

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Kristen Sagafi</b>                  California Bar No. 222249                  483 9th Street, Suite 200                  Oakland, CA 94607                  TELEPHONE NO.: 5102546810 FAX NO. (Optional):                  E-MAIL ADDRESS (Optional): ksagafi@tzlegal.com                  ATTORNEY FOR (Name): Dipti Shah</p>	<p>FOR COURT USE ONLY</p> <p><b>ENDORSED FILED ALAMEDA COUNTY</b></p> <p><b>JUN 02 2016</b></p> <p>CLERK of the SUPERIOR COURT                  By <u>Maria Carrera</u>                  MARIA CARRERA, Deputy</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda</b>                  STREET ADDRESS: 1225 Fallon Street                  MAILING ADDRESS: Rene C. Davidson Courthouse, Rook 109                  CITY AND ZIP CODE: Oakland, CA 94612                  BRANCH NAME: Rene C. Davidson Courthouse</p>	<p>CASE NUMBER:                   JUDICIAL OFFICER: <b>RC16818048</b></p>
<p>PLAINTIFF/PETITIONER: Dipti Shah                   DEFENDANT/RESPONDENT: 24 Hour Fitness USA, Inc.</p>	<p>DEPT.:</p>
<p align="center"><b>NOTICE OF RELATED CASE</b></p>	

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Kevin O'Shea et. al v. 24 Hour Fitness USA, Inc.  
 b. Case number: 3:16-cv-01668-EDL  
 c. Court:  same as above  
 other state or federal court (name and address): U.S. District Court Northern Dist. of California  
 d. Department: Civil  
 e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):  
 f. Filing date: 4/1/2016  
 g. Has this case been designated or determined as "complex?"  Yes  No  
 h. Relationship of this case to the case referenced above (check all that apply):  
 involves the same parties and is based on the same or similar claims.  
 arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
 involves claims against, title to, possession of, or damages to the same property.  
 is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
 Additional explanation is attached in attachment 1h  
 i. Status of case:  
 pending  
 dismissed  with  without prejudice  
 disposed of by judgment
  
2. a. Title: Russell Marchewka v. 24 Hour Fitness USA, Inc.  
 b. Case number: 3:16-cv-02359  
 c. Court:  same as above  
 other state or federal court (name and address): U.S. District Court Northern Dist. of California  
 d. Department: Civil

PLAINTIFF/PETITIONER: <b>Dipti Shah</b> DEFENDANT/RESPONDENT: <b>24 Hour Fitness USA, Inc.</b>	CASE NUMBER:
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2. (continued)

- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date: 4/29/2016
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 2h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment

3. a. Title:

b. Case number:

- c. Court:  same as above  
 other state or federal court (name and address):

d. Department:

e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?"  Yes  No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

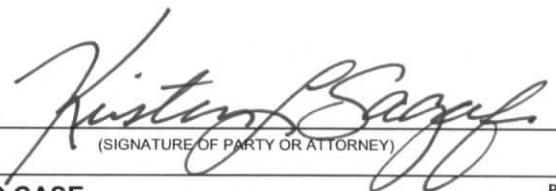
i. Status of case:

- pending
- dismissed  with  without prejudice
- disposed of by judgment

4.  Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: June 2, 2016

Kristen Sagafi  
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

  
(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: Dipti Shah	CASE NUMBER:
DEFENDANT/RESPONDENT: 24 Hour Fitness USA, Inc.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

Tycko & Zavareei LLP  
483 9th St., Ste. 200 Oakland, CA 94607

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (*check one*):
- a.  deposited the sealed envelope with the United States Postal Service.
- b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Related Case* was mailed:
- a. on (*date*): June 2, 2016
- b. from (*city and state*): Oakland, CA

4. The envelope was addressed and mailed as follows:

a. Name of person served:  
Todd M. Logan; Edelson PC  
Street address: 329 Bryant St. Ste. 2C  
City: San Francisco  
State and zip code: CA 94107

c. Name of person served:  
Rachel Adi Naor; Reed Smith LLP  
Street address: 101 Second St., Ste. 1800  
City: San Francisco  
State and zip code: CA 94105

b. Name of person served:  
Terence N. Hawley; Reed Smith LLP  
Street address: 101 Second St., Ste. 1800  
City: San Francisco  
State and zip code: CA 94105

d. Name of person served:  
Street address:  
City:  
State and zip code:

Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 2, 2016

Audrey Abate

(TYPE OR PRINT NAME OF DECLARANT)

▶   
(SIGNATURE OF DECLARANT)

SHORT TITLE: Shah v. 24 Hour Fitness USA, Inc.	CASE NUMBER:
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**ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)**

*(This Attachment is for use with form POS-030)*

**NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:**

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>
Eve-Lynn J. Rapp Edelson PC	350 N. LaSalle St., Ste. 1300 Chicago, IL 60654
Rafey S. Balabanian Edeslson PC	350 North LaSalle St., Ste. 1300 Chicago, IL 60654
Rosemary M. Rivas Finkelstein Thompson LLP	1 California St., Ste. 900 San Francisco, CA 94111
Marc Lawrence Godino Glancy Prongay & Murray LLP	1925 Century Park East, Ste. 2100 Los Angeles, CA 90067
Quentin Alexandre Roberts Finkelstein Thompson LLP	1 California St., Ste. 900 San Francisco, CA 94111

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
Kristen Sagafi
California Bar No. 222249
483 Ninth St., Ste. 200
Oakland, CA 94607
TELEPHONE NO.: 5102546810 FAX NO.: 2029730950

FOR COURT USE ONLY

ENDORSED
FILED
ALAMEDA COUNTY

JUN 02 2016

CLERK OF THE SUPERIOR COURT
By Maria Carrera
MARIA CARRERA, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
STREET ADDRESS: 1225 Fallon Street
MAILING ADDRESS: Rene C. Davidson Courthouse, Room 109
CITY AND ZIP CODE: Oakland, CA 94612
BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME:
Dipti Shah v. 24 Hour Fitness USA, Inc.

CASE NUMBER:
RG16818048
JUDGE:
DEPT:

CIVIL CASE COVER SHEET
Unlimited (Amount demanded exceeds \$25,000)
Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

- Auto Tort: Auto (22), Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: Asbestos (04), Product liability (24), Medical malpractice (45), Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort: Business tort/unfair business practice (07), Civil rights (08), Defamation (13), Fraud (16), Intellectual property (19), Professional negligence (25), Other non-PI/PD/WD tort (35)
Employment: Wrongful termination (36), Other employment (15)
Contract: Breach of contract/warranty (06), Rule 3.740 collections (09), Other collections (09), Insurance coverage (18), Other contract (37)
Real Property: Eminent domain/Inverse condemnation (14), Wrongful eviction (33), Other real property (26)
Unlawful Detainer: Commercial (31), Residential (32), Drugs (38)
Judicial Review: Asset forfeiture (05), Petition re: arbitration award (11), Writ of mandate (02), Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): Antitrust/Trade regulation (03), Construction defect (10), Mass tort (40), Securities litigation (28), Environmental/Toxic tort (30), Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: Enforcement of judgment (20)
Miscellaneous Civil Complaint: RICO (27), Other complaint (not specified above) (42)
Miscellaneous Civil Petition: Partnership and corporate governance (21), Other petition (not specified above) (43)

- 2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. Large number of separately represented parties
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. Large number of witnesses
e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 7
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 6/1/2016
Kristen Law Sagafi

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 **TYCKO & ZAVAREEI LLP**

2 Kristen Law Sagafi (Cal. Bar No. 222249)

3 ksagafi@tzlegal.com

4 Martin D. Quiñones (Cal. Bar No. 238293)

5 mquinones@tzlegal.com

6 483 Ninth Street, Suite 200

7 Oakland, CA 94607

8 Tel: (510) 254-6808

9 Attorneys for Plaintiff and Putative Class

10 *[Additional Counsel Appear on Signature Page]*

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 02 2016**

CLERK OF THE SUPERIOR COURT

By Maria Carrera  
MARIA CARRERA, Deputy

11 **SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA**

12 DIPTI SHAH, on behalf of herself and all  
13 others similarly situated,

14 **PLAINTIFF,**

15 v.

