

FILED
MAR 12 11:03:00
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN DIEGO**

881569

14 MARCUS ESCOW-FULTON,
15 individually, and on behalf of all others
16 similarly situated,

Case No. **GIC**
CLASS ACTION

17 Plaintiffs,

18 vs.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

19 SPORTS AND FITNESS CLUBS OF
20 AMERICA, dba 24 HOUR FITNESS
21 USA, INC., and DOES 1 through 100,
22 inclusive,

23 Defendant.

24 Representative plaintiff alleges as follows:

25 **PRELIMINARY STATEMENT**

26 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages
27 (including overtime wages), and interest thereon, reimbursement of business expenses, rest and meal
28 period penalties, waiting time penalties, liquidated damages and other penalties, injunctive and other
equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, Title 8 of the California
Code of Regulations, California Labor Code §§ 200-204, inclusive, 216-218.6, 221, 223, 226, 226.7,
400-410, 510, 1174, 1194, 1194.2, 1197 and 2802, California Business and Professions Code §§
17200, *et seq.* and California Code of Civil Procedure § 1021.5. The Representative Plaintiff brings

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1 this action on behalf of himself and all other persons similarly situated (hereinafter referred to as the
2 “Class Members” and/or the “Plaintiff Class”) who are, or have been, employed by defendant Sports
3 and Fitness Clubs of America, dba 24 Hour Fitness USA, Inc. (“24 Hour Fitness” and/or
4 “Defendant”) as “Group X” Instructors within the applicable statutory period. The Representative
5 Plaintiff, on behalf of himself and the Class Members, also seeks injunctive relief and restitution of
6 all benefits Defendant has enjoyed from its unfair, unlawful and/or fraudulent business practices
7 under Business and Professions Code §§ 17200-17208.

8 2. The “Class Period” is designated as the time from March 12, 2007 through the trial
9 date, based upon the allegation that the violations of California’s wage and hour laws, as described
10 more fully below, have been ongoing since that time. During the Class period, Defendant has had
11 a consistent policy of, *inter alia*, (1) permitting, encouraging, and/or requiring its “Group X”
12 Instructors to work “off-the-clock,” without compensation therefor, (2) permitting, encouraging,
13 and/or requiring its “Group X” Instructors to perform reported hours of work without compensation
14 therefor, (3) failing to reimburse its “Group X” Instructors for business expenses related to the
15 operations of the defendant, (4) willfully failing to pay compensation (including unpaid overtime)
16 in a prompt and timely manner to the representative plaintiff and/or those Class Members whose
17 employment with the Defendant terminated, and (5) willfully failing to provide the Representative
18 Plaintiff and Class Members with accurate semi-monthly itemized wage statements of the total
19 number of hours each of them worked and the applicable deductions during each pay period.

20
21 **INTRODUCTION**

22 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
23 setting California’s first workday standard, long before the federal government enacted overtime
24 protections for workers.

25 4. According to findings of the California Legislature, numerous studies have linked
26 long work hours to increased rates of accident and injury and a loss of family cohesion when either
27 or both parents are kept away from home for extended periods of time, on either a daily or weekly
28 basis.

1 5. The Defendant maintains and operates health and fitness facilities and makes the
2 strength-building and cardiovascular fitness equipment and services (e.g., group fitness classes) at
3 these facilities available to the public on a membership basis. Within the Class Period, the Defendant
4 has operated numerous facilities throughout California. In so doing, the Defendant has employed
5 hundreds, if not thousands, of individuals in recent years alone as "Group X" Instructors, non-
6 overtime-exempt employees who are entitled to, *inter alia*, be paid for all hours worked, at their
7 regular rate of pay, to be reimbursed for all business expenses related to 24 Hour Fitness' operations,
8 and to be paid said wages and reimbursed for said business-related expenses in a timely manner.

9 6. Defendant's "Group X" Instructors are responsible for facilitating 24 Hour Fitness'
10 members' health and fitness goals through the instruction of dozens of types of group classes referred
11 to, *inter alia*, as "24Cycle," "24Lift," "24 S.E.T. (Strength Endurance Training)," "Camp24" and
12 "24Aqua."

