminated after your Annual Renewal Amount increased.

If 24 Hour Fitness has not yet increased your Annual Renewal Amount, 24 Hour Fitness may increase your Annual Renewal Amount by no more than \$45 for Prepaid Sport Members, or \$90 for Prepaid Super-Sport Members or Prepaid Ultra-Sport Members, for the first such increase, and will not further increase the Annual Renewal Amount for the next two (2) consecutive annual renewal periods.

- 24 Hour Fitness denies any wrongdoing and maintains that its practices at all times complied with its representations, the terms of its Prepaid Memberships, and the law. The Class Settlement does not decide who is right, but instead is a compromise to end the lawsuit and

avoid the uncertainties and costs associated with a trial.

- You may be included in the Class Settlement and Government Settlement if you reside in the United States, enrolled in a Prepaid Membership on or after April 1, 2006, and were enrolled in a Prepaid Membership as of April 1, 2015.
- Please read this Notice carefully. Your legal rights are affected, whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENTS	
DO NOTHING	<p>If your Annual Renewal Amount has already been increased, your Annual Renewal Amount will be reduced to an amount equal to 90% of the Increase Difference (the "Reduced Annual Renewal Amount"), and will remain the same for a period of two (2) to three (3) consecutive annual renewal periods, depending on the status of your Prepaid Membership.</p> <p>If your Annual Renewal Amount has not yet been increased, 24 Hour Fitness may increase your Annual Renewal Amount by no more than \$45 for Prepaid Sport Members, or \$90 for Prepaid Super-Sport Members or Prepaid Ultra-Sport Members, for the first such increase, and will not further increase the Annual Renewal Amount for the next two (2) consecutive annual renewal periods.</p> <p>You will also be provided the right to reinstate your Prepaid Membership for the Reduced Annual Renewal Amount if your Prepaid Membership was terminated after your Annual Renewal Amount increased. You will not, however, be entitled to a refund, and 24 Hour Fitness will retain the right to increase your Annual Renewal Amount after two (2) or three (3) consecutive annual renewal periods, depending on the status of your Prepaid Membership. You will receive no benefits under the Government Settlement.</p>
SUBMIT A CLAIM FORM AND DECLARATION	<p>You will be entitled to a refund of any amounts paid above your Initial Annual Renewal Amount, plus applicable taxes if any. You will be entitled to renew your Prepaid Membership or, if your Prepaid Membership is terminated, reinstate and renew your Prepaid Membership, for the Initial Annual Renewal Amount stated on the front page of your Prepaid Membership, plus applicable taxes if any, in the future, as long as you timely pay and remain a Prepaid Member in good standing.</p>
EXCLUDE YOURSELF	<p>You will receive no benefits under the Class Settlement.</p>
OBJECT	<p>Write to the Court explaining why you don't like the Class Settlement.</p>
ATTEND THE FAIRNESS HEARING	<p>Ask to speak in Court about the fairness of the Class Settlement.</p>

These rights and options—and the deadlines to exercise them—are explained in this Notice.

BASIC INFORMATION

1. What is this Notice and why should I read it?

The Court authorized this Notice to let you know about a proposed Class Settlement with 24 Hour Fitness. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the class action lawsuit, the Class Settlement, and your legal rights.

Judge Jeffery S. White of the U.S. District Court for the Northern District of California is overseeing the class action. The case is called *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW (N.D. Cal.). The persons who filed the lawsuit, Kevin O'Shea, Mark Vitcov, Rod Morris, Michael Losquadro, Dipti Shah and Russell Marchewka, are called the Plaintiffs or the Representative Plaintiffs. The company they sued, 24 Hour Fitness USA, Inc., is the Defendant. Collectively, the Plaintiffs and 24 Hour Fitness are the "Parties."

24 Hour Fitness has also settled claims with the Orange County and Contra Costa District Attorneys' Offices, who act on behalf of the People of the State of California. While the District Attorneys' offices have a separate settlement with 24 Hour Fitness, the terms of that settlement stipulate that the Claim Form and Declaration shall be used to obtain benefits under the Government Settlement. If you do not submit a Claim Form and Declaration by **[DATE]**, you will not be eligible to receive benefits pursuant to the Government Settlement, or the benefits described in Part A under Question 6, below, pursuant to the Class Settlement.

2. What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs sue on behalf of a group of people who have similar claims. Together, this group is called a "Class" and consists of "Class Members." In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class. After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Class Settlement and recognized it as a case that should be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit alleges that 24 Hour Fitness promised its customers when joining the gym that, in exchange for signing up for a Prepaid Membership, customers would be entitled to a fixed Annual Renewal Amount for life, so long as they remained Prepaid Members in good standing and timely paid their Annual Renewal Amount, but that despite its promises, 24 Hour Fitness began increasing some Prepaid Members' Annual Renewal Amounts beginning in April 2015.

24 Hour Fitness denies these allegations and that it violated the law by increasing Annual Renewal Amounts for Prepaid Members. The Court has not decided whether 24 Hour Fitness did anything wrong. The Class Settlement is a compromise to end the lawsuit and avoid the uncertainties and costs associated with a trial. The Class Settlement is not an admission of wrongdoing by 24 Hour Fitness. More information about the lawsuit can be found in the "Court Documents" section of the settlement website at **[WEB ADDRESS]**.

4. Why is there a Class Settlement?

The Court has not decided whether the Plaintiffs or the Defendant should win this case. Instead, the Parties have agreed to the Class Settlement. That way, they can avoid the uncertainty and expense of a trial. The Representative Plaintiffs and their attorneys believe that the Class Settlement is in the best interests of Settlement Class Members.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am a member of the Settlement Class?

You are a member of the Settlement Class who may receive benefits under the Class Settlement if you are a resident of the United States, who enrolled in, or *updated a 24 Hour Fitness Prepaid Membership on or after April 1, 2006, and were still enrolled in a Prepaid Membership as of April 1, 2015, as indicated in 24 Hour Fitness's membership records system.

The Settlement Class does not include: (a) any officers or employees of the Court, the mediator, and their respective immediate family members, (b) counsel for all Parties and their immediate family members, (c) any current employees or agents of 24 Hour Fitness, (d) any Person whose Prepaid Membership was terminated but who did not receive notice of Increased Annual Renewal Amount, as indicated in 24 Hour Fitness's membership records system, and (e) any persons who properly opt out of the Class Settlement.

If you are not sure whether you are included in the Class Settlement, you may call the Court-appointed Settlement Administrator, Rust Consulting, Inc., at **[PHONE NUMBER]**.

THE SETTLEMENT BENEFITS

6. What does the Class Settlement provide?

24 Hour Fitness has agreed to provide various benefits to Settlement Class Members as outlined in Parts A and B, below.

A. Settlement Class Members who submit a Valid Claim Form and Declaration are entitled to the following benefits:

- **If you have a Prepaid Membership and you already paid Annual Renewal Amounts that were increased above your Initial Annual Renewal Amount, and you submit a Valid Claim Form and Declaration**, you will be entitled to: (1) a refund of any amounts you paid above the Initial Annual Renewal Amount listed in your Prepaid Membership plus applicable taxes if any, and (2) renew your Prepaid Membership at the Initial Annual Renewal Amount, plus applicable taxes if any, in the future, as long as you timely pay the Annual Renewal Amount and any applicable taxes and you remain a Prepaid Member in good standing. **NOTE: if you do not submit a Valid Claim Form and Declaration, 24 Hour Fitness may increase your Annual Renewal Amount at any time, subject to the limitations in Part B, below.**
- **If you have a Prepaid Membership and your Annual Renewal Amount has not been increased, and you submit a Valid Claim Form and Declaration**, 24 Hour Fitness will

not increase your Annual Renewal Amount in the future, as long as you timely pay the Annual Renewal Amount plus applicable taxes if any and you remain a Prepaid Member in good standing. **NOTE: If you do not submit a Claim Form and Declaration, 24 Hour Fitness may increase your Annual Renewal Amount at any time, subject to the limitations in Part B, below.**

- **If your Prepaid Membership was terminated (other than for cause as defined in your Prepaid Membership) after you were notified of an increase to your Annual Renewal Amount (including for failure to pay the Increased Annual Renewal Amount) and you submit a Valid Claim Form and Declaration,** you will be entitled to reinstate your membership by paying the Initial Annual Renewal Amount plus applicable taxes if any and you may renew your membership for the Initial Annual Renewal Amount plus applicable taxes, if any, in the future as long as you timely pay the Annual Renewal Amount and any applicable taxes and you remain a Prepaid Member in good standing. You will also receive a refund of any amounts you paid above the Initial Annual Renewal Amount listed in your Prepaid Membership plus applicable taxes if any. To obtain the reinstatement benefit, you must check the box requesting reinstatement in part III of the Claim Form and Declaration, and 24 Hour Fitness will send you an invoice with instructions for payment of the Reinstatement Payment, which you must pay within ninety (90) days of the invoice date.
- **If you are or were enrolled in a Family Add-On Prepaid Membership,** you may be entitled to the benefits described above. To receive these benefits, you must either (i) complete the Declaration in Part II of the Claim Form and Declaration, or (ii) have your Primary Member (*i.e.*, the person linked to your account who purchased your Prepaid Membership) complete the “Family Add-On Declaration” in Part II of the Claim Form and Declaration and identify you as the Family Add-On Member in Paragraph 2.

B. Settlement Class Members who do nothing, *i.e.* do not submit a Valid Claim Form and Declaration are entitled to following benefits under the Class Settlement. These benefits are not included in the Government Settlement, so if the Class Settlement is not approved, 24 Hour Fitness may raise your Annual Renewal Amounts at any time and the below increase limitations will not apply.

- **If you are currently a Prepaid Sport Member and you have not yet received notice that 24 Hour Fitness is increasing your Annual Renewal Amount,** 24 Hour Fitness may increase your Annual Renewal Amount as follows: The first such increase may not exceed \$45 per year above your Initial Annual Renewal Amount and may not be further increased for the next two (2) consecutive annual renewal periods, so long as you timely pay the Increased Annual Renewal Amount and any applicable taxes and remain a Prepaid Member in good standing. 24 Hour Fitness may increase your Annual Renewal Amount thereafter in its discretion.
- **If you are currently a Prepaid Super-Sport Member or Prepaid Ultra-Sport Member and have not yet received notice that 24 Hour Fitness is increasing your Annual Renewal Amount,** 24 Hour Fitness may increase your Annual Renewal Amount as follows: The first such increase may not exceed \$90 per year above your Initial Annual Renewal Amount and may not be further increased for the next two (2) consecutive annual renewal periods, so long as you timely pay the Increased Annual Renewal Amount and any

applicable taxes and remain a Prepaid Member in good standing. 24 Hour Fitness may increase your Annual Renewal Amount thereafter in its discretion.

- **If you are currently a Prepaid Member and received notice that 24 Hour Fitness was increasing your Annual Renewal Amount**, you are entitled to renew your membership at the Reduced Annual Renewal Amount, plus any applicable taxes, for the next three (3) consecutive annual renewal periods, so long as you timely pay the Reduced Annual Renewal Amount and any applicable taxes and remain a Prepaid Member in good standing. 24 Hour Fitness may increase your Annual Renewal Amount thereafter in its discretion.
- **If your Prepaid Membership was terminated after notice that 24 Hour Fitness was increasing your Annual Renewal Amount**, you are entitled to reinstate your Prepaid Membership by paying the Reduced Annual Renewal Amount, plus any applicable taxes. Your Annual Renewal Amount will not be further increased for the next two (2) consecutive annual renewal periods, so long as you timely pay the Increased Annual Renewal Amount and any applicable taxes and remain a Prepaid Member in good standing. 24 Hour Fitness may increase your Annual Renewal Amount thereafter in its discretion. To obtain such relief a Settlement Class Member in this category must check the box requesting reinstatement in Part III of the Claim Form and Declaration, and 24 Hour Fitness will send you an invoice with instructions for payment of the Reinstatement Payment, which you must pay within ninety (90) days from the date of the invoice.

HOW TO GET BENEFITS

7. How do I obtain relief under the Class Settlement?

There are two ways to obtain relief under the Class Settlement. If you are a Settlement Class Member and submit a Valid Claim Form and Declaration Under Penalty of Perjury, you will receive the benefits described in Part A under Question 6, above. If you are a Settlement Class Member and do nothing, you will receive the benefits described in Part B under Question 6, above.