16 24 HOUR FITNESS USA, INC., a California  
17 corporation,

18 **DEFENDANT.**

CASE NO. **RG 16818048**

**CLASS ACTION COMPLAINT FOR:**

- 1) Violation of the Consumers Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.*;
- 2) Violation of CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 3) Violation of the California Health Studio Services Contract Law, CAL. CIV. CODE § 1812.81, *et seq.*;
- 4) Violation of CAL. BUS. & PROF. CODE §17500, *et seq.*;
- 5) Common Law Fraud
- 6) Equitable Claim for Contract Reformation
- 7) Equitable Claim for Restitution

**JURY TRIAL DEMANDED**

19  
20  
21 Plaintiff Dipti Shah (“Plaintiff”), individually and on behalf of all others similarly situated,  
22 brings this class action lawsuit against Defendant 24 Hour Fitness USA, Inc. (“Defendant,” “24  
23 Hour Fitness,” or the “Company”), and in support thereof, avers the following based upon  
24 personal information and the investigation of her counsel:  
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26  
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1 INTRODUCTION

2 1. This action is brought by named plaintiff Dipti Shah (“Plaintiff”) on behalf of herself  
3 and other similarly situated consumers to remedy consumer protection violations and fraud  
4 committed by 24 Hour Fitness, a privately owned and operated fitness center chain.

5 2. Through the years, 24 Hour Fitness has built an impressive fitness empire with over  
6 4 million members and more than 420 clubs in 17 states. The Company is purportedly valued at  
7 approximately \$1.85 billion.

8 3. The success of 24 Hour Fitness rises and falls on a single metric – the number of  
9 gym members paying dues. To induce sales and grow its gym membership base, beginning at least  
10 as early as 2002, 24 Hour Fitness has sold so called “lifetime memberships” (“Lifetime  
11 Memberships”). In exchange for prepaying several years as a lump sum at the outset, 24 Hour  
12 Fitness employees were trained to tell prospective members that they would be locked into a  
13 yearly rate for life, typically ranging from around \$29 per year to \$99 per year. As described  
14 herein, the Company trained its employees to sell these “lifetime memberships” with the promise  
15 of fixed annual renewal rates.

16 4. 24 Hour Fitness’s lifetime membership scheme pervaded every club throughout the  
17 United States. Specifically, 24 Hour Fitness trained its sales force to induce prospective gym  
18 enrollees to enter into a long-term gym membership contract by promising the member enrollee a  
19 low annual renewal rate that would be locked in “for life” (the “Lifetime Renewal Rate”). To  
20 qualify for the Lifetime Renewal Rate, the enrollees were told that they were required to prepay  
21 two, or in some cases as many as three, years of annual membership dues up front.

22 5. Through the use of various sales tactics, 24 Hour Fitness obfuscated the fact that  
23 these customers were not in fact entering lifetime membership agreements with fixed annual  
24 renewal rates, but rather, the membership agreements provided that: “[t]he initial annual renewal  
25 amount... is only for the first 12 month renewal term immediately following expiration of your  
26 prepaid term. . . .”  
27  
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1           6.       The promise of a Lifetime Renewal Rate was the driving force behind Plaintiff's and  
2 other gym enrollees' decisions to enter into a long-term gym membership contract and prepay two  
3 or three years of membership dues. Without the benefit of the Lifetime Renewal Rate, there was  
4 little economic incentive for enrollees to enter into a long-term, prepaid membership agreements.  
5 24 Hour Fitness kept its promise of a fixed annual renewal rate to some members for many years,  
6 never raising rates above the promised lifetime rate. Beginning in 2016, however, 24 Hour Fitness  
7 began sending notifications to its lifetime members stating that it was raising rates, often by as much  
8 as 300%.

9           7.       In or around 2016, Defendant announced that customers benefitting from the  
10 promised Lifetime Renewal Rate - some of whom had been customers under this arrangement for  
11 over a decade - would see their annual renewal rate increase, despite the promises made by  
12 Defendant. Gym members who were sold Lifetime Memberships with fixed renewal rates began to  
13 receive notices from the Company informing them that their annual renewal rates would increase.

14           8.       In many cases, Lifetime Membership customers are now assessed renewal fees that  
15 are double and triple the originally agreed-upon Lifetime Renewal Rate.

16           9.       Quite simply, Defendant has unfairly and unlawfully stopped honoring the Lifetime  
17 Renewal Rate that it guaranteed to Lifetime Members at the outset of their memberships.

18           10.      Defendant's conduct has drawn the attention and ire of customers across the country,  
19 with countless angry customers taking to the internet to voice their discontent over Defendant's  
20 broken promises.

21           11.      Defendant's primary response to date has been to point to the fine print contained in  
22 its standard membership agreements ("Membership Agreement(s)"), which surreptitiously and  
23 discretely identifies that the annual renewal fee is only guaranteed for the first 12-month term  
24 immediately following the expiration of the prepaid period.

25           12.      Defendant's ploy of using misrepresentations about Lifetime Renewal Rates was  
26 nothing short of an artifice devised to lure and deceive thousands of consumers into prepaying for  
27 a multi-year membership. Defendant reaped the economic benefits of fraudulently increasing its  
28



1 member base and obtaining up to three years of membership dues upfront, all the while knowing  
2 that its promises of a fixed renewal rate were illusory.

3 13. Defendant should not be permitted to retreat behind the fine print of its  
4 Membership Agreements to escape liability for defrauding thousands of consumers and illegally  
5 profiting in an amount believed to be in the millions of dollars.

6 14. As a result of Defendant's conduct alleged herein, Plaintiff and Class Members  
7 have suffered injury in fact, incurred damages, and have otherwise been harmed.

8 15. Accordingly, Plaintiff brings this action to redress Defendant's fraud and various  
9 violations of California's consumer protection laws and Health Studio Services Contract Law.  
10 In addition to damages, Plaintiff seeks the reformation of the Membership Agreement to provide  
11 Plaintiff and the other Class Members the rights and benefits that Defendant used to fraudulently  
12 induce Class Members into entering Membership Agreements.

### 13 JURISDICTION AND VENUE

14 16. This Court has subject matter jurisdiction over all causes of action alleged in this  
15 Complaint pursuant to the California Constitution, Article VI, § 10, and is a Court of competent  
16 jurisdiction to grant the relief requested. Plaintiff's claims arise under the laws of California, are  
17 not preempted by federal law, do not challenge conduct within any federal agency's exclusive  
18 domain, and are not statutorily assigned to any other trial court.

19 17. This Court has jurisdiction of this action because Defendant is headquartered and  
20 routinely conducts business in Alameda County. The unlawful conduct alleged in this Complaint  
21 occurred in substantial part within the State of California and was intended to and did substantially  
22 affect business and commerce within this State.

23 18. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 and  
24 Business & Professional Code §§ 17203 and 17204 because Defendant does business in Alameda  
25 County and Plaintiff's transaction took place in Alameda County where Plaintiff resides.