13 7. "Group X" Instructors often teach several classes a day, and are responsible for
14 performing additional tasks such as preparing group workout rooms for instruction, locking and
15 unlocking cabinets and equipment pieces, setting up, breaking down, cleaning and performing basic
16 maintenance on stationary cycles, "steps" and other items of equipment before and after classes,
17 counseling 24 Hour Fitness members, completing paperwork, preparing music and/or instructional
18 "routines," meeting with other "Group X" Instructors and supervisors, finding another Instructor to
19 fill-in for them in the event of sickness, traveling to and from group workout rooms and other areas
20 in the facility, attending continuing education/training programs and a host of other activities
21 required for the performance of their positions with and for the benefit of the Defendant.

22 8. 24 Hour Fitness establishes and publishes, for its members' benefit, class descriptions
23 as well as class durations of each of the "Group X" class formats it offers. As such, 24 Hour Fitness
24 advertises the class length as being the actual duration of instruction.

25 9. Notwithstanding the foregoing, no matter how many hours are spent by "Group X"
26 Instructors performing tasks for the benefit of this employer, such as those identified in paragraph
27 7, above, "Group X" Instructors are paid only for the length of time associated with and advertised
28 for the particular format(s) they are scheduled to teach.

1 10. Defendant denies "Group X" Instructors wages for all hours worked despite the fact
2 that many, if not all, "Group X" Instructors are told to record the time they commence and complete
3 work each day at 24 Hour Fitness facilities and despite 24 Hour Fitness' resultant knowledge that
4 it is fraudulently depriving its employees of wages due on an ongoing basis.

5 11. Moreover, the Representative Plaintiff is informed and believes and, based thereon,
6 alleges that 24 Hour Fitness knew and/or should have known that its "Group X" Instructors are and,
7 at all times during the Class Period, were performing work off-premises (e.g., at home, at continuing
8 education/training programs such as those referred to as "Xpedition") for which Class Members were
9 not being compensated as well as incurring business-related expenses for which they were not being
10 reimbursed by the Defendant.

11 12. Despite actual knowledge of these facts and legal mandates, the Defendant has
12 enjoyed an advantage over its competition and has disadvantaged its workers by electing not to pay
13 all wages due and/or provide reimbursement of business-related expenses to its Group X"
14 Instructors.

15 13. The Representative Plaintiff is informed and believes and, based thereon, alleges that
16 officers of 24 Hour Fitness knew of these facts and legal mandates, yet, nonetheless, repeatedly
17 authorized and/or ratified the violation of the laws cited herein.

18 14. Despite 24 Hour Fitness' knowledge of the Class' entitlement to wages for all hours
19 worked and expense reimbursements for all applicable work periods 24 Hour Fitness failed and
20 continues to fail to provide same thereto in willful violation of California state statutes, Industrial
21 Welfare Commission Orders and Title 8 of the California Code of Regulations. This action is
22 brought to redress and end this long-time pattern of unlawful conduct.

23
24 **JURISDICTION AND VENUE**

25 15. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
26 claims for unpaid wages, expenses and/or penalties under, *inter alia*, Title 8 of the California Code
27 of Regulations, California Labor Code §§ 200-204, inclusive, 216-218.6, 221, 223, 226, 226.7, 400-
28 410, 510, 1174, 1194, 1194.2, 1197 and 2802, California Business and Professions Code §§ 17200,

1 *et seq.* and California Code of Civil Procedure § 1021.5.

2 16. This Court has further jurisdiction over the Representative Plaintiff's and Class
3 Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Defendant's
4 unfair, unlawful and/or fraudulent business practices under Business & Professions Code §§ 17203
5 and 17204.

6 17. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
7 Procedure § 395(a). Defendant maintains facilities and offices in the County of San Diego, transacts
8 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
9 process. The unlawful acts alleged herein have a direct effect on the Representative Plaintiff and
10 those similarly situated within the State of California and within San Diego County. Defendant
11 operates said facilities and has employed numerous Class Members in San Diego County, as well
12 as in other counties within the State of California.

13
14 **PLAINTIFFS**

15 18. Representative Plaintiff Marcus Escow-Fulton is a natural person and was, during the
16 relevant time period identified herein, employed by Sports and Fitness Clubs of America, dba 24
17 Hour Fitness USA, Inc., within the State of California, as a "Group X" Instructor.

18 19. In said position, the Representative Plaintiff was repeatedly paid a substandard wage
19 insofar as he was denied full pay for all hours worked and reimbursement for expenses made on
20 behalf of the Defendant. The Representative Plaintiff is informed and believes, and based thereon,
21 alleges that this conduct of 24 Hour Fitness is/was commonplace at every location owned and
22 operated thereby.

23 20. As used throughout this Complaint, the terms "Class Members" and/or the "Plaintiff
24 Class" refer to the named plaintiff herein as well as each and every person eligible for membership
25 in the Plaintiff Class, as further described and defined herein.