Your Claim Form and Declaration is pre-populated with basic contact information as that information appears in 24 Hour Fitness's membership records system. If you fill out Part II (Declaration) of the Claim Form and Declaration, you must affirm under the penalty of perjury that you were told that the Annual Renewal Amount listed on your Prepaid Membership agreement was guaranteed for life and/or that it would not increase in future years. If this Notice was mailed to you, the envelope should have included a Claim Form and Declaration and a prepaid postage return envelope. You may also obtain and print a Claim Form and Declaration and other relevant documents by visiting **[WEB ADDRESS]**.

The Claim Form and Declaration can be submitted either electronically or by mail. All Claim Forms and Declarations must be hand-signed regardless of how it is returned, and all pages must be submitted to the Settlement Administrator. Your Claim Form and Declaration must be postmarked or submitted electronically at **[WEB ADDRESS]**, by no later than **[DATE]**.

If you wish to reinstate your Prepaid Membership, you must check the box requesting reinstatement in Part III of the Claim Form and Declaration. An invoice for the Reinstatement Payment will then be sent to you, which you must pay within ninety (90) days from the date of the invoice.

Claim Form and Declarations submitted to the Settlement Administrator may also be shared with the United States District Court for the Northern District of California, the California Superior Court for the County of Orange (“California Court”), 24 Hour Fitness, Settlement Class Counsel, counsel for 24 Hour Fitness, or the California District Attorneys Offices for Contra Costa and Orange Counties (the “District Attorneys”). The District Attorneys and California Court may receive copies of your Claim Form and Declaration because 24 Hour Fitness entered into a separate settlement with the District Attorneys, filed with the California Court.

8. When will I receive the relief I am entitled under the Class Settlement?

The hearing to consider the fairness of the Class Settlement (the “Fairness Hearing”) is scheduled for **[DATE]** at **[TIME]**. If the Court approves the Class Settlement, your Annual Renewal Amounts will be restored consistent with the relief you are entitled to under the Class Settlement (as discussed in Question 6) after the Class Settlement is approved and becomes final. Settlement Class Members who are entitled to a refund and whose Claim Form and Declaration are approved by the Settlement Administrator, will receive their refunds within forty-five (45) days after the Final Settlement Date. (Refund checks that are not cashed will escheat in accordance with applicable state escheat laws).

9. What if the Court does not approve the Class Settlement, can I still get the relief to which I am entitled?

Yes. If you submit a Valid Claim Form and Declaration, you are still entitled to benefits described in Part A under Question 6 above for Prepaid Members who submit a Valid Claim Form and Declaration through the Government Settlement. If the U.S. District Court for the Northern District of California enters an order denying final approval of the Class Settlement, Prepaid Members who submit a Valid Claim Form and Declaration by **[DATE]** and are entitled to a refund will receive the refund within forty-five (45) days after entry of such order.

THE LAWYERS REPRESENTING THE CLASS

10. Do I have a lawyer in the class action case?

The Court has appointed attorneys at the law firms of Edelson PC, Finkelstein Thompson, LLP, Chimicles & Tikellis LLP, and Tycko & Zavareel, LLP to represent you and the other Settlement Class Members in this lawsuit. These attorneys are called “Settlement Class Counsel.” Kevin O’Shea, Mark Vitcov, Rod Morris, Michael Losquadro, Dipti Shah and Russell Marchewka have been appointed by the Court as the Representative Plaintiffs or Class Representatives. The Representative Plaintiffs are Settlement Class Members like you. Settlement Class Counsel can be reached by calling 1-866-354-3015.

11. Should I get my own lawyer?

You don’t need to hire your own lawyer because Settlement Class Counsel is working on your behalf. If you want your own lawyer, you can certainly get one, but you will have to pay for that lawyer yourself. For example, you can ask your lawyer to appear in Court for you if you want someone other than Settlement Class Counsel to represent you.

12. How will the lawyers be paid?

Settlement Class Counsel will ask the Court for attorneys' fees and expenses of up to \$1,500,000.00. Settlement Class Counsel will also request an award of \$3,000 for each Representative Plaintiff. 24 Hour Fitness has agreed to pay those fees, expenses and awards, subject to Court approval. Any amount awarded will not affect the relief entitled to Settlement Class Members. The Court will determine the proper amount of any attorneys' fees and expenses to award Settlement Class Counsel and the proper amount of any awards to the Class Representatives. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS**13. What happens if I do nothing at all?**

If you do nothing, you will remain a Settlement Class Member and, depending on the status of your Prepaid Membership, will receive the relief outlined for Settlement Class Members who do not submit a Valid Claim Form and Declaration as described in Part B under Question 6, above.

14. What happens if I ask to be excluded?

If you decide to exclude yourself from the Class by opting out, you will be free to sue 24 Hour Fitness on your own for the claims being resolved by the Class Settlement. However, you will not receive any benefits from the Class Settlement, and Settlement Class Counsel will no longer represent you in the Class Settlement. If you want to receive benefits from the Class Settlement, you should not exclude yourself.

15. How do I ask to be excluded?

You must send a letter stating that you want to be excluded from the Class Settlement in *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW by no later than **[DATE]**. Your letter must also include (1) your name and address, (2) your Prepaid Membership agreement number, Prepaid Member number, telephone number and email address, if any, (3) a statement that you wish to be excluded from the Settlement Class, (4) the name and case number for this case, and (5) your signature. You must mail your exclusion request no later than **[DATE]** to:

----- Settlement
P.O. Box 0000
City, ST 00000

You can't exclude yourself by phone or email.

16. If I don't exclude myself, can I sue 24 Hour Fitness for the same thing later?

No. Unless you exclude yourself, you give up any right to sue 24 Hour Fitness for the claims being resolved by the Class Settlement.

17. If I exclude myself, can I still get benefits under the Class Settlement?

No. If you exclude yourself, you will not be able to get any benefits under the Class Settlement.

18. How do I object to the Class Settlement?

You can ask the Court to deny approval of the Class Settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the Class Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must file a letter or brief with the Court stating that you object to the Class Settlement in *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW by no later than **[DATE]**. Your objection should be sent to the United States District Court for the Northern District of California at the following address:

Class Action Clerk, United States District Court for the Northern District of California
Ronald V. Dellums Federal Building,
Second Floor, Courtroom 5
Oakland, California 94612

The objection must be in writing and include the case name *In re 24 Hour Fitness Prepaid Memberships Litigation*, Case No. 4:16-cv-01668-JSW. Your objection must be personally signed and include the following information: (1) your full name, address, telephone number and email address, if any; (2) your Prepaid Membership agreement number and Prepaid Member number; (3) the name and contact information of any and all attorneys representing, advising, profiting, or in any way assisting you in connection with the preparation or submission of the objection; (4) a written statement of all grounds for the objection accompanied by any legal support for the objection, if any; (5) copies of any papers, briefs, or other documents upon which the objection is based; (6) a statement of whether you intend to appear at the Fairness Hearing personally or through counsel, and (7) a list of all other objections you submitted to any class action settlements in any court in the United States in the previous five years or, if you submitted no such objections, a statement that you have submitted no objections to class action settlements in the United States in the previous five years.

If you are represented by a lawyer, your lawyer must file an appearance or seek *pro hac vice* admission.

In addition to filing your objection with the Court, you must send copies of your objection and any supporting documents to both Settlement Class Counsel and 24 Hour Fitness's lawyers at the addresses listed below:

Settlement Class Counsel

Rafey S. Balabanian
Eve-Lynn Rapp
Edelson PC
123 Townsend Street, Suite 100
San Francisco, CA 94107

Defense Counsel

Elizabeth L. Deeley
Austin L. Klar
Kirkland & Ellis LLP
555 California Street
San Francisco, CA 94104

Settlement Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and incentive award on **[DATE]**.

19. What is the difference between objecting and asking to be excluded?

Objecting simply means telling the Court that you don't like something about the Class Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the Class Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Class Settlement?

The Court will hold the Fairness Hearing at [TIME] on [DATE], before the Honorable Jeffrey S. White in Courtroom 5 of the Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California 94612. The purpose of the Fairness Hearing is for the Court to determine whether the Class Settlement is fair, reasonable, and adequate, and in the best interests of the Class. At the Fairness Hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Settlement Class Counsel for attorneys' fees and expenses and the incentive award to the Representative Plaintiffs.

Note: The date and time of the Fairness Hearing are subject to change by the Court. Any changes will be posted at the settlement website, [WEB ADDRESS], or through the Court's online docket search at <https://ecf.cand.uscourts.gov/>.

21. Do I have to come to the Fairness Hearing?

No. Settlement Class Counsel will answer any questions the Court may have. But you are welcome to come to the Fairness Hearing at your own expense. If you send an objection, you don't have to come to the Court to talk about it. As long as your written objection was filed and mailed on time and meets the other criteria described in the Class Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

22. May I speak at the Fairness Hearing?

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Fairness Hearing concerning any part of the proposed Class Settlement. If you filed an objection (*see* Question 18 above) and intend to appear at the Fairness Hearing, you must state your intention to do so in your objection.

GETTING ADDITIONAL INFORMATION

23. How can I get more information?

This Notice summarizes the proposed Class Settlement. For more information about the precise terms and conditions of the Class Settlement, please see the Settlement Agreement available at [WEB ADDRESS], contact the Settlement Administrator at [PHONE NUMBER], contact Settlement Class Counsel at 1-866-354-3015, contact the District Attorneys at [PHONE NUMBER], visit the Court's online electronic full case docket search at <https://ecf.cand.uscourts.gov/>, or visit the office of the Clerk of the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California 94612, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**Please Do Not Contact the Court, the Judge, or 24 Hour Fitness
with Questions about the Settlement or claims process.**

EXHIBIT 3

1. PARTIES

24 Hour Fitness USA, Inc. (24 Hour) and you agree that by signing this agreement, you purchased a membership or services and agree to all the terms in this agreement. You also agree to follow 24 Hour's membership policies and any club rules. 24 Hour may, in its sole discretion, modify the policies and any club rule without notice at any time. Club rules vary by location and all signs posted in a club or on the premises shall be considered a part of the rules of 24 Hour. The terms "You" and "24 Hour" include heirs, estates, agents, representatives, officers, directors, shareholders, successors, affiliates, subsidiaries and employees. Both parties make this agreement on behalf of, and it binds all these included persons and entities.

2. MEMBERSHIP

2(a). Nature of Membership: Your membership permits you to use 24 Hour's premises, facilities, equipment and services as shown and limited by the membership identified on page 1. Your membership is non-transferable by you and gives you no rights in 24 Hour, its management, property or operation. 24 Hour may assign or transfer your membership in its sole discretion. 24 Hour can sell memberships at different rates and terms than yours. Any special promotional membership or rate regarding privileges, usage, hours, or facilities is valid only at the club of enrollment, unless otherwise noted. It is your responsibility to notify 24 Hour of any change in your address or phone number.

2(b). All Club Privileges: Your all club privileges are limited to those benefits identified on page 1, and you are entitled to use only those facilities covered by your membership. For example, if you purchased an All Clubs Active membership you will NOT have access to our Sport clubs, Super-Sport or Ultra-Sport clubs. Likewise, if you purchased an All Clubs Sport membership you will NOT have access to the Super-Sport or Ultra-Sport clubs and if you purchased an All Club Super-Sport membership, you will NOT have access to the Ultra-Sport clubs. 24 Hour reserves the right to charge an extra fee and/or extra dues for your use of any facility not included in your type of membership or your All-Club access level or for any facility with additional services and/or amenities than those offered at the time you enrolled.

2(c). Corporate Memberships: You must be a current employee of a participating company and eligible under the company's guidelines to enroll under a Corporate membership program. In the event you are not currently employed or cease being a current employee of a participating company, 24 Hour reserves the right to immediately terminate your membership and/or require you to pay the full regular price of initiation fees, processing fees and monthly dues.

2(d). Membership Freezes: 24 Hour will only freeze your membership if you qualify under 24 Hour's Membership Freeze Policy set forth in the membership policies. To be eligible for a membership freeze you must be in good standing with all initiation and processing fees paid and you must be current on your monthly or prepaid dues.