26  
27  
28

1 PARTIES

2 **A. Plaintiff Dipti Shah**

3 19. Plaintiff Dipti Shah is a citizen of the State of California, and currently resides in  
4 Pleasanton, California.

5 **B. Defendant 24 Hour Fitness USA, Inc.**

6 20. Defendant 24 Hour Fitness is a private corporation incorporated under the laws of  
7 the State of California. It is the world's largest private fitness company (by membership).

8 21. Defendant has a principal place of business and headquarters located at 12647  
9 Alcosta Blvd., Suite 500, San Ramon, California 94583. Defendant also has a processing center  
10 located in Carlsbad, California.

11 22. Defendant routinely conducts business in the State of California, including in  
12 Alameda County. Specifically, Defendant advertises and sells a substantial number of gym and  
13 fitness center memberships in California. According to Defendant, 24 Hour Fitness conducts  
14 business through the United States in 17 different states.

15 FACTUAL ALLEGATIONS

16 **A. Overview of 24 Hour Fitness**

17 23. 24 Hour Fitness is the world's largest (by membership) privately owned and  
18 operated fitness club chain and the second largest health and fitness company in the world. In  
19 2014, Defendant reportedly generated \$1.33 billion in revenue from over 4 million members in  
20 more than 400 clubs across 17 states<sup>1</sup> in the United States. In California alone, Defendant  
21 currently operates 223 fitness locations in 139 cities.

22 24. 24 Hour Fitness started in 1983 as a one-club operation called 24 Hour Nautilus.  
23 Gradually expanding in membership, the company soon gained widespread attention in the fitness  
24 world, including through the use of promotional campaigns with high-profile celebrities such as  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Defendant has fitness centers or gyms in the following states: California, Colorado,  
28 Florida, Hawaii, Kansas, Maryland, Missouri, Nebraska, Nevada, New Jersey, New York,  
Oklahoma, Oregon, Texas, Utah, Washington, and Virginia.

1 Arnold Schwarzenegger. The company enjoyed healthy growth over the next decade, including  
2 international expansion to East and Southeast Asia.

3 25. In 1994, the company was acquired by California-based Family Fitness Centers and  
4 was renamed as 24 Hour Fitness. Following this acquisition, Defendant began to undertake  
5 lucrative and highly publicized marketing efforts, including, *inter alia*, sponsoring the United  
6 States Olympic teams from 2004 to 2008 and partnering with NBC to develop the well-known  
7 reality television show *The Biggest Loser*.

8 26. Following a sale of the company by the now-defunct private equity firm Forstmann  
9 Little in 2014 for a reported \$1.85 billion, 24 Hour Fitness is currently owned jointly by private  
10 equity firms AEA Investors, Fitness Capital Partners, and Global Leisure Partners, as well as the  
11 Ontario Teachers' Pension Plan/Teacher's Private Capital.

12 **B. 24 Hour Fitness Membership Options**

13 27. Defendant offers two different types of memberships. The first type of membership  
14 is a monthly payment membership where members pay on a monthly basis, with an option to  
15 commit to twelve (12) months at a reduced monthly rate. This membership runs month-to-month  
16 until a member cancels, and monthly bills are automatically debited to the customer's bank  
17 account. A monthly membership costs members less up-front, but this option winds up being a  
18 greater expense over time than the second membership option – prepaid memberships.

19 28. The second type of membership is a prepaid membership. Prepaid memberships  
20 provide an opportunity for members to pay a large, up-front, lump-sum payment to cover a two- or  
21 three- year membership period, after which period the member is supposedly entitled to renew  
22 their membership at a fixed price. Prepaid memberships cost more up-front but, over time, the up-  
23 front cost is theoretically offset by a fixed, annual renewal rate that Defendant promises to its  
24 members indefinitely.

25 **C. 24 Hour Fitness "Lifetime Memberships" and Lifetime Renewal Rates**

26 29. From the beginning of its operations in 1983, Defendant has offered Lifetime  
27 Memberships. As part of its prepaid membership packages, Defendant would regularly and  
28

1 systematically guarantee that the prepaid membership is a Lifetime Membership with a Lifetime  
2 Renewal Rate. That is, Defendant promises prepaid members that at the expiration of the prepaid  
3 (two- or three-year) membership period, they will be entitled to renew their membership with 24  
4 Hour Fitness “for life” at a fixed, annual rate.

5 30. The Lifetime Renewal Rate can vary from member to member and location to  
6 location, but it is intended to incentivize new members to take on the greater expense of larger up-  
7 front payments in order to achieve gym membership savings in the long-run in the form of a less-  
8 expensive, fixed renewal rate.

9 31. Specifically, these up-front, lump-sum payments provided a substantial uptick in  
10 immediately-available capital (and a subsequent income stream from renewal fees) which enabled  
11 Defendant to expand rapidly in its earlier years during a time when the fitness industry was  
12 beginning to decline. Indeed, Defendant continues to benefit from the immediate large revenues  
13 derived from these prepaid memberships

14 32. In the absence of the Lifetime Renewal Rate, there is very limited incentive for a  
15 customer to agree to enter into a prepaid membership wherein he or she pays advance membership  
16 fees for a multi-year membership. In other words, the Lifetime Renewal Rate is the primary (if not  
17 only) economic justification for consumers to enter into multi-year prepaid memberships with  
18 Defendant.

19 33. Lifetime Memberships were also offered to entice customers to sign up for  
20 memberships during a time when fitness chains were having difficulty obtaining new members  
21 and retaining current members. For example, as one individual recounted, the Lifetime  
22 Memberships and Lifetime Renewal Rate were used to induce otherwise disinterested customers  
23 into enrolling as gym members as follows:

24 If you don't already know about the Lifetime memberships, the  
25 salesperson at 24 hour Fitness will first try and sell you a monthly  
26 plan. If you are a hard sell, and aren't biting the sales pitch, especially  
27 when you are walking out (I was), the salesperson will whip out the  
28 “lifetime” membership offers. Mine was pay \$800 up front for the  
lifetime membership, and that would cover my first 3 years of  
membership, then I would have to pay \$49 only once per year for

1 life.... I remember during the sales pitch I asked what was the catch  
2 and was told there is no catch.<sup>2</sup>

3 34. As consumers later discovered, however, there was a catch and that was that the  
4 Company was lying to customers to induce them to enter a gym membership contract that  
5 contained none of the lifetime benefits described.

6 **D. Defendant's Deceptive Sales Practices**

7 35. Defendant is and was at all relevant times highly sales-driven, with its sales  
8 practices, compensation, and goals established by executives at the top rungs of the Company.

9 36. According to postings on job boards by employees, the culture of the Company is  
10 sales-obsessed. A former 24 Hour Fitness sales employee described the Company as engaged in  
11 "[r]elentless sales tactics taught from a very specific script and strategy" and "robotic strong-arm  
12 sales tactics." According to another sales associate, 24 Hour Fitness's mantra is "Sell, sell, sell.  
13 Key word to work here and make money, sales."

14 37. As per the protocols, Defendant provided its sales associates with scripts of sales  
15 pitches to coax prospective customers into signing a Membership Agreement using the promise of  
16 a Lifetime Memberships. According to numerous customer accounts, Defendant's salespeople and  
17 support staff would pressure potential customers into quickly signing up for what are described as  
18 "Lifetime Memberships."