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DEFENDANT

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2 21. At all times herein relevant, defendant Sports and Fitness Clubs of America, dba 24
3 Hour Fitness USA, Inc. was, and is, a corporation with a principal place of business within the State
4 of California and with health and fitness facilities located both within this judicial district and
5 elsewhere across the United States.

6 22. The Representative Plaintiff is informed and believes and, on that basis, alleges that
7 the Defendant has, and does, directly and/or indirectly, employed and/or exercised control over the
8 wages, hours and working conditions of the Representative Plaintiff and members of the class.

9 23. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
10 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each
11 of the remaining defendants. The Representative Plaintiff is informed and believes and, on that basis
12 alleges that, at all relevant times herein mentioned, each of the defendants identified as Does 1
13 through 100, inclusive, employed and/or exercised control over the wages, hours and/or working
14 conditions of the Representative Plaintiff and Class Members at various California locations, as
15 identified in the preceding paragraph.

16 24. The Representative Plaintiff is unaware of the true names and capacities of those
17 defendants sued herein as Does 1 through 100, inclusive and, therefore, sue these defendants by such
18 fictitious names. The Representative Plaintiff will seek leave of Court to amend this Complaint when
19 same are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges
20 that each of the fictitiously-named defendants is responsible in some manner for, gave consent to,
21 ratified and/or authorized the conduct herein alleged and that the Representative Plaintiff's and Class
22 Members' damages, as herein alleged, were proximately caused thereby.

23 25. The Representative Plaintiff is informed and believes and, on that basis, alleges that,
24 at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
25 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
26 scope of such agency and/or employment.

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1 **CLASS ACTION ALLEGATIONS**

2 26. The Representative Plaintiff brings this action individually and as a class action on
3 behalf of all persons similarly situated and proximately damaged by 24 Hour Fitness' conduct, as
4 set forth in this Complaint, including, but not necessarily limited to, the following plaintiff class:

5 All persons employed by Sports and Fitness Clubs of America, dba 24 Hour
6 Fitness USA, Inc., in the State of California as "Group X" Instructors within
the applicable statutory period.

7 27. The Defendant, its officers and directors are excluded from each of these classes.

8 28. This action has been brought and may properly be maintained as a class
9 action under Code of Civil Procedure § 382 because there is a well-defined community of interest
10 in the litigation and the proposed Class is easily ascertainable.

11 a. Numerosity: A class action is the only available method for the fair and
12 efficient adjudication of this controversy. The members of the classes are so
13 numerous that joinder of all members is impractical, if not impossible, insofar
14 as the Representative Plaintiff is informed and believes and, on that basis,
alleges that the total number of Class Members exceeds hundreds of
15 individuals. Membership in the plaintiff classes will be determined upon
analysis of employee and payroll, among other, records maintained by the
16 Defendant.

17 b. Commonality: The Representative Plaintiff and the Class Members share a
18 community of interests in that there are numerous common questions and
issues of fact and law which predominate over any questions and issues solely
affecting individual members, thereby making a class action superior to other
19 available methods for the fair and efficient adjudication of the controversy.
These common questions include, but are not necessarily limited to:

- 20 1. Whether the Defendant violated one or more of California's Wage
Orders, the California Labor Code and/or California Business and
Professions Code §§ 17200, *et seq.* by failing to pay all wages due to
its "Group X" Instructors;
- 21 2. Whether the Defendant violated California Labor Code §§ 400-410
22 and/or § 2802 by requiring its "Group X" Instructors to pay all or a
portion of the normal business expenses of the Defendant;
- 23 3. Whether the Defendant violated and/or continues to violate,
24 California Labor Code § 1174 by failing to keep accurate records of
its "Group X" Instructors' hours of work;
- 25 4. Whether the Defendant violated, and continues to violate California
26 Labor Code §§ 201-203 by failing to pay all wages due and owing at
the time particular Class Members' employment with the Defendant
27 terminated;

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5. Whether the Defendant violated and/or continues to violate California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff Class. The Representative Plaintiff and all members of the class sustained injuries and damages arising out of and caused by 24 Hour Fitness' common course of conduct in violation of state law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for class members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual class member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interests in the litigation of this case as the class members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

29. As described herein, 24 Hour Fitness has, for years, knowingly failed to adequately compensate those "Group X" Instructors within the class definition identified above for wages due under California Labor Code §§ 200, *et seq.* and applicable California Wage Orders, thereby enjoying a significant competitive edge over other companies within its industry.