3. FINANCIAL POLICY

3(a). Dues & Fees: You agree to pay the dues and fees on page 1 and 3. If you are under 18, 24 Hour requires an adult to guarantee payment. 24 Hour immediately earns the processing initiation fees and the first and last months dues when you buy your membership, including any and all paid amounts or unpaid portions which are to be paid according to a payment plan. These fees and any prepaid monthly dues are not refundable, except as stated in Section 6 of this agreement. Whether or not you use the facilities, you must still pay your monthly dues. You agree to pay 24 Hour an administrative fee for any returned check, or debit problems, such as non-sufficient funds, closed account, frozen or declined credit or similar circumstances. The current fee is \$15.00, but is subject to change at 24 Hour's discretion without prior notice.

3(b). Family & Couple Memberships: Whether you bought a couple (2 members), or family (3 or more members) membership, one member only pays all the dues. If a family membership drops a member, the total dues will be reduced by the lowest rate membership in the family membership. If a family membership of three members drops to two members, the dues change to the couple rate in effect at the time of the drop. If a family or couple membership drops to one member or any member wants to pay his or her own dues, the dues for that member change to a Single rate in effect at the time of the drop. If the member responsible for paying the family or couple dues fails to timely pay the dues, another member must make arrangements to pay the dues, or 24 Hour has the right to terminate all the memberships. 24 Hour will accept notice of a change of status (in writing) only from the member whose status has changed.

3(c). Right to Increase Dues: If you have a Monthly Payment Membership (MPM), 24 Hour may increase your monthly dues once per calendar year. The increase will be calculated at not more than five percent (5%) of your then current monthly dues. Any such increase will not occur during the first three 3 months of your membership. Your EFT date will not change. If you have a prepaid membership, 24 Hour will not increase your Initial Annual Renewal Amount on page 1 of this agreement, but may increase all subsequent annual renewal amounts. 24 Hour will send you notice of your new annual renewal amount each year thereafter prior to the end of your then current term.

3(d). Charges & Taxes: If you or your guests incur any 24 Hour charges for goods or services that include, without limitation, tanning, baby-sitting, fitness services, or similar services, you agree to pay for them according to 24 Hour's rates and practices then in effect. 24 Hour has the right to add to your prepaid dues or to your monthly EFT dues any tax imposed by the government. 24 Hour has the right in its sole discretion to add any utility charges or surcharges to your prepaid dues and monthly EFT dues.

3(e). Automatic Monthly Deductions & Timely Payments: You have full control over the method of preauthorized payment that you have selected ("EFT"). You also have full control over the EFT and can stop it anytime by notifying 24 Hour at least 30 days before your EFT date, in writing, or by notifying your bank, or credit card company to stop. You are responsible for notifying your bank of any error that appears on your bank or credit card statement in a timely manner. You may be responsible for an ACH Debit (checking, savings or debit card) if you have not provided your bank at least 3 days notice before a scheduled transfer. You must notify 24 Hour within 60 days of a claimed EFT error on your bank statement or credit card statement. If you claim your EFT was not stopped when you told 24 Hour, you must have written proof or 24 Hour will not reimburse you for EFT deductions which you claim should not have been deducted. If your EFT ends for any reason, your membership may be immediately suspended at 24 Hour's election. You will have 30 days from the date your EFT ends to reinstate your original EFT authorization or provide a substitute EFT authorization. Alternatively, within 30 days from the date your EFT ends, you can prepay your membership for a minimum of 12 months at the rates then in effect and in accordance with 24 Hour's policy on prepaid memberships. If you prepay your membership, the terms applicable to prepaid membership in this agreement will apply to your membership. Upon reinstatement, all past due amounts, including any administrative fees will be electronically deducted or you must pay all past due amounts at the time of reinstatement if prepaying. If you have not provided a valid EFT or prepaid your membership within the 30 days, your membership will terminate. If your membership terminates because your EFT ends and you have not reinstated your EFT or prepaid your membership, the terms of Section 6(k) will apply.

3(f). Failure to Provide Documentation for Automatic Monthly Payments: If your EFT does not begin because you fail for any reason to provide the information for processing the EFT, 24 Hour may immediately suspend your membership and terminate your membership in accordance with the procedures set forth in Section 3(e) above. All initiation and processing fees are non-refundable unless specifically stated otherwise in Section 6.

3(g). Fee for Copy of Agreement: You acknowledge that you received a copy of your agreement at the time you signed up. If you lose or misplace your agreement you agree to pay an administrative fee of \$15.00 for each additional copy you request from 24 Hour. To obtain a copy of your agreement contact Member Services at 1(800) 432-6348 or in writing at 24 Hour Fitness, P.O. Box 2689, Carlsbad, CA 92018, Attn: Membership Copy.

4. FACILITIES AND SERVICES

4(a) Description of Services and Hours of Access: Not all facilities or services are open or available 24 hours a day. Your membership with 24 Hour shall include access to the facility or facilities to which you purchased including the cardiovascular, strength and conditioning equipment. 24 Hour also provides a number of group exercise classes some of which are optional services and may require a charge. Your access days are indicated in the Membership section on page 1 if you are a Value Plus member. If you purchased a Keep Fit Plus, Keep Fit, Limited Term or Shape Up membership you have access during all regular business hours of your facility or facilities. Your membership agreement does not include personal training which is an optional service subject to a separate agreement with 24 Hour. Other optional services requiring additional fees include, but are not limited to, towel service, babysitting, basketball leagues, class fees, class reservation fees, tanning or executive lockers. 24 Hour reserves the right to charge a separate participation or reservation fee for such optional services.

4(b). Changes in Equipment or Classes: 24 Hour reserves the right at any time to make reasonable changes to the type or quantity of group exercise classes and equipment offered and alter the hours of operation, and to amend the cost of, add, modify and/or eliminate any program, facility, activity, class or service in 24 Hour's reasonable discretion. Classes and equipment are available subject to demand. Any of the facilities or services, including but not limited to classes, equipment, babysitting, tanning, basketball, saunas, and whirlpools may have limited hours or may be discontinued altogether at any time and may be offered on a "first come first serve basis."

4(c). Services for New Facilities to Begin within Six Months: Performance of the agreed upon services (access to the work-out facility) under this agreement shall begin within six months after the date of this agreement. If 24 Hour does not provide the services within six months, you may cancel the agreement up to 10 days after the services are provided. However, if 24 Hour provides you with a temporary workout facility or other 24 Hour locations within 10 miles of the new facility that shall be deemed performance of the agreed upon services under this agreement.

4(d). Temporary Closures: 24 Hour regularly closes on a temporary basis its facilities (or portions of its facilities) for maintenance, selected holidays, and other hours based on municipal requirements and such temporary closures will have no effect on this agreement so long as such temporary closures are reasonable. If your club of enrollment is forced to close or partially close by events or occurrences beyond 24 Hour's control, such as, by way of example, acts of God, fires, floods, windstorms, explosions, riots or unrest, natural disasters, wars, sabotage, or action by any lawful authority (Unforeseen Events), you will not be entitled to a refund, dues credit or to terminate your membership. However, if your club of enrollment is forced to close or partially close for more than 30 days by Unforeseen Events, then 24 Hour will extend your membership, without dues, for the same period your club of enrollment was closed or completely unavailable, but only if there is not another club within 10 miles of your club of enrollment. If 24 Hour closes your club of enrollment for more than ten (10) consecutive days for any reason not caused by Unforeseen Events, 24 Hour will credit the term of your membership for any days beyond ten (10), but only if there is not another club within ten (10) miles of your club of enrollment.

5. REPRESENTATIONS

5(a). Physical Condition & No Medical Advice: You represent that you are in good physical condition

and have no medical reason for complaint that you cannot or should not use the facilities for your intended use of 24 Hour's facilities. As such, you acknowledge that 24 Hour did not give you medical advice before you joined, and cannot give you any after you join, relating to your physical condition and ability to use the facilities. If you have any health or medical concerns now or after you join, discuss them with your doctor before using the facilities.

5(b). Limited Use: If you know or should know you have any problem that might prevent you from using all of 24 Hour's facilities and you sign this agreement, you agree that your membership is limited accordingly. However, because it's your choice, you still must pay your dues as if you could use all the facilities.

5(c). Liability for Property: 24 Hour is not liable to you or your guest for any personal property that is damaged, lost, or stolen while on or around 24 Hour's premises including, but not limited to, a vehicle or its contents or any property left in a locker. If you or your guest cause any damage to 24 Hour's facilities, you are liable to 24 Hour for its cost of repair or replacement.

5(d). Entire Agreement & Enforcement: You acknowledge that neither 24 Hour, nor anyone else, made any representations or promises upon which you relied that are not stated in this agreement. Handwritten changes to this agreement are not valid. This document contains the entire agreement between you and 24 Hour and replaces any oral or other written agreement. If a court declares any part of this agreement invalid, it will not invalidate the remaining parts, which continue unaffected. If 24 Hour does not enforce any right in this agreement for any reason, 24 Hour does not waive its right to enforce it later.

6. CANCELLATION • TERMINATION • REFUND

6(a). Your 5-Day Cancellation Right: You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of the this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar affect. Such notice shall be sent to: 24 Hour Fitness, P.O. Box 787, Carlsbad, CA 92018. 24 Hour will refund all the money you paid, including your initiation and processing fees, within 10 days of when 24 Hour receives written notice in the manner described above.

6(b). Cancellation Rights & Refund: Initiation and processing fees and first and last months dues are non-refundable, except for 5-day cancels above or unless specifically stated otherwise below. You may cancel this agreement and receive a refund of unused prepaid dues or unused fitness services if you qualify as follows:

6(b)(1). You Are Disabled or You Die: Your disability must physically prevent you from using the club's facilities and a licensed physician must verify this fact in writing. In case of death, your estate must provide written evidence. In either case, 24 Hour will refund any unused prepaid dues and a pro rata refund of your initiation fee if you are entitled to cancel within your initial term.

6(b)(2). You Move: Your move must be more than 25 miles from your club of enrollment and 24 Hour is unable to transfer your membership to another facility within 25 miles of your new residence. You must provide written evidence of your move. If there is another club within 25 miles of your new residence, your membership will be transferred to that club and you are not entitled to a refund. If 24 Hour is unable to transfer your membership, 24 Hour will refund your unused prepaid dues or unused fitness services and deduct a move fee of \$100 or a move fee of \$50 if more than half of your prepaid membership has expired.

6(b)(3). Notice & Effective Date: You (your estate) must send written notice and proof of the event within 30 days after it happens, along with your membership ID card. Cancellation is effective as of the date of the event. If your notice is late or lacks proof, 24 Hour may set the effective date when 24 Hour receives the notice. Such notice shall be sent to: 24 Hour Fitness, P.O. Box 787, Carlsbad, CA 92018.

6(c) Cancellation Rights for Agreements \$1,500.00 and Over:

6(c)(1). Nothing in this section shall apply to an agreement for \$1,499.99 or less.

6(c)(2). If your agreement requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, you have the right to cancel the agreement within 20 days after the agreement is executed.

6(c)(3). If your agreement requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, you have the right to cancel the agreement within 30 days after the agreement is executed.

6(c)(4). If your agreement requires payment of two thousand five hundred and one dollars (\$2501) or more, including initiation fees or initial membership fees, you have the right to cancel the agreement within 45 days after the agreement is executed.

6(c)(5). If you are entitled to cancel under this Section 6(c), you shall be liable only for that portion of the total agreement payment, including initiation fees and other charges however denominated, that has been available for your use, based upon a pro rata calculation over the term of the agreement. The remaining portion of the agreement payment shall be returned to you by 24 Hour.

6(d). Termination of Monthly Payment Membership, Monthly Payment Special Privilege, and Monthly Payment Upgrade: If you have a Monthly Payment Membership (MPM), Monthly Payment Special Privilege (MPSP), or a Monthly Payment Upgrade (MPU), you understand that the minimum term of your MPM, MPSP, or MPU consists of the prorated days and prepaid first and last months of your membership or special privilege. Your MPM, MPSP, or MPU term is extended by your EFT days. EFT days are those days of membership or special privilege fees paid by EFT and do not include your prepaid and prorated days and first and last months dues. Your EFT days terminate 30 days after providing notice to 24 Hour. Your MPM, MPSP, or MPU ends 30 days after termination of your EFT days. 24 Hour will apply your prepaid last months dues, special privilege fees, or upgrade fees to the 30 days after your EFT days and your access, privilege, or upgrade benefit will continue through the term of your membership or special privilege.