19 38. Defendant accomplishes this in a number of ways, including by not giving the  
20 customer an opportunity to read and actually discouraging customers from reading the fine print in  
21 the Membership Agreements, and by making promises that are not contained in Defendant's  
22 Membership Agreements, such as guaranteeing a customer that he or she will be a member "for  
23 life."  
24  
25

26 \_\_\_\_\_  
27 <sup>2</sup> See <http://www.ripoffreport.com/r/24-Hour-Fitness/Select-StateProvince/24-Hour-Fitness-The-24-Hour-Fitness-Lifetime-Membership-scam-and-or-Renovat-1106306> (last visited  
28 May 20, 2016)

1           39.     In an interview of Dan Benning (“Benning”), then-President of 24 Hour Fitness  
2 North America Division, Benning ironically described the sales approach of the Company as one  
3 of “trust”, claiming that the Company was “very focused that from a pricing standpoint, you know  
4 what the price is” and “[t]here is no high-low.”<sup>3</sup> According to Benning, the goal was to “spend  
5 less time weeding through information and more time getting answers to their questions... In other  
6 words, when you make it easier for customers to buy your product, you make it easier to sell.”

7           40.     Former employees of Defendant acknowledge these practices and the use of the  
8 “lifetime” hook to reel in new gym members. One former sales employee of Defendant identifies  
9 the following:

10                     Not only did I buy a lifetime membership by paying a large sum up  
11 front that was *supposed* to renew at \$29 a year, *but I used to work in*  
12 *sales at 24 Hour Fitness . . . and we were trained to tell people this*  
13 *is the price they would pay for the rest of their lives, hence*  
14 *“lifetime,”* which is why I also bought myself. They increased my  
15 dues this year to 79 . . . .<sup>4</sup>

16           41.     One customer recounts her experiences with a dishonest and deceptive sales  
17 employee of Defendant [*sic*]:

18                     I have bought 3 different “lifetime” memberships. . . . My husband  
19 just got his notice and his rate has been increased from \$29 to \$79. I  
20 read his contract and it does allow for increase. I read my contract and  
21 it states that my rate shall remain the same so long as I remain a  
22 member in good standing. I am going to assume that my daughters  
23 contract reads the same since they purchased from the same facility  
24 and just a few months apart. However, *I was told verbally that the*  
25 *rate was “for life”* when purchasing each membership. This is why I  
26 bought them and paid a large “up front” amount of money. *The sales*  
27 *rep at the 24 Hour Concord, CA did deceive me.* I recall being told

28  

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<sup>3</sup> Laura Green, *Dan Benning uses a simple strategy to grow 24 Hour Fitness*, Smart Business, dated June 1, 2011, available at <http://www.sbsonline.com/article/dan-benning-uses-a-simple-strategy-to-grow-24-hour-fitness/> (last visited May 20).

<sup>4</sup> [https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html?page=7](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=7) (last visited May 17, 2016) (emphasis added).

1                    *that the contracts are “all the same” and no need to spend the time*  
2                    *to read all the fine print.”*<sup>5</sup>

3                    42.      Another consumer details the pressure and deceit experienced when a prospective  
4                    customer shows any sign of hesitation in signing up for a prepaid membership [*sic*]:

5                                       “I was conned by a 24 Hour Fitness salesperson. I was told that for a  
6                                       prepaid membership of \$700 there were no monthly fees for three  
7                                       years and then it would only be \$29 per year thereafter. *I specifically*  
8                                       *asked if that annual fee was subject to change, and I was told, “No,*  
9                                       *after three years, just \$29 a year for as long as you stay a member.”*  
10                                       This was a lie. My annual renewal fee for the upcoming year was  
11                                       increased 272% to \$79. *He also told me that the promotional offer*  
12                                       *was expiring that day so I had to act that day or miss the offer. . . .*  
13                                       *BTW, the contract was two legal-sized pages of multiple columns of*  
14                                       *fine print. I told the salesperson I didn’t have my reading glasses*  
15                                       *with me. That’s when he told me the offer ended that day.”*<sup>6</sup>

16                    43.      Despite that the concept of a Lifetime Renewal Rate “for life” is at odds with the  
17                    contents of its Membership Agreements, Defendant continuously promises this and goes to great  
18                    lengths to deceive customers into believing it will honor this promise and to prevent customers  
19                    from learning the truth about renewal as it is actually provided for in the fine print of the  
20                    Membership Agreement.

21                    44.      Indeed, 24 Hour Fitness sales agents were taught to deflect a consumer’ attention  
22                    from the fact that the monthly price of the membership could be increased at any time by quickly  
23                    marshalling consumers through the contract, and with some agents actively encouraging  
24                    consumers to not read their contracts because they are “*all the same*” and there is “*no need to*  
25                    *spend the time to read all the fine print.*” Indeed, even the contract itself deflects customers away  
26                    from the fine print. For example, Plaintiff’s contract, attached hereto as **Exhibit A**, contains the  
27                    following statement in large bold font “**optional annual renewal: \$99.99**”. Meanwhile in a  
28                    much lighter, non-bolded smaller font, the contract states “initial annual renewal amount stated

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25                    <sup>5</sup>[https://www.reddit.com/r/legaladvice/comments/3ayunb/24\\_hour\\_fitness\\_increasing\\_lifetime\\_membership/](https://www.reddit.com/r/legaladvice/comments/3ayunb/24_hour_fitness_increasing_lifetime_membership/) (last visited May 17, 2016) (emphasis added).

27                    <sup>6</sup> <http://www.bbb.org/sdoc/business-reviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/>(last visited May 17, 2016) (emphasis added).

1 below is only for the first 12 months” – immediately and directly contradicting exactly what was  
2 stated only moments earlier.

3 **E. Defendant’s Response to Customer Complaints: “Read the Fine Print”**

4 45. Defendant responds to consumer complaints about Lifetime Memberships in a  
5 number of incredible ways.

6 46. In many instances, Defendant appallingly responds to consumer complaints by  
7 pointing to the fine print of its Membership Agreements and taking the position that Defendant is  
8 entitled to raise its renewal rates at any time. For example, one consumer reported:

9 “I was also offered the \$49/year for the "rest of my life" promises from  
10 24 Hour Fitness only to see it go up to \$99 for this upcoming year.  
11 Who knows what will happen next year? Will it double again? I'm  
12 searching for other gyms, as I've spent LOTS of money training at 24  
13 Hour Fitness, and when I just called their 866 line and talked to a  
14 customer rep named Joseph, *he repeated verbatim what every  
operator said that it's in the contract that they can raise the rate.* I  
15 will join class action lawsuit as there has to be tons of evidence that  
16 they marketed these "lifetime" memberships at the time. Dirty  
17 corporate BS that I thought was too good to be true.”<sup>7</sup>

18 47. Defendant also routinely tells customers that the reason for the renewal fee increase  
19 is related to equipment, maintenance, or other upkeep, which is clearly subterfuge as many  
20 consumers identify that their fitness location has not upgraded its facilities at all. One consumer  
21 complaint identifying this type of response is reproduced in pertinent part below [*sic*]:

22 First I received a letter stating they were going to double my  
23 membership dues when *I "was" considered a lifetime member.* They  
24 closed one of the gyms I attended to open a new one and promised all  
25 attending members would be grandfathered into the new location.  
26 Once they closed that particular gym they changed their promise to  
27 "oh that was just a rumor." *Then they "upgraded" the rest of the  
gyms in my area to super sport but DID NOT upgrade the equipment*

28  

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<sup>7</sup> Post of “Greg” of Boulder, CO on April 21, 2016, available at  
[https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html) (last visited May 17, 2016)  
(emphasis added).