30. Even upon the termination or resignation of the employment of the Representative Plaintiff and numerous other class members during the class period, 24 Hour Fitness declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

31. Moreover, according to the Defendant's policies, all Class Members were required to incur business expenses related to the operations of the Defendant.

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1 32. Moreover, California Labor Code §§ 201 and 202 require 24 Hour Fitness to pay all
2 wages due to members of the class immediately upon discharge. California Labor Code § 203
3 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a
4 penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
5 action is commenced, for a period not to exceed 30 days of wages.

6 33. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
7 Members' entitlement to pay for all work performed, 24 Hour Fitness violated California Labor Code
8 § 1174(d) by failing to provide or require the use, maintenance or submission of time records by
9 members of the class that reflect all hours worked thereby.

10 34. Finally, 24 Hour Fitness failed to provide Representative Plaintiff and members of
11 the class with accurate semi-monthly itemized wage statements of the total number of hours worked
12 by each, and all applicable hourly rates in effect during the pay period, in violation of California
13 Labor Code § 226. In so doing, the Defendant has not only failed to pay its workers the full amount
14 of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for
15 its unlawful conduct by concealing the magnitude (the full number of hours worked) and the
16 financial impact of its wrongdoing.

17 35. Representative Plaintiff and all persons similarly situated who comprise the class are
18 entitled to unpaid compensation, yet, to date, have not received such compensation, despite the
19 severance of their employment with 24 Hour Fitness.

20 36. More than 30 days have passed since certain class members have left 24 Hour Fitness'
21 employ.

22 37. As a consequence of 24 Hour Fitness' willful conduct in not paying compensation
23 for all hours worked, certain class members are entitled to 30 days wages as a penalty, pursuant to
24 California Labor Code § 203, together with attorneys' fees and costs.

25 38. As a direct and proximate result of 24 Hour Fitness' unlawful conduct, as set forth
26 herein, Representative Plaintiff and members of the class identified herein have sustained damages,
27 as described above, including loss of earnings for hours worked on behalf of the Defendant, in an
28 amount to be established at trial. As a further direct and proximate result of the Defendant's unlawful

1 conduct, as set forth herein, Representative Plaintiff and many class members herein are entitled to
2 recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for
3 failure to provide semi-monthly statements of hours worked and all applicable hourly rates (pursuant
4 to California Labor Code § 226) in an amount to be established at trial. As a further direct and
5 proximate result of the Defendant's unlawful conduct, as set forth herein, Representative Plaintiff
6 and Class Members are entitled to recover attorneys' fees and costs, pursuant to the California Labor
7 Code and/or California Civil Code § 1021.5, among other authorities.

8
9 **FIRST CAUSE OF ACTION**
10 **UNLAWFUL FAILURE TO PAY WAGES**

11 39. Representative Plaintiff incorporates in this cause of action each and every allegation
12 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

13 40. During the Class Period, Representative Plaintiff and the Class Members frequently
14 worked in excess of eight hours in a workday and/or forty hours in a workweek. The precise number
15 of overtime hours will be proven at trial.

16 41. During said time period, 24 Hour Fitness refused to compensate Representative
17 Plaintiff and the Class Members for some and/or all of the wages (including overtime wages) earned,
18 in violation of the applicable California Wage Order, Title 8 of the California Code of Regulations
19 and the provisions of the California Labor Code.

20 42. At all relevant times, 24 Hour Fitness was aware of, and was under a duty to comply
21 with the wage and overtime provisions of the California Labor Code, including, but not limited to
22 California Labor Code §§ 200, et seq., 510, 1194 and 1198.

23 43. By refusing to properly compensate Representative Plaintiff and the Class Members
24 for wages earned (either at these Class Members' regular rate of pay and/or at their applicable
25 overtime rates) and/or at a level sufficient to satisfy California's minimum wage provisions, 24 Hour
26 Fitness violated the California Labor Code, as well as Title 8 of the California Code of Regulations
27 and the applicable IWC Wage Order.

28 ///

1 44. As a direct and proximate result of the Defendant's unlawful conduct, as set forth
2 herein, Representative Plaintiff and the Class Members have sustained damages, including loss of
3 earnings for hours worked, including overtime hours worked, on behalf of the Defendant, in an
4 amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

5
6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**

8 45. Representative Plaintiff incorporates in this cause of action each and every allegation
9 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

10 46. During the class period, 24 Hour Fitness required the Representative Plaintiff and
11 members of the class to incur expenses related to the business operations of the defendant. These
12 expenses include(d), without limitation, costs related to travel, continuing education and/or fitness
13 certification, licenses, materials and equipment used in the instruction of "Group X" classes.