6(e). Termination of Prepaid Membership: If you have a prepaid membership, you may not terminate it during the prepaid period (or get a refund), unless specifically stated otherwise in Sections 6(a), 6(b), or 6(c) above. If you do not renew your prepaid membership by the renewal date, your prepaid membership automatically expires and you are not entitled to the initial annual renewal rate.

6(f). Termination of Prepaid Fitness Services Agreement: If you have a prepaid Fitness Service agreement, you may not terminate for any reason except those described in Section 6(a), 6(b), or 6(c) above. 24 Hour immediately earns all fitness service fees which are non-refundable. If you are entitled to a refund under Section 6(a), 6(b), or 6(c) above, your refund is limited to unused sessions. If you received a gift with purchase or purchased any item with your fitness service agreement including, but not limited to, a Nutri-Kit, Body-Gem test or Solutions Kit, your refund shall be reduced by the corresponding purchase price or value of any gift if the item is not returned unopened at the time you request your cancellation.

6(g). Termination for Cause by 24 Hour: 24 Hour may, at its option, terminate your membership if (1) you fail to complete all signature lines and required initial blocks, (2) you fail to make timely payments under any payment plan, (3) any monthly payments or dues are late, (4) the monthly EFT payments or dues are interrupted or discontinued for any reason and you or your cosigner do not provide an acceptable alternative, (5) you fail to follow any of 24 Hour's membership policies or club rules or violate any part of this agreement, or (6) your conduct is improper or harmful to the best interest of 24 Hour or its members. Termination is effective on the date 24 Hour mails a written notice to your last known address. You are liable for all financial obligations until that date.

6(h). Termination without Cause by 24 Hour: 24 Hour reserves the right to terminate your membership for any reason not stated above and if not prohibited by law. If 24 Hour does so terminate your membership, it will mail a termination notice to you and refund any unused prepaid dues.

6(i). Termination on Club Closure: If 24 Hour cannot transfer your membership upon a permanent club closure to another club within 10 miles of your club of enrollment, this agreement ends 30 days later. As such, you will not have to pay further monthly dues and 24 Hour will refund any unused prepaid dues. You are not entitled to a refund if 24 Hour can transfer your membership to another club within 10 miles of your club of enrollment.

6(j). Termination on Cancellation of Ancillary Agreements: 24 Hour may, at its sole discretion, cancel all agreements, including your membership agreement, if you cancel any related agreement, such as an agreement for fitness services which were concurrently purchased with your membership agreement. If you terminate your monthly membership or your prepaid membership expires and you want to rejoin, you must buy a new membership at the then current rates.

6(k). Effect of Termination & Financial Obligation: Upon cancellation or termination and after the required notice period, your right to use 24 Hour's facilities ends after all paid dues including last month's dues have expired and 24 Hour can deny you access to any or all 24 Hour clubs. If you owe 24 Hour money when your membership ends, you still owe the money, and 24 Hour will deduct it from any refund you might have coming. If there is not enough money to cover the debt in the refund, you must pay the balance. If you terminate your monthly membership or your prepaid membership expires and you want to rejoin, you must buy a new membership at the then current rate.

7. ARBITRATION

If there is any dispute or claim between you and 24 Hour involving an amount in controversy of more than Five Thousand Dollars (\$5,000.00) you and 24 Hour agree to submit the dispute for resolution to binding arbitration. Arbitration means that neither you nor 24 Hour can sue each other in court over a dispute and that a neutral arbitrator will decide the dispute, not a judge or jury. This arbitration provision is governed by the Federal Arbitration Act (the "FAA").

To start the arbitration process, either party must submit a written arbitration request to the other within the appropriate statute of limitation period for the claim being brought. The arbitrator shall be selected by mutual agreement of the parties. Unless recoverable under an applicable statute or legal authority provides otherwise, each party shall bear his/her own attorneys' fees and costs.

If it is determined by the arbitrator or a court that any part of this dispute is not subject to arbitration, the parties acknowledge, agree and stipulate that the part of the dispute that is not subject to arbitration shall be stayed pending resolution of the arbitration. The arbitration award shall be binding, complete and final. The parties agree they shall not disclose the existence, content or results of the arbitration without the written consent of both parties.

8. LIMITATION OF LIABILITY

Unless controlling legal authority requires otherwise, any award by the arbitrator or a court is limited to actual compensatory damages. Specifically, neither an arbitrator nor a court can award either party any indirect, special, incidental or consequential damages, even if one party told the other party that they might suffer these damages.

Authorization

Member #: _____

Member Name: _____

Agreement #: _____

PAYMENTS FOR TOTAL DUE NOW

Total Due Now (from page 1)	\$
Deposit Received	\$
Balance Due	\$

PAYMENT AUTHORIZATION - BALANCE DUE

Payment Amount	Payment Month	Payment Day
\$		
\$		
\$		

Credit Card (Authorization for Balance Due charges)

Cardholder Name:			
Credit Card Number:			
Expiration Date:		Card Type:	
Cardholder Address: (if different from page 1)			
City:		State:	Zip:

Checking Account / Savings Account / Debit Card (Authorization for Balance Due direct payments ("ACH Debits"))

Name of Depository Institution: _____

Branch (if applicable): _____

City: _____ State: _____ Zip: _____

Account Number: _____

Routing Number: _____ (if applicable)

By signing below, I authorize 24 Hour Fitness USA Inc., (24 Hour) to charge, or to initiate transfers from, the account designated above for the purpose of making the scheduled payments on the Balance Due (together with any related fees, taxes or charges), until such amounts are paid in full or until the applicable membership is terminated or cancelled, whichever occurs first. This authorization will remain in full force and effect during the term of this membership agreement until cancelled by 24 Hour, or until 24 Hour receives my written revocation at P.O. Box 787, Carlsbad, CA, 92018. I understand that I may stop any ACH Debit (checking, savings, debit card) by notifying the financial institution named above at least 3 days before the scheduled date of the transfer. I also understand that the charges and transfers authorized by my signature below are different from the transfers (if any) authorized by any other agreement with 24 Hour (including transfers in payment of monthly membership dues), and that such charges and transfers are likely to occur on dates which are different than the dates designated above. Cancellation or revocation of this authorization, or stopping any payment hereunder, does not affect any other payments authorized on the date of this agreement or in the future.

I understand and acknowledge that the amounts debited to my account may vary each month between the amount shown in the applicable box above, and two times that amount, due to a change in applicable taxes, and other fees and charges. I understand that I have the right to receive notice in writing at least 10 days in advance of any ACH Debit (checking, savings, debit card) that will fall outside of this range. I confirm that I am authorized under the terms of the applicable agreement with my financial institution (the "Bank Agreement") to use the account I have designated for the purchase of goods and services from 24 Hour. I certify that all statements made in this payment authorization are true and correct to the best of my knowledge. I understand that any failure by the applicable financial institution to pay any charge in full does not release me from any liability for obligations owing to 24 Hour. I agree to comply with my Bank Agreement at all times that this authorization is in effect.

Authorized Signature _____

Print Name _____

PAYMENT AUTHORIZATION FOR MONTHLY, UPGRADE OR SPECIAL PRIVILEGE DUES

	Month Begins	Monthly EFT Payment Date	Year
\$			

Credit Card (Authorization for monthly, upgrade or special privilege charges)

Cardholder Name:			
Credit Card Number:			
Expiration Date:		Card Type:	
Cardholder Address: (if different from page 1)			
City:		State:	Zip:

Checking Account / Savings Account / Debit Card (Authorization for monthly, upgrade or special privilege direct payments ("ACH Debits"))

Name of Depository Institution: _____

Branch (if applicable): _____

City: _____ State: _____ Zip: _____

Account Number: _____

Routing Number: _____ (if applicable)

By signing below, I authorize 24 Hour Fitness USA Inc., (24 Hour) to charge, or to initiate transfers from, the account designated above for the purpose of making the payments which I owe to 24 Hour each month until all of my obligations (other than the Balance Due and related fees, taxes and charges, if any) are paid under this agreement, or until the applicable membership is terminated or cancelled, whichever occurs first. I understand that my obligations under this agreement include monthly dues, annual increases in monthly dues, prepaid dues, family dues, upgrade or additional dues, applicable taxes, charges and any other unpaid fees or dues including fees for fitness services or other ancillary services. This authorization will remain in full force and effect during the term of this membership agreement until cancelled by 24 Hour, or until 24 Hour receives my written revocation at P.O. Box 787, Carlsbad, CA, 92018. I understand that I may stop any ACH Debit (checking, savings, debit card) by notifying the financial institution named above at least 3 days before the scheduled date of the transfer. I also understand that the charges and transfers authorized by my signature below are different from the transfers (if any) authorized by any other agreement with 24 Hour (including transfers in payment of the Balance Due), and that such charges and transfers are likely to occur on dates which are different than the dates designated above. Cancellation or revocation of this authorization, or stopping any payment hereunder, does not affect any other payments authorized on the date of this agreement or in the future.

I understand and acknowledge that the amounts debited to my account may vary each month between the amount shown in the applicable box above, and three times that amount, due to a change in monthly dues, past unpaid dues, applicable taxes, and other fees and charges. I understand that I have the right to receive notice in writing at least 10 days in advance of any ACH Debit (checking, savings, debit card) that will fall outside of this range. I confirm that I am authorized under the terms of the applicable agreement with my financial institution (the "Bank Agreement") to use the account I have designated for the purchase of goods and services from 24 Hour. I certify that all statements made in this payment authorization are true and correct to the best of my knowledge. I understand that any failure by the applicable financial institution to pay any charge in full does not release me from any liability for obligations owing to 24 Hour. I agree to comply with my Bank Agreement at all times that this authorization is in effect.

Authorized Signature _____

Print Name _____

RELATED MEMBERSHIPS

Member Name	Agreement #	Monthly Dues Amount

Must Attach Sample Void Check

WELCOME ...

24 Hour welcomes you as a new member and will do everything it can to help you reach your fitness goals.

MEMBERSHIP POLICIES & CLUB RULES

24 Hour designed the Membership Policies ("Policies") and the club rules ("Rules") to insure a safer and more enjoyable environment in which to exercise. So, please be thoughtful and observe the Policies and Rules as you, and all members, agreed to follow. 24 Hour may, in its sole discretion, modify the Policies and Rules without notice at any time. It's your responsibility to know and follow the most current Policies and Rules.

The following Policies replace all previous Policies. If there is any conflict between these Policies and the Rules, these Policies apply. All approved signs posted in a club or on the premises shall be considered a part of the Rules and Policies of 24 Hour.

24 HOUR FITNESS USA, Inc. EQUAL OPPORTUNITY POLICY STATEMENT

24 Hour seeks, enrolls and maintains memberships without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age. It is further club policy that no circumstance or conduct undertaken by club personnel shall have the effect of discrimination on the basis of any of the aforementioned classifications. All club members shall have full and equal access to the club facility. All members with disabilities shall be entitled to reasonable accommodations for their physical and mental impairments. Any members with disabilities shall be entitled to reasonable accommodations for their physical and mental impairments. Any member who believes that he/she is/has been treated unfairly on any of the aforementioned matters should first report to club management or to the 24 Hour Fitness USA, Inc, Corporate Administration Center at 1 (800) 432-6348.

PERSONAL INFORMATION

While 24 Hour and its officers, directors, employees, volunteers, agents and independent contractors will to the extent reasonable, respect the privacy of its members and their guests concerning any health or medical information provided to us, you should NOT have expectations that health and medical information provided or discussed at our facilities will be private.

MEMBERSHIP ID CARDS

24 Hour issues a membership ID card to you for identification purposes. You may not let anyone else use it. Use of your card by anyone else will cause it to be confiscated, and a fee will be charged to redeem it. The ID card is 24 Hour's property and you must return it immediately if your membership is terminated or canceled. There is a fee for lost ID cards.

CHECK-IN

You must check in at the front desk and present your membership card and a photo ID before you use the Facilities. If you have not yet received your permanent membership card, you must show a copy of your membership agreement and a photo ID. The photo ID can be an original or copy of a driver's license, state ID, student ID, military ID or passport.