1                                    *or the services in the gym. The only thing they upgraded was the*  
2                                    *COST.*<sup>8</sup>

3                    48.            In certain circumstances, 24 Hour Fitness flat out tells consumers to, essentially,  
4                    “go pound sand.” One example of this type of response is recounted below [*sic*]:

5                    I have been held victim to 24 hour lies as many others on this online  
6                    community. I signed a lifetime agreement and I paid close \$700 for  
7                    the first 3 years and I negotiated my rate all the way down to \$99 a  
8                    year for life. Yet when my contract was time to renew it jumped all  
9                    the up to \$174 an increase of 0.56% increase. . . . Oh yeah when I  
10                    called customer service or talk to management at the gyms I mostly  
11                    attended they both told me that everybody's rate went up. I told them  
12                    that is not correct as I spoke to other friends, co-workers and even my  
13                    wife that had separate membership and their rate did not go up.

14                    I call corporate and they told me the reason for big increase was due  
15                    to *new gyms being built, and improvements being made* for to 24  
16                    hour gyms. I explained to the representative that *none of the gyms I*  
17                    *attended - 4 at that time had not received any remodeling, nor new*  
18                    *equipment or added services.* Her reply, *"We can't help you."* . . . .<sup>9</sup>

19                    49.            Clearly, Defendant's method of handling the blowback from its fraudulent conduct  
20                    is to simply shrug off the explicit promises it made to Plaintiff and Class Members by either  
21                    attempting to hide behind the fine print of its Membership Agreement or by simply telling its  
22                    aggrieved members that they are out of luck.

23                    50.            The result of Defendant's conduct is twofold: prepaid members who were  
24                    previously benefitting from a Lifetime Renewal Rate are no longer seeing this promise honored by  
25                    Defendant, while thousands of other prepaid members who signed up for what they believed to be  
26                    a Lifetime Membership with a Lifetime Renewal Rate will *never* receive the benefit of the  
27                    promised Lifetime Renewal Rate.

28                    \_\_\_\_\_  
29                    <sup>8</sup> Post of “Shelly” of Vista, CA on April 8, 2016, available at  
30                    [https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html) (last visited May 17, 2016)  
31                    (emphasis added).

32                    <sup>9</sup> Post of “jazzy” of Kansas City, MO on March 19, 2016, available at  
33                    [https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html?page=2](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html?page=2) (last visited May  
34                    17, 2016) (emphasis added).

1 **F. Complaints by Other Class Members**

2 51. Scores of virtually identical complaints about this exact conduct by Defendant can  
3 be found on the internet from consumers across the country.

4 52. A small sample of the countless consumer complaints about 24 Hour Fitness's false  
5 promises regarding Lifetime Memberships and Lifetime Renewal Rates are reproduced verbatim  
6 below:

7 • **Dianne of San Diego, CA on April 29, 2016**

8 The same complaint as many others here! When I initially signed up in 2007,  
9 I was told by the Salesperson that I would have a lifetime membership of  
10 \$49/yearly, after paying a large sum upfront. Imagine my surprise when I  
open my dues notice and see that my membership has just about tripled! No  
heads up letter or email, just an invoice with triple the amount!<sup>10</sup>

11 • **Evelyn of Huntington Beach, CA on May 10, 2016**

12 In 2007, I enrolled with 24 Hour Fitness in under the advertised "**LIFETIME**"  
13 **membership** that required me to pay upfront about \$599 including membership  
14 enrollment fees with the guarantee that all consecutive years I remain a member of  
24 Hour Fitness will ensure me a \$29/year rate; no limitation. When I received the  
15 invoice renew my membership from an email reminder sent to me, my membership  
16 payment *went up to \$79 and also included language which reads only that "we  
are constantly reinvesting in our clubs, services and team of professionals... In  
order to do this, it has become necessary to increase your annual renewal amount  
effective on the due date below."* No exact details are provided.

17 My membership is an All-Sport membership. Isn't that why there are several  
18 different types of memberships with different costs? Unless all the sports facilities  
19 of 24 Hour Fitness is undergoing upgrade to Super/Ultra-sport nationwide, I don't  
20 see why this explanation is used. Upon logging in to renew my membership, I  
found *not only did 24 Hour Fitness violate their agreement not to raise my rate,  
but they increased it like 272%! My membership nearly tripled in one year!*  
21 Throughout the years, I've been with 24 Hour Fitness, always loyal without going  
22 to another fitness facility. I am so upset! I want to have my \$29/yr rate or else give  
me all club access.<sup>11</sup>

23 • **Maritza of Bakersfield, CA on April 15, 2016**

24 \_\_\_\_\_  
25 <sup>10</sup> [https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html) (last visited May  
20, 2016) (emphasis added).

26 \_\_\_\_\_  
27 <sup>11</sup> [https://www.consumeraffairs.com/health\\_clubs/24\\_hour\\_fitness.html](https://www.consumeraffairs.com/health_clubs/24_hour_fitness.html) (last visited May  
17, 2016) (emphasis added).

1 *I was told that my annual membership of \$49.99 was going to be for lifetime after*  
2 *finishing paying the total amount of my contract. It has been like that for the last*  
3 *years annually. I paid 49.00, but now increased to 99.00. I am very unhappy.*<sup>12</sup>

4 • **Charles of Bakersfield, CA on April 15, 2016**

5 I signed up for 24 Hour Fitness in May of 2007 for \$900.00 dollars and *was told I*  
6 *had a lifetime \$49 annual contract. It has been \$49 a year until now.* I recently  
7 opened my renewal letter and found it is now \$149.00 a year. I'm very interested in  
8 joining in a class action lawsuit against this unfair increase.<sup>13</sup>

9 • **Wai H. of San Lorenzo, CA on April 12, 2016**

10 I signed up for 24 Hour Fitness in 2008 and *was told I had a lifetime \$49 annual*  
11 *contract. It has been \$49 a year until now. I recently opened my renewal letter*  
12 *and found it is now \$99.00 a year.* I'm very interested in joining in a class action  
13 lawsuit against this unfair increase.<sup>14</sup>

14 • **Suzanne of Sherman Oaks, CA on April 8, 2016**

15 In 2008 I signed up for a 3 year membership with 24 Hour Fitness for \$999 and  
16 was told that if I paid my dues on time that after the 3 years *I would be locked into*  
17 *a lifetime membership* for \$75 plus tax annually. After the 3 years were up, if I  
18 continued to pay my annual dues of \$75 plus tax I would be grandfathered into that  
19 price for the rest of my life. *Many other people received the same verbal*  
20 *agreement* for various prices from \$29.99 annually to \$99.99 annually. *Now, we*  
21 *have all received a \$120 increase in our annual dues that were guaranteed to be*  
22 *locked in at a certain rate.* I would like to request that 24 Hour Fitness either  
23 stands by their agreement to grandfather us into a certain rate for our annual  
24 memberships or if they refuse then use the support of all of you to start a class  
25 action lawsuit against 24 Hour Fitness for this unjustified price increase. I would  
26 like to be part of a class action lawsuit.<sup>15</sup>

27 • **24 Hour Fitness Increasing "Lifetime" membership rate - is this legal?**  
28 **(California) - submitted 10 months ago \* by FU24HrFitness**

My mother signed up for one of those 24 Hour Fitness *lifetime membership* deals,  
where you pay a few hundred up front and then get "*locked*" into a rate of  
*\$49/year.* After 5 or so years, she received a letter stating that her *lifetime rate was*  
*increasing.* They *didn't give a reason for this, just a "sorry, we're raising your*

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<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> *Id.* (emphasis added).