14 47. These expenditures were incurred in direct consequence of the discharge of the duties
15 of Representative Plaintiff and members of the class, or of their obedience to the directions of the
16 employer and have not yet been reimbursed by the Defendant.

17 48. At all relevant times, 24 Hour Fitness was aware of and was under a duty to comply
18 with various provisions of the California Labor Code, including, but not necessarily limited to §§
19 406 and 2802(a).

20 49. California Labor Code § 406 provides:

21 Any property put up by an employee, or applicant as a part of the contract of
22 employment, directly or indirectly, shall be deemed to be put up as a bond
23 and is subject to the provisions of this article whether the property is put up
24 on a note or as a loan or an investment and regardless of the wording of the
25 agreement under which it is put up.

24 50. California Labor Code § 2802(a) provides:

25 An employer shall indemnify his or her employee for all necessary
26 expenditures or losses incurred by the employee in direct consequence of the
27 discharge of his or her duties, or of his or her obedience to the directions of
28 the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

///

1 51. By requiring the Representative Plaintiff and members of the class to incur
2 uncompensated expenses in direct consequence of the discharge of their duties, Representative
3 Plaintiff and members of the class were forced and/or brought to contribute to the capital and
4 expenses of the Defendant's business which is legally a cash bond and which must be refunded by
5 the Defendant to each Class Member.

6 52. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
7 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
8 attorneys' fees to collect reimbursement.

9 53. Therefore, Representative Plaintiff demands reimbursement for expenditures or losses
10 incurred by himself and other members of the class in direct consequence of the discharge of his or
11 their duties, or of his or their obedience to the directions of the employer, plus return of all cash
12 bonds or other coerced investments in the business of the Defendant, with interest, at the statutory
13 rate, plus attorneys' fees.

14
15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 54. Representative Plaintiff incorporates in this cause of action each and every allegation
18 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

19 55. California Labor Code § 226(a) provides:

20 Each employer shall semimonthly, or at the time of each payment of wages,
21 furnish each of his or her employees either as a detachable part of the check,
22 draft or voucher paying the employee's wages, or separately when wages are
23 paid by personal check or cash, an itemized wage statement in writing
24 showing: (1) gross wages earned; (2) total number of hours worked by each
25 employee whose compensation is based on an hourly wage; (3) all
deductions; provided, that all deductions made on written orders of the
employee may be aggregated and shown as one item; (4) net wages earned;
(5) the inclusive date of the period for which the employee is paid; (6) the
name of the employee and his or her social security number; and (7) the name
and address of the legal entity which is the employer.

26 56. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code
27 Regs. § 11010, *et seq.*).

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57. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

58. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

59. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under these provisions on behalf of himself and the class.

60. 24 Hour Fitness failed to provide timely, accurate itemized wage statements to Representative Plaintiff and the class in accordance with Labor Code § 226(a) and the applicable IWC Wage Order. None of the statements provided by the Defendant have accurately and/or completely reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

61. As a direct and proximate result of the Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION

62. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

63. California Labor Code § 203 provides that:

"If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for

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1 more than 30 days.”

2 64. Representative Plaintiff and numerous Class Members were employed by 24 Hour
3 Fitness during the Class Period, employment which was thereafter voluntarily or involuntarily
4 severed, yet were not paid all wages due immediately upon the involuntary termination or within
5 seventy-two hours of the voluntary termination of their respective employment positions with the
6 Defendant. Said non-payment and/or untimely payment was the direct and proximate result of a
7 willful refusal to do so by 24 Hour Fitness.

8 65. More than thirty days has elapsed since Representative Plaintiff and these particular
9 Class Members were terminated and/or resigned from the Defendant’s employ.

10 66. As a direct and proximate result of the Defendant’s willful conduct in failing to pay
11 said Class Members for all hours worked, Representative Plaintiff and certain Class Members are
12 entitled to recover “waiting time” penalties of thirty days’ wages, pursuant to California Labor Code
13 § 203, in an amount to be established at trial, together with attorneys’ fees and costs.

14
15 **FIFTH CAUSE OF ACTION**
16 **UNFAIR BUSINESS PRACTICES**

17 67. Representative Plaintiff incorporates in this cause of action each and every allegation
18 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

19 68. Representative Plaintiff further brings this cause of action seeking equitable and
20 statutory relief to stop the misconduct of 24 Hour Fitness, as complained of herein, and to seek
21 restitution from the Defendant of amounts acquired through the unfair, unlawful, deceitful and
22 fraudulent business practices described herein.