MEMBERSHIP FREEZE POLICY

24 Hour does not allow freezes to be placed on limited memberships purchased through the Internet.

Qualification: 24 Hour will only freeze your membership if you are in good standing with all enrollment fees paid and current on your monthly dues and you qualify as follows:

Medical Disability: You must provide 24 Hour with a verification from your physician stating your medical disability will prevent you from using the Facilities. You can ask at your club for a 24 Hour form which your physician must sign which is acceptable for documenting your medical disability. The minimum term for a medical freeze is three (3) months and the maximum is six (6) months.

Active Duty Military Transfer or Missionary Assignment: You must provide 24 Hour with a copy of your transfer, deployment orders or missionary orders from the church. There is no minimum or maximum for missionary assignment freeze. If you request a specific freeze term less than six (6) months, your membership and EFT will automatically resume at the end of the specified time. If you request a specific freeze term greater than six (6) months, or you do not specify a freeze term, you must contact 24 Hour to reactivate.

Temporary Employment Transfer: You must provide 24 Hour with a verification from your employer, on company letterhead, that you are being temporarily transferred. The location of your transfer must be more than 25 miles from the nearest 24 Hour location. The minimum term for a temporary employment transfer freeze is three (3) months and the maximum freeze is six (6) months.

Dues During Freeze: If 24 Hour approves a membership freeze no dues will be collected with respect to such time and your right to use 24 Hour Facilities is also frozen or suspended and 24 Hour can deny you access to any 24 Hour club during such freeze. In the event your membership is prepaid, the term of the prepaid membership shall be extended, without dues, for the same period of the freeze. Except for military freezes greater than 6 months or unspecified, your membership will be reactivated and your EFT will automatically resume at the end of your freeze period.

Notice: You must provide at least thirty (30) days notice for a freeze request to allow 24 Hour to process your request. If your request does not conform to this Membership Freeze Policy, you will be notified that your request has been denied and your membership shall remain active unless cancelled.

No Other Freezes Allowed: 24 Hour will not allow any freeze that does not comply with the foregoing policies.

GUEST PRIVILEGES

24 Hour encourages you to bring friends, relatives and business associates for a guest visit. We strongly recommend that you make an appointment for your guest's visit and a tour/orientation may be required. A guest must check in at the front desk, be at least 18, sign a medical and injury release form and pay a guest fee before using the Facilities (a parent or legal guardian may bring a 16 or 17 year old minor as a guest if the adult member agrees to sign the appropriate release forms). 24 Hour may restrict the number of guests and times you may bring guests. You must inform guests about these Policies.

USE OF THE FACILITIES

Availability of Facilities: Any or all of the Facilities or services, including but not limited to, classes, equipment, babysitting, tanning, basketball, saunas, whirlpools or pools may have limited hours or may be discontinued altogether at

any time and may also be offered on a "first come first served basis." 24 Hour reserves the right to charge a separate participation or reservation fee for any or all of these Facilities or services.

Conflicts Regarding Use: Please don't linger on the equipment because other members may want to use it. No member should monopolize the equipment or weights. If there is a sign-up list for the use of the equipment and a maximum time limit on its use, 24 Hour expects all the members to follow the Rules. In short, observe gym etiquette. If there is a conflict over use, let 24 Hour management resolve it.

Sports Courts & Specialty Classes: 24 Hour has specific procedures and Rules and may charge you for the use of the sports courts and special classes. Please see the front desk or read the posted information for these activities.

Pool, Whirlpool, Sauna & Steamroom: 24 Hour requires you to shower before using the pool, whirlpool, sauna or steam room. There are no lifeguards on duty at any of 24 Hour's Facilities. The use of the pool, whirlpool, sauna or steamroom are at your risk. While using the pool, you cannot jump lanes, dive or engage in horseplay. Lap swimmers have priority over casual swimmers.

Weights & Other Equipment: There are specific Rules posted regarding the use of the weights and other equipment in the Facilities. As a courtesy, please replace the weights on the rack after you use them and wipe off any benches after your use.

No Solicitation: 24 Hour club Facilities are provided for the private use of club members only and are not open to the public. Any solicitation within any club is absolutely forbidden. This includes, for example, solicitation for profit, political purposes or any other reason. This includes, but is not limited to, use of petitions, distributing or posting leaflets, notices or advertising anywhere in a club facility, or leaving multiple copies of leaflets or other papers in any clubs areas.

GENERAL POLICIES FOR MINORS

Please check with the front desk for specific Rules, Policies and fees covering the Kids Club (baby-sitting) and minors. You and your minor children must follow any such Rules or Policies and pay any applicable fees. To join, all minors need the financial guaranty of a parent or guardian and the parent or guardian must sign the membership agreement.

Minors Under 12: May not use the Facilities at any time and must be accompanied by a parent or guardian at all times when in the Facilities, unless the minor is registered in Kids Club or participating in a 24 Hour approved youth program. If your minor child reacts negatively or cannot behave, 24 Hour will ask you to make other baby-sitting arrangements. 24 Hour does not permit children over six years old of the opposite sex in the dressing or shower rooms.

Minors 12 - 17: May use the Facilities without being accompanied by a parent or guardian if the minor is a member or a guest and their parent or guardian signed the financial guaranty and the membership agreement. 24 Hour reserves the right, in its discretion, to require that a parent or guardian accompany a minor.

LOCKERS

24 Hour provides lockers for your use on a daily basis only and suggests that you use a lock to protect your property. Do not leave any valuable property in a locker at any time. 24 Hour is not responsible for any theft of, or damage to your property. If you leave a lock on the locker overnight, 24 Hour has the right to cut it off. 24 Hour will consider your property abandoned if left overnight. If you leave your property overnight, 24 Hour shall have the right to donate your property to charity.

PROHIBITED ITEMS AND ACTIVITIES

No Alcohol, Drugs, or Smoking: You cannot use the Facilities or engage in any activity at 24 Hour while under the influence of illegal drugs or alcohol. Also, 24 Hour does not permit smoking, alcohol, illegal drugs, including steroids in its Facilities.

No Weapons: No weapons of any kind are permitted in 24 Hour's Facilities.

No Photographic or Video Equipment: No photography, video taping, filming or audio recording is permitted on these premises without written permission of the management of 24 Hour Fitness.

Food & Beverages: 24 Hour reserves the right to limit the consumption of food or beverages in workout areas.

Personal Training: Under no circumstance is any member to train another member for compensation. If it is determined that paid personal training has been conducted on the premises, the trainer and trainee will each lose their membership.

Outside Equipment: 24 Hour reserves the right, in its sole discretion, to limit or restrict the use of outside equipment in the club.

DRESS / TOWEL POLICY

24 Hour requires you to wear appropriate clothing and footwear while in the Facilities. Here are general guidelines: gym shorts, T-shirts, jogging, aerobic and sweat outfits are all right for exercising or aerobics, but street clothes/shoes and jeans are not. Shower shoes and swimming suits are all right in the pool area, but leotards, danskins or cutoffs are not. Racquetball/basketball shoes are required on the courts. No street or black-soled shoes permitted. You must have a cloth towel with you during workouts to protect and clean the machines you use.

CONDUCT

While in the Facilities, 24 Hour does not permit and will not tolerate any inappropriate conduct. Such conduct includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any conduct that harasses or is bothersome to members or 24 Hour employees.

VIOLATION OF RULES

If any member or guest violates any of the Policies or Rules, 24 Hour will ask that person to stop or leave. A violation may also cause 24 Hour to terminate the violator's membership according to the terms of their membership agreement.

STEROID WARNING

Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damage liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. There are also civil and criminal penalties for the unauthorized sale, use, or exchange of anabolic steroids.

EXHIBIT 4

New Membership Orientation



Member Name:

Membership: Single Keep Fit

Access Clubs: All Fit-Lite, Express Clubs, Active Clubs and Sport Clubs

Welcome to 24 Hour Fitness!

We want you to get the most out of your membership, and to inform you of some key points about your agreement and get you started!

Club Access: You have selected the club access level and type of membership that's right for you. As a reminder, club access depends on level and type of membership purchased.

'Club of Enrollment'/'One-Club' memberships allow you access to the one club only.

'All-Club' memberships allow you access to all clubs at the same level, as well as those at lower level(s).

24 Hour Fitness has 4 levels of clubs:

- Ultra (highest level)
- Super-Sport
- Sport
- Active/Express/FitLite (lowest level)

For example, if you purchase an All-Club Sport membership, you have access to any Sport level club, as well as Active/Express/FitLite clubs.

For each workout, please bring the following:

- Membership card
- Photo ID
- Workout towel
- Lock (for a locker)

Cancellation Information:

5 Day Cancellation Right: You are entitled to a 5 business day period ('5 day period') to notify 24 Hour Fitness that you wish to cancel your agreement, and receive a full refund.

Please see '...Buyers Right to Cancel...' section on page 1 of your agreement for more details.

After the 5 Day period: You are not entitled to cancel and receive a refund except for specific events such as disability or death. There may be other reasons for which you would be entitled to cancel your membership and receive a pro-rated refund.

Please see Section 6 on Page 4 of your agreement for a complete explanation of your cancellation rights

Initial Renewal Amount (Optional Renewal):

Your initial annual renewal amount is only for the first 12 month renewal term immediately following the end of your prepaid term.

Please see page 1 and Section 3(c) on page 3 of your agreement for more details.

'Membership Freeze' Rules

You can freeze your membership a minimum of 3 months and 6 months maximum upon proof of the following:

- Medical reasons
- Military service (no min/max)
- Temporary job transfer
- Extended volunteer service

Please see your Membership Policies for more information.

Fitness Orientation:

A complimentary, introductory service available to all members. A personal trainer will discuss your fitness goals, and provide an exercise introduction and personal training program recommendation. Also included is a medical questionnaire for your benefit.

If your membership includes personal training sessions, please note the following:

- All personal training sessions must be completed within 6 months from date of purchase
- Your trainer may change during the course your training agreement
- If you need to re-schedule a fitness appointment, 24 hour notice is required