<sup>15</sup> *Id.* (emphasis added).



- 1 • I was duped as well. The *in-club advertisement along with the sales staff assured me my dues would not increase*. I too have seen an increase. 300%

2 -steve knoll, Irvine, CA<sup>20</sup>

- 3  
4 • Clear bait and switch.... *Sales guy lied that \$30/month life time membership due will never increase* and had me sign on a contract that clearly says in 3(c) that dues can be increased at any time. BAD FAITH. willfully mis-lead me into signing a contract based on mis-information. This happened across the nation over and over.<sup>21</sup>

7 **G. Plaintiff Shah's Experience**

8 53. Plaintiff's own experience with 24 Hour Fitness and a supposed Lifetime  
9 Membership is consistent with the complaints of consumers across the nation.

10 54. On or about March 27, 2009, Plaintiff entered into a Lifetime Membership by  
11 signing a Membership Agreement with Defendant at the 24 Hour Fitness located close to her  
12 home in Pleasanton.

13 55. Under the terms of Plaintiff's Membership Agreement, Plaintiff committed to a  
14 three-year prepaid membership that provided her with access to all levels of Defendant's clubs,  
15 commencing on March 27, 2009 and ending on March 26, 2012, after which Defendant promised  
16 a Lifetime Renewal Rate of \$99.99 per year. Plaintiff's prepaid amount for the first three years of  
17 her membership was \$449.99.

18 56. At the time Plaintiff agreed to sign the Membership Agreement, a representative of  
19 Defendant told Plaintiff that by signing up for the Membership Agreement, Plaintiff was agreeing  
20 to a membership that entitled her to pay a fixed, annual renewal fee of \$99.99 to maintain her  
21 membership with Defendant for life. Specifically the sales representative stated that this  
22 membership included a "lifetime guaranty" and that the price would never change.

23 57. The representative advised Plaintiff that it was unnecessary to read the Membership  
24 Agreement prior to signing. Rather, the representative recommended that Plaintiff sign the

25 \_\_\_\_\_  
26 <sup>20</sup> *Id.* (emphasis added).

27 <sup>21</sup> [http://www.bbb.org/sdoc/businessreviews/health-clubs/24hour-fitness-usa-inc-in-](http://www.bbb.org/sdoc/businessreviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints)  
28 [carlsbad-ca-9000777/complaints](http://www.bbb.org/sdoc/businessreviews/health-clubs/24hour-fitness-usa-inc-in-carlsbad-ca-9000777/complaints) (last visited May 17, 2016) (emphasis added).

1 Membership Agreement just moments after Plaintiff was presented with the Agreement for the  
2 first time, and then she could read it later on at home if she wanted.

3 58. When Plaintiff signed a Membership Agreement with Defendant, Plaintiff's  
4 understanding and belief – based upon Defendant's verbal communications and promises – was  
5 that by paying in advance for a three-year membership with 24 Hour Fitness, she could renew her  
6 membership in each subsequent year (for life) following the expiration of the prepaid term at a  
7 locked rate of \$99.99. Consistent with the representations made to her, Plaintiff did receive the  
8 benefit of a locked \$99 rate for the next four years.

9 59. On or about February 26, 2016, however, Plaintiff was informed by letter  
10 notification sent by Defendant that her Lifetime Renewal Rate would not be honored and that her  
11 new annual renewal rate going forward would be \$149.99 – \$50.00 more than the previously  
12 promised Lifetime Renewal Rate of \$99.99.

13 60. Plaintiff relied on Defendant's representations concerning the Lifetime Renewal  
14 Rate in agreeing to prepay several years of membership dues. Had Defendant disclosed that the  
15 promise of a Lifetime Renewal Rate was illusory, she would not have agreed to prepay several  
16 years of membership fees or to sign the Membership Agreement.

17 61. Prior to Plaintiff signing the Membership Agreement, neither Defendant nor any of  
18 its agents or other representatives ever communicated to Plaintiff the possibility that her Lifetime  
19 Renewal Rate at some point may not be honored and/or that the annual renewal rate could  
20 increase. Indeed, 24 Hour Fitness staff told her the exact opposite. Defendant never told Plaintiff  
21 that 24 Hour Fitness could unilaterally increase the annual rate as much as it liked until 2016.

22 62. Plaintiff's experiences, along the countless other complaints by Class Members and  
23 the statements made by former employees of Defendant, make it clear that Defendant has engaged  
24 in a uniform and fraudulent scheme to induce consumers to sign up for prepaid Lifetime  
25 Memberships by falsely promising a fixed Lifetime Renewal Rate.

26 63. Defendant has engaged in a systematic course of fraudulent conduct designed to  
27 deceive consumers – like Plaintiff and Class Members – into paying for supposed Lifetime  
28

1 Memberships with Lifetime Renewal Rates when the reality is that Defendant knew that it was not  
2 providing consumers a Lifetime Renewal Rate at the time Plaintiff and the other Class Members  
3 were being induced into entering the Membership Agreement, and that Defendant could and has  
4 stopped honoring its promise made to thousands of consumers throughout California and  
5 nationwide.

6  
7 **CLASS ALLEGATIONS**

8 64. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings this action on  
9 her own behalf, and on behalf of a class (the “Class”) defined as follows:

10 All persons or entities residing in California who purchased a 24 Hour  
11 Fitness prepaid membership and who maintained their membership at least  
12 until such time as 24-Hour fitness sought to increase their renewal rate.

13 65. Excluded from the Class are Defendant, its affiliates, subsidiaries, parents,  
14 successors, predecessors, any entity in which Defendant or its parents have a controlling interest;  
15 Defendant’s current and former employees, officers and directors; the Judge(s) and/or  
16 Magistrate(s) assigned to this case; any person who properly obtains exclusion from the Class; any  
17 person whose claims have been finally adjudicated on the merits or otherwise released; and the  
18 parties’ counsel in this litigation. Plaintiff reserves the right to modify, change, or expand the  
19 Class definitions based upon discovery and further investigation.

20 66. Ascertainability: The Class is defined in terms of objective characteristics and  
21 common transactional facts; namely, the purchase of prepaid 24 Hour Fitness memberships.  
22 Moreover, the Class is limited to those individuals who maintained their memberships until such  
23 time as 24 Hour Fitness sought to increase their promised renewal rate. Class membership will be  
24 readily ascertainable from 24 Hour Fitness’s business records.

25 67. Numerosity: Upon information and belief, the Class is so numerous that joinder of  
26 all members is impracticable. While the exact number and identities of individual members of the  
27 Class are unknown at this time, such information being in the sole possession of Defendant and  
28 obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis

1 alleges, that thousands of Class Members have been subjected to the conduct by Defendant herein  
2 alleged.