23 69. The knowing conduct of the Defendant, as alleged herein, constituted and continues
24 to constitute an unlawful and/or fraudulent business practice, as set forth in California Business &
25 Professions Code §§ 17200, *et seq.* Specifically, the Defendant conducted business activities while
26 failing to comply with the legal mandates cited herein.

27 70. The Defendant’s knowing failure to adopt policies in accordance with and/or to
28 adhere to these laws, all of which are binding upon and burdensome to the Defendant’s competitors,

1 engenders an unfair competitive advantage for the Defendant, thereby constituting an unfair business
2 practice, as set forth in California Business & Professions Code §§ 17200-17208.

3 71. 24 Hour Fitness has clearly established a policy of accepting a certain amount of
4 collateral damage, as represented by the damages to Representative Plaintiff and the class herein
5 alleged, as incidental to its business operations, rather than accept the alternative costs of full
6 compliance with fair, lawful and honest business practices ordinarily borne by responsible
7 competitors of the defendant and as set forth in legislation and the judicial record.

8
9 **RELIEF SOUGHT**

10 **WHEREFORE, the Representative Plaintiff, on behalf of himself and the Plaintiff Class,**
11 **prays for judgment and the following specific relief against Defendant(s), as follows:**

12 1. That the Court declare, adjudge and decree that this action is a proper class action and
13 certify the proposed class under Code of Civil Procedure § 382;

14 2. That the Court declare, adjudge and decree that the Defendant violated the wage and
15 overtime provisions of the California Labor Code and the applicable California Industrial Wage
16 Commission Wage Order as to the Representative Plaintiff and the Plaintiff Class, as applicable;

17 3. That the Court declare, adjudge and decree that the Defendant willfully violated its
18 legal duties to pay wages, including overtime wages and/or the applicable minimum wage, under the
19 California Labor Code and the applicable California IWC Wage Order;

20 4. That the Court declare, adjudge and decree that the Defendant violated California
21 Labor Code §§ 406 and 2802(a), *inter alia*, by willfully failing to reimburse the Representative
22 Plaintiff and Class Members for expenses made on behalf of the Defendant;

23 5. That the Court declare, adjudge and decree that the Defendant violated the record
24 keeping provisions of California Labor Code §§ 226(a) and 1174(d) and section 7 of the applicable
25 IWC Wage Order as to Representative Plaintiff and members of the class, and willfully failed to
26 provide accurate semi-monthly itemized wage statements thereto;

27 6. That the Court declare, adjudge and decree that the Defendant violated California
28 Labor Code § 203 by willfully failing to pay all compensation owed at the time of the termination

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1 of the employment of Representative Plaintiff and other terminated Class Members or within the
2 statutorily-permitted grace period for payment of said wages;

3 7. That the Court declare, adjudge and decree that the Defendant violated California
4 Business and Professions Code §§ 17200, *et seq.* by failing to pay Representative Plaintiff and Class
5 Members all wages due, in a timely manner and/or by failing to provide Class Members with
6 accurate and complete itemized wage statements;

7 8. That the Court make an award to Representative Plaintiff and the class of damages
8 and/or restitution for the amount of unpaid wages, including minimum wages and/or overtime
9 compensation, including interest thereon, and penalties in an amount to be proven at trial;

10 9. That the Court make an award to the Representative Plaintiff and the class for
11 reimbursement of all employer related expenses incurred by said Class Members;

12 10. That the Court order the Defendant to pay restitution to Representative Plaintiff and
13 the class due to the Defendant's unlawful activities, pursuant to California Business and Professions
14 Code §§ 17200-08;

15 11. That the Court further enjoin the Defendant, ordering it to cease and desist from
16 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

17 12. For all other Orders, findings and determinations identified and sought in this
18 Complaint;

19 13. For Interest on the amount of all economic losses, at the prevailing legal rate;


20 14. For reasonable attorneys' fees, pursuant to California Labor Code § 1194 and/or
21 California Civil Code § 1021.5; and

22 15. For costs of suit and any and all such other relief as the Court deems just and proper.

23
24 Dated: March 9, 2007

SCOTT COLE & ASSOCIATES, APC

25
26
27 By:


Scott Edward Cole, Esq.
Attorneys for the representative plaintiff
And the plaintiff class