Member#:	Member Name:	Membership Policies
WELCOME... <p>24 Hour welcomes you as a new member and will do everything it can to help you reach your fitness goals.</p> MEMBERSHIP POLICIES & CLUB RULES <p>24 Hour designed the Membership Policies ("Policies") and the club rules ("Rules") to insure a safer and more enjoyable environment in which to exercise. So, please be thoughtful and observe the Policies and Rules as you, and all members, agreed to follow. 24 Hour may, in its sole discretion, modify the Policies and Rules without notice at any time. It's your responsibility to know and follow the most current Policies and Rules.</p> <p>The following Policies replace all previous Policies. If there is any conflict between these Policies and the Rules, these Policies apply. All approved signs posted in a club or on the premises shall be considered a part of the Rules and Policies of 24 Hour.</p> EQUAL OPPORTUNITY POLICY STATEMENT <p>24 Hour seeks, enrolls and maintains memberships without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age. It is further club policy that no circumstance or conduct undertaken by club personnel shall have the effect of discrimination on the basis of any of the aforementioned classifications. All club members shall have full and equal access to the club facility. All members with disabilities shall be entitled to reasonable accommodations for their physical and mental impairments. Any members with disabilities shall be entitled to reasonable accommodations for their physical and mental impairments. Any member who believes that he/she is/has been treated unfairly on any of the aforementioned matters should first report to club management or to the 24 Hour Fitness USA, Corporate Administration Center at 1 (800) 432-6348.</p> PERSONAL INFORMATION <p>While 24 Hour and its officers, directors, employees, volunteers, agents and independent contractors will to the extent reasonable, respect the privacy of its members and their guests concerning any health or medical information provided to us, you should NOT have expectations that health and medical information provided or discussed at our facilities will be private.</p> MEMBERSHIP ID CARDS <p>24 Hour issues a membership ID card to you for identification purposes. You may not let anyone else use it. Use of your card by anyone else will cause it to be confiscated, and a fee will be charged to redeem it. The ID card is 24 Hour's property and you must return it immediately if your membership is terminated or canceled. There is a fee for lost ID cards.</p> CHECK-IN <p>You must check in at the front desk and present your membership card and a photo ID before you use the Facilities. If you have not yet received your permanent membership card, you must show a copy of your membership agreement and a photo ID. The photo ID can be an original or copy of a driver's license, state ID, student ID, military ID or passport.</p> MEMBERSHIP FREEZE POLICY <p>24 Hour does not allow freezes to be placed on limited memberships purchased through the Internet.</p> Qualification: 24 Hour will only freeze your membership if you are in good standing with all enrollment fees paid and current on your monthly dues and you qualify as follows: Medical Disability: You must provide 24 Hour with a verification from your physician stating your medical disability will prevent you from using the Facilities. You can ask at your club for a 24 Hour form which your physician must sign which is acceptable for documenting your medical disability. The minimum term for a medical freeze is three (3) months and the maximum is six (6) months. Active Duty Military Transfer or Volunteer Missionary Assignment: You must provide 24 Hour with a copy of your transfer, deployment orders or missionary orders from the church. There is no minimum or maximum for assignment freeze. If you request a specific freeze term less than six (6) months, your membership and EFT will automatically resume at the end of the specified time. If you request a specific freeze term greater than six (6) months, or you do not specify a freeze term, you must contact 24 Hour to reactivate. Temporary Employment Transfer: You must provide 24 Hour with a verification from your employer, on company letterhead, that you are being temporarily transferred. The location of your transfer must be more than 25 miles from the nearest 24 Hour location. The minimum term for a temporary employment transfer freeze is three (3) months and the maximum freeze is six (6) months. Dues During Freeze: If 24 Hour approves a membership freeze no dues will be collected with respect to such time and your right to use 24 Hour Facilities is also frozen or suspended and 24 Hour can deny you access to any 24 Hour club during such freeze. In the event your membership is prepaid, the term of the prepaid membership shall be extended, without dues, for the same period of the freeze. Except for military freezes greater than 6 months or unspecified, your membership will be reactivated and your EFT will automatically resume at the end of your freeze period. Notice: You must provide at least thirty (30) days notice for a freeze request to allow 24 Hour to process your request. If your request does not conform to this Membership Freeze Policy, you will be notified that your request has been denied and your membership shall remain active unless cancelled. No Other Freezes Allowed: 24 Hour will not allow any freeze that does not comply with the foregoing policies. GUEST PRIVILEGES <p>24 Hour encourages you to bring friends, relatives and business associates for a guest visit. We strongly recommend that you make an appointment for your guest's visit and a tour/orientation may be required. A guest must check in at the front desk, be at least 18, sign a medical and injury release form and pay a guest fee before using the Facilities (a parent or legal guardian may bring a 16 or 17 year old minor as a guest if the adult member agrees to sign the appropriate release forms). 24 Hour may restrict the number of guests and times you may bring guests. You must inform guests about these Policies.</p>		USE OF THE FACILITIES <p>Availability of Facilities: Any or all of the Facilities or services, including* but not limited to, classes, equipment, babysitting, tanning, basketball, saunas, whirlpools or pools may have limited hours or may be discontinued altogether at anytime and may also be offered on a "first come first serve" bases." 24 hour reserves the right to charge a separate participation or reservation fee for any or all of these Facilities or services.</p> <p>Conflicts Regarding Use: Please don't linger on the equipment because other members may want to use it. No member should monopolize the equipment or weights. If there is a sign-up list for the use of the equipment and a maximum time limit on its use, 24 Hour expects all the members to follow the Rules. In short, observe gym etiquette. If there is a conflict over use, let 24 Hour management resolve it.</p> <p>Sports Courts & Specialty Classes: 24 Hour has specific procedures and Rules and may charge you for the use of the sports courts and special classes. Please see the front desk or read the posted information for these activities.</p> <p>Pool, Whirlpool, Sauna & Steamroom: 24 Hour requires you to shower before using the pool, whirlpool, sauna or steam room. There are no lifeguards on duty at any of 24 Hour's Facilities. The use of the pool, whirlpool, sauna or steamroom are at your risk. While using the pool, you cannot jump lanes, dive or engage in horseplay. Lap swimmers have priority over casual swimmers.</p> <p>Weights & Other Equipment: There are specific Rules posted regarding the use of the weights and other equipment in the Facilities. As a courtesy, please replace the weights on the rack after you use them and wipe off any benches after your use.</p> <p>No Solicitation: 24 Hour club Facilities are provided for the private use of club members only and are not open to the public. Any solicitation within any club is absolutely forbidden. This includes, for example, solicitation for profit, political purposes or any other reason. This includes, but is not limited to, use of petitions, distributing or posting leaflets, notices or advertising anywhere in a club facility, or leaving multiple copies of leaflets or other papers in any clubs areas.</p> GENERAL POLICIES FOR MINORS <p>Please check with the front desk for specific Rules, Policies and fees covering the Kids Club (baby-sitting) and minors. You and your minor children must follow any such Rules or Policies and pay any applicable fees. To join, all minors need the financial guaranty of a parent or guardian and the parent or guardian must sign the membership agreement.</p> <p>Minors Under 12: May not use the Facilities at any time and must be accompanied by a parent or guardian at all times when in the Facilities, unless the minor is registered in Kids Club or participating in a 24 Hour approved youth program. If your minor child reacts negatively or cannot behave, 24 Hour will ask you to make other baby-sitting arrangements. 24 Hour does not permit children over six years old of the opposite sex in the dressing or shower rooms.</p> <p>Minors 12 - 17: May use the Facilities without being accompanied by a parent or guardian if the minor is a member or a guest and their parent or guardian signed the financial guaranty and the membership agreement. 24 Hour reserves the right, in its discretion, to require that a parent or guardian accompany a minor.</p> LOCKERS <p>24 Hour provides lockers for your use on a daily basis only and suggests that you use a lock to protect your property. Do not leave any valuable property in a locker at any time. 24 Hour is not responsible for any theft of, or damage to your property. If you leave a lock on the locker overnight, 24 Hour has the right to cut it off. 24 Hour will consider your property abandoned if left overnight. If you leave your property overnight, 24 Hour shall have the right to donate your property to charity.</p> PROHIBITED ITEMS AND ACTIVITIES <p>No Alcohol, Drugs, or Smoking: You cannot use the Facilities or engage in any activity at 24 Hour while under the influence of illegal drugs or alcohol. Also, 24 Hour does not permit smoking, alcohol, illegal drugs, including steroids in its Facilities.</p> <p>No Weapons: No weapons of any kind are permitted in 24 Hour's Facilities.</p> <p>No Photographic or Video Equipment: No photography, video taping, filming or audio recording is permitted on these premises without written permission of the management of 24 Hour Fitness.</p> <p>Food & Beverages: 24 Hour reserves the right to limit the consumption of food or beverages in workout areas.</p> <p>Personal Training: Under no circumstance is any member to train another member for compensation. If it is determined that paid personal training has been conducted on the premises, the trainer and trainee will lose their membership.</p> <p>Outside Equipment: 24 Hour reserves the right, in its sole discretion, to limit or restrict the use of outside equipment in the club.</p> DRESS / TOWEL POLICY <p>24 Hour requires you to wear appropriate clothing and footwear while in the Facilities. Here are general guidelines: gym shorts, T-shirts, jogging, aerobic and sweat outfits are all right for exercising or aerobics, but street clothes/shoes and jeans are not. Shower shoes and swimming suits are all right in the pool area, but leotards, danskins or cutoff are not. Racquetball/basketball shoes are required on the courts. No street or black-soled shoes permitted. You must have a cloth towel with you during workouts to protect and clean the machines you use.</p> CONDUCT <p>While in the Facilities, 24 Hour does not permit and will not tolerate any inappropriate conduct. Such conduct includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any conduct that harasses or is bothersome to members or 24 Hour employees.</p> VIOLATION OF RULES <p>If any member or guest violates any of the Policies or Rules, 24 Hour will ask that person to stop or leave. A violation may also cause 24 Hour to terminate the violator's membership according to the terms of their membership agreement.</p> STEROID WARNING <p>Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damage liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. There are also civil and criminal penalties for the unauthorized sale, use, or exchange of anabolic steroids.</p>

**Club of Enrollment**

club number: street address:
city: state: zip:

Club Membership Agreement

membership: Single Keep Fit 00181
club access: All Fit-Lite, Express Clubs, Active Clubs and Sport Clubs

Personal Information

last name: first name:
street address:
city: state: zip:
home ph.:
work ph.: ext.:
birthdate: age: gender:
e-mail address:
employer: corp. id:

master agreement #:

member #:

Description of Services, Facilities and Hours of Access. This is a club membership agreement and not an optional services agreement such as personal training which is a separate agreement. This club membership agreement entitles you to access the facility or facilities designated above during regular business hours unless limited in the days under the Value Plus membership plan. This club membership agreement provides you access to cardiovascular, strength and conditioning machines. See Section 4 on page 3 for additional details.

Accounting

initiation fee:	\$	total due now:	\$
prepaid dues:	\$	deposit received:	\$
processing fee:	\$	balance due:	\$
nutri-kit received:		(non-refundable)	
nutri-kit:			
taxes/fees/surcharge:	\$	sold by:	
		emp #:	



See page 2 of this agreement (if applicable) for details on payment plans and/or payment authorization.

Initiation fees, processing fees, dues for prorated days, first and last month's dues, and prepaid dues are non-refundable, unless specifically stated otherwise in Section 6 on page 4.

Release of Liability - Assumption of Risk - Buyer's Right To Cancel - Membership Term

Using the 24 Hour Fitness USA, Inc. (24 Hour) facilities involves the risk of injury to you or your guest, whether you or someone else causes it. Specific risks vary from one activity to another and the risks range from minor injuries to major injuries, such as catastrophic injuries including death. In consideration of your participation in the activities offered by 24 Hour, you understand and voluntarily accept this risk and agree that 24 Hour, its officers, directors, employees, volunteers, agents and independent contractors will not be liable for any injury, including, without limitation, personal, bodily, or mental injury, economic loss or any damage to you, your spouse, guests, unborn child, or relatives resulting from any negligence of 24 Hour or anyone on 24 Hour's behalf or anyone using the facilities whether related to exercise or not. You agree to indemnify, defend and hold 24 Hour harmless against any liability, damages, defense costs, including attorneys fees, or from any other costs incurred in connection with claims for bodily injury, wrongful death or property damage caused by your negligence or other wrongful acts or omissions. You further agree to hold harmless, defend and indemnify 24 Hour from all liability, damages, defense costs, including attorneys fees, or from any other costs incurred in connection with claims for bodily injury, wrongful death or property damage brought by you, your guests, or minors, even if 24 Hour Fitness was negligent. Further, you understand and acknowledge that 24 Hour does not manufacture fitness or other equipment at its facilities, but purchases and/or leases equipment. You understand and acknowledge that 24 Hour is providing recreational services and may not be held liable for defective products. By signing below, you acknowledge and agree that you have read the foregoing and know of the nature of the activities at 24 Hour and you agree to all the terms on pages 1 through 4 of this agreement and acknowledge that you have received a copy of it and the membership policies.

YOU, THE BUYER, MAY CANCEL THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY OF THE HEALTH STUDIO AFTER THE DATE OF THIS AGREEMENT, EXCLUDING SUNDAYS AND HOLIDAYS. TO CANCEL THIS AGREEMENT, MAIL OR DELIVER A SIGNED AND DATED NOTICE, OR SEND A TELEGRAM WHICH STATES THAT YOU, THE BUYER, ARE CANCELING THIS AGREEMENT, OR WORDS OF SIMILAR EFFECT. SUCH NOTICE SHALL BE SENT TO: 24 HOUR FITNESS, P.O. BOX 787, CARLSBAD, CA 92018.

PREPAID Membership

paid months: paid period : thru
free bonus months: free bonus period: thru
your total prepaid term: months

A prepaid membership is non-cancelable and the initiation fees, processing fees, and prepaid dues are non-refundable, unless specifically stated otherwise in Section 6 on page 4.

member signature: _____ date signed: _____

Prepaid Initial Annual Renewal Amount (Optional Renewal)

The initial annual renewal amount stated below is only for the first 12 month renewal term immediately following expiration of your prepaid term stated above and does not include applicable taxes which shall be applied at the time of renewal. You must be a member in good standing at the expiration of your prepaid term stated above to be eligible for the initial annual renewal amount stated below. See Section 3 on page 3 of this agreement for more information on subsequent annual renewal amounts.

optional annual renewal: \$ _____ pay by: _____

Co-signer

Parent or Guardian: On behalf of my minor child and myself, I agree to the Release of Liability/Assumption of Risk and Applicable Law clauses in this agreement and I agree to defend and indemnify 24 Hour to the fullest extent permitted by law for any claim brought by my minor child against 24 Hour. I also promise to pay any financial obligation that my minor child does not pay for any reason.