3           68.    Existence and Predominance of Common Questions of Fact and Law: Common  
4 questions of law and fact exist as to all members of the Class. These questions predominate over  
5 the questions affecting individual Class Members. These common legal and factual questions  
6 include, but are not limited to:

7           a.       whether Defendant routinely and systematically represents/represented to  
8 potential customers that its prepaid memberships are/were accompanied by or entail a fixed,  
9 annual renewal rate “for life” at the expiration of the prepaid membership period;

10           b.       whether the conduct of Defendant alleged herein violates the California  
11 Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 - *et seq.*;

12           c.       whether conduct of Defendant alleged herein violates the California  
13 Consumers Legal Remedies Act, CAL. CIV. CODE § 1750 - *et seq.*;

14           d.       whether Defendant engaged or engages in conduct in violation of the  
15 California Health Studio Services Contract Law, CAL. CIV. CODE § 1812.80 - *et seq.*;

16           e.       whether the conduct of Defendant alleged herein violates the California  
17 False Advertising Law, CAL. BUS. & PROF. CODE § 17500 - *et seq.*;

18           f.       whether the conduct by Defendant alleged herein constitutes fraud;

19           g.       whether the verbal representations made by Defendant and/or its  
20 representatives regarding fixed, annual renewal rates “for life” became the basis of Defendant’s  
21 Membership Agreements with Plaintiff and Class Members such that those contracts should be  
22 reformed to definitively include a fixed renewal rate;

23           h.       whether Defendant should be required to provide restitutionary relief to  
24 Plaintiff and Class Members in light of and on the basis of Membership Agreements that are  
25 reformed to include a fixed, annual renewal rate;

26           i.       whether Plaintiff and Class Members are entitled to damages as a result of  
27 Defendant’s conduct and, if so, the proper measure of those damages; and  
28



1           j.       whether equitable and/or injunctive relief are appropriate in light of  
2 Defendant's conduct.

3           69.    Typicality: All of Plaintiff's claims are typical of the claims of the Class since  
4 Plaintiff and all Class Members were injured in the same manner by Defendant's uniform course  
5 of conduct described herein. Plaintiff and all Class Members have the same claims against  
6 Defendant relating to the conduct alleged herein, and the same events giving rise to Plaintiff's  
7 claims for relief are identical to those giving rise to the claims of all Class Members. Plaintiff and  
8 all Class Members sustained monetary and economic injuries including, but not limited to,  
9 ascertainable losses arising out of Defendant's wrongful conduct in increasing prepaid  
10 membership renewal rates. Plaintiff is advancing the same claims and legal theories on behalf of  
11 herself and all absent Class Members.

12           70.    Adequacy: Plaintiff is an adequate representative for the Class because her interests  
13 do not conflict with the interests of the Class that she seeks to represent; Plaintiff has retained  
14 counsel competent and highly experienced in complex class action litigation – including consumer  
15 fraud class action cases – and counsel intends to prosecute this action vigorously. The interests of  
16 the Class will be fairly and adequately protected by Plaintiff and her counsel.

17           71.    Superiority: A class action is superior to all other available means of fair and  
18 efficient adjudication of the claims of Plaintiff and all Class Members. The injury suffered by each  
19 individual Class Member is relatively small in comparison to the burden and expense of individual  
20 prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would  
21 be virtually impossible for members of the Class individually to redress effectively the wrongs  
22 done to them by Defendant. Even if Class Members could afford such individual litigation, the  
23 court system could not. Individualized litigation presents a potential for inconsistent or  
24 contradictory judgments. Individualized litigation increases the delay and expense to all parties,  
25 and to the court system, presented by the complex legal and factual issues of the case. By contrast,  
26 the class action device presents far fewer management difficulties, and provides the benefits of  
27 single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon  
28

1 information and belief, members of the Class can be readily identified and notified based on, *inter*  
2 *alia*, the records (including databases, e-mails, *etc.*) Defendant maintains regarding membership,  
3 new members, current members, and even complaints from members regarding the matters alleged  
4 in this Complaint.

5 72. Defendant has acted, and refuses to act, on grounds generally applicable to the  
6 Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

7  
8 **FIRST CAUSE OF ACTION**  
9 **VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**  
10 **("CLRA") (CAL. CIV. CODE § 1750 - *et seq.*)**

11 73. Plaintiff and the Class incorporate by reference each preceding and succeeding  
12 paragraph as though fully set forth at length herein.

13 74. Defendant is a "person" as that term is defined in California Civil Code § 1761(c).

14 75. Plaintiff and Class Members are "consumers" as that term is defined in California  
15 Civil Code § 1761(d).

16 76. Plaintiff's purchase of a 24 Hour Fitness prepaid membership is a "transaction" as  
17 that term is defined in California Civil Code § 1761(e).

18 77. Defendant's prepaid memberships are "services" as that term is defined in  
19 California Civil Code § 1761(b).

20 78. Defendant engaged and continues to engage in unfair and deceptive acts in  
21 violation of the CLRA by the practices described above, and by knowingly and intentionally (a)  
22 promising and/or advertising to customers that prepaid memberships are sold with accompanying  
23 Lifetime Renewal Rates when Defendant knows it does not and has no intention to honor these  
24 promises and (b) concealing from customers that it does not intend to honor the fixed, annual  
25 Lifetime Renewal Rate it promises. These acts and practices violate, at a minimum, the following  
26 subsections of the CLRA § 1770:

27 (a)(5) Representing that . . . services have sponsorships, characteristics, uses, benefits or  
28 quantities which they do not have, or that a person has a sponsorship, approval,  
status, affiliation or connection which he or she does not have;

(a)(9) Advertising . . . services with the intent not to sell them as advertised;

1 (a)(13) Making false or misleading statements of fact concerning . . . existence of, or  
2 amounts of price reductions;

3 (a)(14) Representing that a transaction confers or involves rights, remedies, or obligations  
4 which it does not have or involve, or which are prohibited by law.

5 CAL. CIV. CODE § 1770(a).

6 79. Defendant's unfair or deceptive acts or practices occurred repeatedly in  
7 Defendant's trade or business and were capable of deceiving a substantial portion of the  
8 consuming public.

9 80. Defendant knew that it would increase membership renewal rates despite its  
10 promises about Lifetime Renewal Rates.

11 81. Defendant was obligated to disclose the truth and be forthcoming about its prepaid  
12 memberships and annual renewal fees, and in failing to do so, violated the CLRA.

13 82. The facts concealed or not disclosed by Defendant to Plaintiff and the Class  
14 Members are material in that a reasonable consumer would have considered them to be important  
15 in deciding whether to make a larger up-front payment in conjunction signing up for Defendant's  
16 prepaid membership or, instead, choose the month-to-month membership option. Had Plaintiff and  
17 the Class known that the Lifetime Renewal Rate would not be honored by Defendant, they would  
18 not have purchased prepaid memberships or would have paid less for them.

19 83. Plaintiff's and the other Class Members' injuries were proximately caused by  
20 Defendant's fraudulent and deceptive business practices.

21 84. Plaintiff has provided Defendant with notice of its violations of the CLRA pursuant  
22 to California Civil Code § 1782(a) in a letter dated April 15, 2016, a true and correct copy of  
23 which is attached hereto as **Exhibit B**.

24 85. To date, Defendant has taken no action to remedy its unlawful practices with  
25 respect to its prepaid memberships or otherwise address the CLRA violations and associated harm  
26 Plaintiffs outlined in their notice letter. Plaintiffs therefore seek actual and punitive damages, in  
27 addition to restitution, injunctive relief, reasonable costs and attorneys' fees, and any other relief  
28 the Court deems proper pursuant to California Civil Code § 1780(d).



1           93.     The gravity of the harm to members of the Class resulting from these unfair acts  
2 and practices is outweighed any conceivable reasons, justifications and/or motives of Defendant  
3 for engaging in such deceptive acts and practices. By committing the acts and practices alleged  
4 above, Defendant engaged in unfair business practices within the meaning of California Business  
5 & Professions Code §§ 17200, et seq..

6           94.     A business act or practice is “fraudulent” under the UCL if it is likely to deceive  
7 members of the consuming public.