Financial Cosigner: I agree to the Applicable Law clause in this agreement, and I promise to pay any financial obligation that the member does not pay for any reason. I also agree to defend and indemnify 24 Hour to the fullest extent permitted by law for any claim brought against 24 Hour by the member.

Whether Parent or Cosigner, I understand my obligation can only end if the member properly terminates the membership according to this agreement. If I signed the preauthorized payment (EFT) on page 2, I agree to directly pay according to the terms in this agreement.

co-signer signature: _____ date signed: _____

last name: first name:
street address: city: state: zip:
home ph.: work ph.:

Payment and Transfer Authorization



member name:

member #:

agreement #

Payments for Total Due Now

total due now: \$

deposit received: \$

balance due: \$

(non-refundable)

Payments Schedule for Total Due Now

payment amount: payment date:

payment amount: payment date:

payment amount: payment date:

Authorization for Balance Due

account type: name of depository institution:

account holder name: account number:

expiration date: routing number (if applicable):

By signing below, I authorize 24 Hour Fitness USA Inc., (24 Hour) to charge, or to initiate transfers from, the account designated above for the purpose of making the scheduled payments on the Balance Due (together with any related fees, taxes or charges), until such amounts are paid in full or until the applicable membership is terminated or cancelled, whichever occurs first This authorization will remain in full force and effect during the term of this membership agreement until cancelled by 24 Hour, or until 24 Hour receives my written revocation at 24 Hour Fitness, P.O. Box 787, Carlsbad, CA, 92018. I understand that I may stop any ACH Debit (checking, savings, debit card) by notifying the financial institution named above at least 3 days before the scheduled date of the transfer. I also understand that the charges and transfers authorized by my signature below are different from the transfers (if any) authorized by any other agreement with 24 Hour (including transfers in payment of monthly membership dues), and that such charges and transfers are likely to occur on dates which are different than the dates designated above. Cancellation or revocation of this authorization, or stopping any payment hereunder, does not affect any other payments authorized on the date of this agreement or in the future. I understand and acknowledge that the amounts debited to my account may vary each month between the amount shown in the applicable box above, and two times that amount, due to a change in applicable taxes, and other fees and charges.

I understand that I have the right to receive notice in writing at least 10 days in advance of any ACH Debit (checking, savings, debit card) that will fall outside of this range. I confirm that I am authorized under the terms of the applicable agreement with my financial institution (the "Bank Agreement") to use the account I have designated for the purchase of goods and services from 24 Hour. I certify that all statements made in this payment authorization are true and correct to the best of my knowledge. I understand that any failure by the applicable financial institution to pay any charge in full does not release me from any liability for obligations owing to 24 Hour. I agree to comply with my Bank Agreement at all times that this authorization is in effect.

authorized signature:

date signed:

Membership Monthly Dues

monthly dues \$0.00

EFT begin date:

Authorization for Dues Direct Payments

account type: name of depository institution:

account holder name: account number:

expiration date: routing number (if applicable):

By signing below, I authorize 24 Hour Fitness USA Inc., (24 Hour) to charge, or to initiate transfers from, the account designated above for the purpose of making the payments which I owe to 24 Hour each month until all of my obligations (other than the Balance Due and related fees, taxes and charges, if any) are paid under this agreement, or until the applicable membership is terminated or cancelled, whichever occurs first. I understand that my obligations under this agreement include monthly dues, annual increases in monthly dues, prepaid dues, family dues, upgrade or additional dues, applicable taxes, charges and any other unpaid fees or dues including fees for fitness services or other ancillary services. This authorization will remain in full force and effect during the term of this membership agreement until cancelled by 24 Hour, or until 24 Hour receives my written revocation at 24 Hour Fitness, P.O. Box 787, Carlsbad, CA, 92018. I understand that I may stop any ACH Debit (checking, savings, debit card) by notifying the financial institution named above at least 3 days before the scheduled date of the transfer. I also understand that the charges and transfers authorized by my signature below are different from the transfers (if any) authorized by any other agreement with 24 Hour (including transfers in payment of the Balance Due), and that such charges and transfers are likely to occur on dates which are different than the dates designated above. Cancellation or revocation of this authorization, or stopping any payment hereunder, does not affect any other payments authorized on the date of this agreement or in the future.

I understand and acknowledge that the amounts debited to my account may vary each month between the amount shown in the applicable box above, and three times that amount, due to a change in monthly dues, past unpaid dues, applicable taxes, and other fees and charges. I understand that I have the right to receive notice in writing at least 10 days in advance of any ACH Debit (checking, savings, debit card) that will fall outside of this range. I confirm that I am authorized under the terms of the applicable agreement withmy financial institution (the "Bank Agreement") to use the account I have designated for the purchase of goods and services from 24 Hour. I certify that all statements made in this payment authorization are true and correct to the best of my knowledge. I understand that any failure by the applicable financial institution to pay any charge in full does not release me from any liability for obligations owing to 24 Hour. I agree to comply with my Bank Agreement at all times that this authorization is in effect.

authorized signature:

date signed:

Related Member(s)

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:

name: agreement number:



1. PARTIES

24 Hour Fitness USA, Inc. (24 Hour) and you agree that by signing this agreement, you purchased a membership or services and agree to all the terms in this agreement. You also agree to follow 24 Hour's membership policies and any club rules. 24 Hour may, in its sole discretion, modify the policies and any club rule without notice at any time. Club rules vary by location and all signs posted in a club or on the premises shall be considered a part of the rules of 24 Hour. The terms "You" and "24 Hour" include heirs, estates, agents, representatives, officers, directors, shareholders, successors, affiliates, subsidiaries and employees. Both parties make this agreement on behalf of, and it binds all these included persons and entities.

2. MEMBERSHIP

2(a). Nature of Membership: Your membership permits you to use 24 Hour's premises, facilities, equipment and services as shown and limited by the membership identified on page 1. Your membership is non-transferable by you and gives you no rights in 24 Hour, its management, property or operation. 24 Hour may assign or transfer your membership in its sole discretion. 24 Hour can sell memberships at different rates and terms than yours. Any special promotional membership or rate regarding privileges, usage, hours, or facilities is valid only at the club of enrollment, unless otherwise noted. It is your responsibility to notify 24 Hour of any change in your address or phone number.

2(b). All Club Privileges: Your all club privileges are limited to those benefits identified on page 1, and you are entitled to use only those facilities covered by your membership. For example, if you purchased an All Clubs Active membership you will NOT have access to our Sport clubs, Super-Sport or Ultra-Sport clubs. Likewise, if you purchased an All Clubs Sport membership you will NOT have access to the Super-Sport or Ultra-Sport clubs and if you purchased an All Club Super-Sport membership, you will NOT have access to the Ultra-Sport clubs. 24 Hour reserves the right to charge an extra fee and/or extra dues for your use of any facility not included in your type of membership or your All-Club access level or for any facility with additional services and/or amenities than those offered at the time you enrolled.

2(c). Corporate Memberships: You must be a current employee of a participating company and eligible under the company's guidelines to enroll under a Corporate membership program. In the event you are not currently employed or cease being a current employee of a participating company, 24 Hour reserves the right to immediately terminate your membership and/or require you to pay the full regular price of initiation fees, processing fees and monthly dues.

2(d). Membership Freezes: 24 Hour will only freeze your membership if you qualify under 24 Hour's Membership Freeze Policy set forth in the membership policies. To be eligible for a membership freeze you must be in good standing with all initiation and processing fees paid and you must be current on your monthly or prepaid dues.

3. FINANCIAL POLICY

3(a). Dues & Fees: You agree to pay the dues and fees on page 1 and 2. If you are under 18, 24 Hour requires an adult to guarantee payment. 24 Hour immediately earns the processing initiation fees and the first and last months dues when you buy your membership, including any and all paid amounts or unpaid portions which are to be paid according to a payment plan. These fees and any prepaid monthly dues are not refundable, except as stated in Section 6 of this agreement. Whether or not you use the facilities, you must still pay your monthly dues. You agree to pay 24 Hour an administrative fee for any returned check, or debit problems, such as non-sufficient funds, closed account, frozen or declined credit or similar circumstances. The current fee is \$15.00, but is subject to change at 24 Hour's discretion without prior notice.

3(b). Family & Couple Memberships: Whether you bought a couple (2 members), or family (3 or more members) membership, one member only pays all the dues. If a family membership drops a member, the total dues will be reduced by the lowest rate membership in the family membership. If a family membership of three members drops to two members, the dues change to the couple rate in effect at the time of the drop. If a family or couple membership drops to one member or any member wants to pay his or her own dues, the dues for that member change to a Single rate in effect at the time of the drop. If the member responsible for paying the family or couple dues fails to timely pay the dues, another member must make arrangements to pay the dues, or 24 Hour has the right to terminate all the memberships. 24 Hour will accept notice of a change of status (in writing) only from the member whose status has changed.

3(c). Right to Increase Dues: If you have a Monthly Payment Membership (MPM), 24 Hour may increase your monthly dues once per calendar year. The increase will be calculated at not more than five percent (5%) of your then current monthly dues. Any such increase will not occur during the first three 3 months of your membership. Your EFT date will not change. If you have a prepaid membership, 24 Hour will not increase your Initial Annual Renewal Amount on page 1 of this agreement, but may increase all subsequent annual renewal amounts. 24 Hour will send you notice of your new annual renewal amount each year thereafter prior to the end of your then current term.

3(d). Charges & Taxes: If you or your guests incur any 24 Hour charges for goods or services that include, without limitation, tanning, baby-sitting, fitness services, or similar services, you agree to pay for them according to 24 Hour's rates and practices then in effect. 24 Hour has the right to add to your prepaid dues or to your monthly EFT dues any tax imposed by the government. 24 Hour has the right in its sole discretion to add any utility charges or surcharges to your prepaid dues and monthly EFT dues.

3(e). Automatic Monthly Deductions & Timely Payments: You have full control over the method of preauthorized payment that you have selected ("EFT"). You also have full control over the EFT and can stop it anytime by notifying 24 Hour at least 30 days before your EFT date, in writing, or by notifying your bank, or credit card company to stop. You are responsible for notifying your bank of any error that appears on your bank or credit card statement in a timely manner. You may be responsible for an ACH Debit (checking, savings or debit card) if you have not provided your bank at least 3 days notice before a scheduled transfer. You must notify 24 Hour within 60 days of a claimed EFT error on your bank state mentor credit card statement. If you claim your EFT was not stopped when you told 24 Hour, you must have written proof or 24 Hour will not reimburse you for EFT deductions which you claim should not have been deducted. If your EFT ends for any reason, your membership may be immediately suspended at 24 Hour's election. You will have 30 days from the date your EFT ends to reinstate your original EFT authorization or provide a substitute EFT authorization. Alternatively, within 30 days from the date your EFT ends, you can prepay your membership for a minimum of 12 months at the rates then in effect and in accordance with 24 Hour's policy on prepaid memberships. If you prepay your membership, the terms applicable to prepaid membership in this agreement will apply to your membership. Upon reinstatement, all past due amounts, including any administrative fees will be electronically deducted or you must pay all past due amounts at the time of reinstatement if prepaying. If you have not provided a valid EFT or prepaid your membership within the 30 days, your membership will terminate. If your membership terminates because your EFT ends and you have not reinstated your EFT or prepaid your membership, the terms of Section 6(k) will apply.

3(f). Failure to Provide Documentation for Automatic Monthly Payments: If your EFT does not begin because you fail for any reason to provide the information for processing the EFT, 24 Hour may immediately suspend your membership and terminate your membership in accordance with the procedures set forth in Section 3(e) above. All initiation and processing fees are non-refundable unless specifically stated otherwise in Section 6.

3(g). Fee for Copy of Agreement: You acknowledge that you received a copy of your agreement at the time you signed up. If you lose or misplace your agreement you agree to pay an administrative fee of \$15.00 for each additional copy you request from 24 Hour. To obtain a copy of your agreement contact Member Services at 1(800)432-6348 or in writing at 24 Hour Fitness, P.O. Box 2689, Carlsbad, CA 92018, Attn: Membership Copy.

4. FACILITIES AND SERVICES

4(a). Description of Services and Hours of Access: Not all facilities or services are open or available 24 hours a day. Your membership with 24 Hour shall include access to the facility or facilities to which you purchased including the cardiovascular, strength and conditioning equipment. 24 Hour also provides a number of group exercise classes some of which are optional services and may require a charge. Your access days are indicated in the Membership section on page 1 if you are a Value Plus member. If you purchased a Keep Fit Plus, Keep Fit, Limited Term or Shape Up membership you have access during all regular business hours of your facility or facilities. Your membership agreement does not include personal training which is an optional service subject to a separate agreement with 24 Hour. Other optional services requiring additional fees include, but are not limited to, towel service, babysitting, basketball leagues, class fees, class reservation fees, tanning or executive lockers. 24 Hour reserves the right to charge a separate participation or reservation fee for such optional services.

4(b). Changes in Equipment or Classes: 24 Hour reserves the right at any time to make reasonable changes to the type or quantity of group exercise classes and equipment offered and alter the hours of operation, and to amend the cost of, add, modify and/or eliminate any program, facility, activity, class or service in 24 Hour's reasonable discretion. Classes and equipment are available subject to demand. Any of the facilities or services, including but not limited to classes, equipment, babysitting, tanning, basketball, saunas, and whirlpools may have limited hours or may be discontinued altogether at any time and may be offered on a "first come first serve basis."

4(c). Services for New Facilities to Begin within Six Months: Performance of the agreed upon services (access to the work-out facility) under this agreement shall begin within six months after the date of this agreement. If 24 Hour does not provide the services within six months, you may cancel the agreement up to 10 days after the services are provided. However, if 24 Hour provides you with a temporary workout facility or other 24 Hour locations within 10 miles of the new facility that shall be deemed performance of the agreed upon services under this agreement.

4(d). Temporary Closures: 24 Hour regularly closes on a temporary basis its facilities (or portions of its facilities) for maintenance, selected holidays, and other hours based on municipal requirements and such temporary closures will have no effect on this agreement so long as such temporary closures are reasonable. If your club of enrollment is forced to close or partially close by events or occurrences beyond 24 Hour's control, such as, by way of example, acts of God, fires, floods, windstorms, explosions, riots or unrest, natural disasters, wars, sabotage, or action by any lawful authority (Unforeseen Events), you will not be entitled to a refund, dues credit or to terminate your membership. However, if your club of enrollment is forced to close or partially close for more than 30 days by Unforeseen Events, then 24 Hour will extend your membership, without dues, for the same period your club of enrollment was closed or completely unavailable, but only if there is not another club within 10 miles of your club of enrollment. If 24 Hour closes your club of enrollment for more than ten (10) consecutive days for any reason not caused by Unforeseen Events, 24 Hour will credit the term of your membership for any days beyond ten (10), but only if there is not another club within ten (10) miles of your club of enrollment.

5. REPRESENTATIONS

5(a). Physical Condition & No Medical Advice: You represent that you are in good physical condition and have no medical reason or impairment that might prevent you from your intended use of 24 Hour's facilities. As such, you acknowledge that 24 Hour did not give you medical advice before you joined, and cannot give you any after you join, relating to your physical condition and ability to use the facilities. If you have any health or medical concerns now or after you join, discuss them with your doctor before using the facilities. You acknowledge that you have been informed that 24 Hour offers an orientation training which includes a questionnaire designed for you to determine whether you should consult a physician before participating in an exercise program.

5(b). Limited Use: If you know or should know you have any problem that might prevent you from using all of 24 Hour's facilities and you sign this agreement, you agree that your membership is limited accordingly. However, because it's your choice, you still must pay your dues as if you could use all the facilities.

5(c). Liability for Property: 24 Hour is not liable to you or your guest for any personal property that is damaged, lost, or stolen while on or around 24 Hour's premises including, but not limited to, a vehicle or its contents or any property left in a locker. If you or your guest cause any damage to 24 Hour's facilities, you are liable to 24 Hour for its cost of repair or replacement.

5(d). Entire Agreement & Enforcement: You acknowledge that neither 24 Hour, nor anyone else, made any representations or promises upon which you relied that are not stated in this agreement. Handwritten changes to this agreement are not valid. This document contains the entire agreement between you and 24 Hour and replaces any oral or other written agreement. If a court declares any part of this agreement invalid, it will not invalidate the remaining parts, which continue unaffected. If 24 Hour does not enforce any right in this agreement for any reason, 24 Hour does not waive its right to enforce it later.

6. CANCELLATION - TERMINATION - REFUND

6(a). Your 5-Day Cancellation Right: You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of the this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar affect. Such notice shall be sent to: 24 Hour Fitness, P.O. Box 787, Carlsbad, CA 92018. 24 Hour will refund all the money you paid, including your initiation and processing fees, within 10 days of when 24 Hour receives written notice in the manner described above.

6(b). Cancellation Rights & Refund: Initiation and processing fees and first and last months dues are nonrefundable, except for 5-day cancels above or unless specifically stated otherwise below. You may cancel this agreement and receive a refund of unused prepaid dues or unused fitness services if you qualify as follows:

6(b)(1). You Are Disabled or You Die: Your disability must physically prevent you from using the club's facilities and a licensed physician must verify this fact in writing. In case of death, your estate must provide written evidence. In either case, 24 Hour will refund any unused prepaid dues and a pro rata refund of your initiation fee if you are entitled to cancel within your initial term.

6(b)(2). You Move: Your move must be more than 25 miles from your club of enrollment and 24 Hour is unable to transfer your membership to another facility within 25 miles of your new residence. You must provide written evidence of your move. If there is another club within 25 miles of your new residence, your membership will be transferred to that club and you are not entitled to a refund. If 24 Hour is unable to transfer your membership, 24 Hour will refund your unused prepaid dues or unused fitness services and deduct a move fee of \$100 or a move fee of \$50 if more than half of your prepaid membership has expired.

6(b)(3). Notice & Effective Date: You (your estate) must send written notice and proof of the event within 30 days after it happens, along with your membership ID card. Cancellation is effective as of the date of the event. If your notice is late or lacks proof, 24 Hour may set the effective date when 24 Hour receives the notice. Such notice shall be sent to: 24 Hour Fitness, P.O. Box 787, Carlsbad, CA 92018.

6(c) Cancellation Rights for Agreements \$1,500.00 and Over:

6(c)(1). Nothing in this section shall apply to an agreement for \$1,499.99 or less.

6(c)(2). If your agreement requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, you have the right to cancel the agreement within 20 days after the agreement is executed.

6(c)(3). If your agreement requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, you have the right to cancel the agreement within 30 days after the agreement is executed.

6(c)(4). If your agreement requires payment of two thousand five hundred and one dollars (\$2501) or more, including initiation fees or initial membership fees, you have the right to cancel the agreement within 45 days after the agreement is executed.

6(c)(5). If you are entitled to cancel under this Section 6(c), you shall be liable only for that portion of the total agreement payment, including initiation fees and other charges however denominated, that has been available for your use, based upon a pro rata calculation over the term of the agreement. The remaining portion of the agreement payment shall be returned to you by 24 Hour.

6(d). Termination of Monthly Payment Membership, Monthly Payment Special Privilege, and Monthly Payment Upgrade: If you have a Monthly Payment Membership (MPM), Monthly Payment Special Privilege (MPSP), or a Monthly Payment Upgrade (MPU), you understand that the minimum term of your MPM, MPSP, or MPU consists of the prorated days and prepaid first and last months of your membership or special privilege. Your MPM, MPSP, or MPU term is extended by your EFT days. EFT days are those days of membership or special privilege fees paid by EFT and do not include your prepaid and prorated days and first and last months dues. Your EFT days terminate 30 days after providing notice to 24 Hour. Your MPM, MPSP, or MPU ends 30 days after termination of your EFT days. 24 Hour will apply your prepaid last months dues, special privilege fees, or upgrade fees to the 30 days after your EFT days and your access, privilege, or upgrade benefit will continue through the term of your membership or special privilege.

6(e). Termination of Prepaid Membership: If you have a prepaid membership, you may not terminate it during the prepaid period (or get a refund), unless specifically stated otherwise in Sections 6(a), 6(b), or 6(c) above. If you do not renew your prepaid membership by the renewal date, your prepaid membership automatically expires and you are not entitled to the initial annual renewal rate.

6(f). Termination of Prepaid Fitness Services Agreement: If you have a prepaid Fitness Service agreement, you may not terminate for any reason except those described in Section 6(a), 6(b), or 6(c) above. 24 Hour immediately earns all fitness service fees which are non-refundable. If you are entitled to a refund under Section 6(a), 6(b), or 6(c) above, your refund is limited to unused sessions. If you received a gift with purchase or purchased any item with your fitness service agreement including, but not limited to, a Nutri-Kit, Body-Gem test or Solutions Kit, your refund shall be reduced by the corresponding purchase price or value of any gift if the item is not returned unopened at the time you request your cancellation.

6(g). Termination for Cause by 24 Hour: 24 Hour may, at its option, terminate your membership if (1) you fail to complete all signature lines and required initial blocks, (2) you fail to make timely payments under any payment plan, (3) any monthly payments or dues are late, (4) the monthly EFT payments or dues are interrupted or discontinued for any reason and you or your cosigner do not provide an acceptable alternative, (5) you fail to follow any of 24 Hour's membership policies or club rules or violate any part of this agreement, or (6) your conduct is improper or harmful to the best interest of 24 Hour or its members. Termination is effective on the date 24 Hour mails a written notice to your last known address. You are liable for all financial obligations until that date.

6(h). Termination without Cause by 24 Hour: 24 Hour reserves the right to terminate your membership for any reason not stated above and if not prohibited by law. If 24 Hour does so terminate your membership, it will mail a termination notice to you and refund any unused prepaid dues.

6(i). Termination on Club Closure: If 24 Hour cannot transfer your membership upon a permanent club closure to another club within 10 miles of your club of enrollment, this agreement ends 30 days later. As such, you will not have to pay further monthly dues and 24 Hour will refund any unused prepaid dues. You are not entitled to a refund if 24 Hour can transfer your membership to another club within 10 miles of your club of enrollment.

6(j). Termination on Cancellation of Ancillary Agreements: 24 Hour may, at its sole discretion, cancel all agreements, including your membership agreement, if you cancel any related agreement, such as an agreement for fitness services which were concurrently purchased with your membership agreement. If you terminate your monthly membership or your prepaid membership expires and you want to rejoin, you must buy a new membership at the then current rates.

6(k). Effect of Termination & Financial Obligation: Upon cancellation or termination and after the required notice period, your right to use 24 Hour's facilities ends after all paid dues including last month's dues have expired and 24 Hour can deny you access to any or all 24 Hour clubs. If you owe 24 Hour money when your membership ends, you still owe the money, and 24 Hour will deduct it from any refund you might have coming. If there is not enough money to cover the debt in the refund, you must pay the balance. If you terminate your monthly membership or your prepaid membership expires and you want to rejoin, you must buy a new membership at the then current rate.

7. APPLICABLE LAW

This Agreement and/or any legal action related to the 24 Hour Fitness membership shall be governed by, construed and enforced in accordance with the laws of the State where the Agreement was executed, without reference to choice of law principles. Exclusive venue for any legal action related to this Agreement or the 24 Hour Fitness membership shall be brought in any federal or State court where the Agreement was executed ('Applicable Courts'). The parties waive any objection that they have or may have to venue in the Applicable Courts including, but not limited to, any objection that the Applicable Courts are an inconvenient forum. In addition, the parties waive, to the fullest extent they may effectively do so, any objection that they have or may have to the transfer of any legal action to the Applicable Courts.

8. LIMITATION OF LIABILITY

Unless controlling legal authority requires otherwise, any award by the arbitrator or a court is limited to actual compensatory damages. Specifically, neither an arbitrator nor a court can award either party any indirect, special, incidental or consequential damages, even if one party told the other party that they might suffer these damages.