8           95.     Defendant engaged in a uniform course of conduct which was intended to, and did  
9 in fact, deceive Plaintiff and Class members into agreeing to prepay several years of membership  
10 dues in exchange for a promise of a Lifetime Renewal Rate, when Defendant did not actually  
11 intend to provide that benefit. Defendant’s course of conduct and marketing practices were  
12 fraudulent within the meaning of the UCL because they deceived Plaintiffs, and were likely to  
13 deceive members of the Class, into believing that they were entitled to a benefit that did not, in  
14 fact, exist.

15           96.     As a result, purchasers, including Plaintiff, reasonably perceived that they were  
16 receiving Lifetime Renewal rate benefits. This perception induced reasonable purchasers,  
17 including Plaintiffs, to enter into the Membership Agreements and pre-pay many years of fees,  
18 which they would not otherwise have done had they known the truth.

19           97.     A business act or practice is “unlawful” under the UCL if it violates any other law  
20 or regulation.

21           98.     Defendant has violated the CLRA (CAL. CIV. CODE § 1750 - et seq.), California  
22 Health Studio Services Contract Law (CAL. CIV. CODE § 1812.81), and California False  
23 Advertising Law (CAL. BUS. & PROF. CODE § 17500, et seq.), as set forth herein.

24           99.     Defendant explicitly promised Plaintiff and Class Members that after the prepaid  
25 membership period terminated, they would be entitled to a Lifetime Renewal Rate for life, and  
26 Defendant even encouraged Plaintiff and Class Members to not read the fine print in the  
27 Membership Agreements.

28

1           100. Defendant induced Plaintiff and Class Members to sign Membership Agreements  
2 with hollow oral promises of an indefinite Lifetime Renewal Rate when Defendant had no  
3 intention to honor these promises.

4           101. Plaintiff and Class Members could not reasonably have been expected to learn or  
5 discover the true facts relating to the Lifetime Renewal Rates, because 24-Hour employees were  
6 trained to make contradictory or misleading representations in order to obfuscate or obscure the  
7 actual terms of the contract. Plaintiff and Class Members relied upon Defendant's express  
8 representations and promises regarding the Lifetime Renewal Rate, believed them to be true, and  
9 would not have agreed to prepay significant fees absent the benefits of the promised Lifetime  
10 Renewal Rate.

11           102. Defendant's misrepresentations about its prepaid memberships deceived Plaintiff  
12 into believing that her Membership Agreement gave rise to a Lifetime Membership with a  
13 Lifetime Renewal Rate for life, and its misrepresentations are likely to deceive and have deceived  
14 the public.

15           103. In failing to both disclose the true nature of the renewal fee structure for  
16 Defendant's prepaid memberships and direct new members to the language in the Membership  
17 Agreement (as opposed to encouraging new members to ignore the fine print), Defendant violated  
18 the UCL and caused injuries to Plaintiff and the Class Members.

19           104. The omissions and acts of concealment, fraud, and deceit by Defendant pertained to  
20 information that was material to Plaintiff and the Class Members, as it would have been to all  
21 reasonable consumers.

22           105. The injuries suffered by Plaintiff and the Class Members are greatly outweighed by  
23 any potential countervailing benefit to consumers or to competition, nor are they injuries that  
24 Plaintiff and the Class Members should have reasonably avoided. Through its fraudulent, unfair,  
25 and unlawful acts and practices, Defendant has improperly obtained money from Plaintiffs and the  
26 Class. As such, Plaintiffs request that this court cause Defendant to restore this money to Plaintiffs  
27 and all Class members, and to enjoin Defendant from violating the UCL in the future.  
28







1           *device, or by public outcry or proclamation, . . . any statement,*  
2           concerning . . . those services, professional or otherwise, or  
3           concerning any circumstance or matter of fact connected with the  
4           proposed performance or disposition thereof, which is untrue or  
5           misleading, and which is known, or which by the exercise of  
6           reasonable care should be known, to be untrue or misleading, or for  
7           any person, firm, or corporation to so make or disseminate or cause to  
8           be so made or disseminated any such statement as part of a plan or  
9           scheme with the intent not to sell that personal property or those  
10          services, professional or otherwise, so advertised at the price stated  
11          therein, or as so advertised.”

12          CAL. BUS. & PROF. CODE § 17500.

13          120.     Defendant has disseminated, and caused to be disseminated, deceptive advertising  
14          misrepresentations, omissions, and practices as described herein. Specifically, Defendant and/or its  
15          employees have used in-store advertising and have made spoken statements to prospective  
16          members regarding and promising Lifetime Memberships and Lifetime Renewal Rates.

17          121.     Defendant’s written and spoken advertisements were untrue and misleading, and  
18          Defendant knew, or by the exercise of reasonable care should have known, that the statements  
19          were untrue or misleading.

20          122.     Defendant’s statements are actionable violations of the FAL in that Defendant  
21          expressly states that it offers a service in the form of a Lifetime Membership that is promised to  
22          entail a Lifetime Renewal Rate that is actually not provided or honored.

23          123.     Defendant’s advertising misrepresentations, omissions, and practices made in  
24          connection with the sale of memberships to its locations are unfair, deceptive, and misleading  
25          within the meaning of the FAL. These representations are likely to, and did, deceive reasonable  
26          consumers such as Plaintiff Shah.

27          124.     As detailed above, Plaintiff suffered injury in fact and a loss of money as a result of  
28          Defendant’s conduct and practices.

            125.     Pursuant to California Business & Professions Code § 17535, Plaintiff and Class  
            Members seek, and are entitled to:

            a.       an order enjoining Defendant from continuing to make false and misleading  
            statements concerning memberships; and



1 planned not to honor its promises of Lifetime Renewal Rates or that it would retract or renege  
2 upon these verbal promises.

3 133. Defendant's false representations and omission to Plaintiff and the Class were  
4 coupled with conduct – namely failing to convey the actual terms of the Membership Agreements  
5 and discouraging customers from reading the fine print in the Membership Agreements – that was  
6 intended to discourage Plaintiff and Class Members from learning the truth about Defendant's  
7 prepaid memberships, *i.e.* that the Lifetime Renewal Rate is no longer available and/or will not be  
8 honored regardless of the promises Defendant made.

9 134. Defendant made the misrepresentations and omissions alleged herein with  
10 knowledge and disregard of their falsehood and misleading nature, and with the intent that  
11 Plaintiff and the Class Members would rely on them.

12 135. Plaintiff and Class Members reasonably relied upon Defendant's fraudulent  
13 representations and omissions in deciding and agreeing to pay in advance large sums of money for  
14 Defendant's multi-year prepaid memberships, which Plaintiff and Class Members would not have  
15 purchased had they known the truth.

16 136. As a direct and proximate result of Defendant's fraudulent conduct, Plaintiff and  
17 Class Members were induced to pay for Defendant's prepaid memberships and have suffered  
18 economic harm, entitling them to actual and punitive damages, and all other just and appropriate  
19 relief.

20 **SIXTH CAUSE OF ACTION**  
21 **EQUITABLE CLAIM FOR CONTRACT REFORMATION**

22 137. Plaintiff and the Class incorporate by reference each preceding and succeeding  
23 paragraph as though fully set forth at length herein.

24 138. Plaintiff and Class Members had written contracts with Defendant for multi-year  
25 prepaid memberships.

26 139. Before, leading up to, and at the point of signing Membership Agreements, Plaintiff  
27 and Class Members were told that their Membership Agreements entitled them to a Lifetime  
28 Membership with a Lifetime Renewal Rate "for life."





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Dated: June 1, 2016

By: /s/ Kristen Law Sagafi

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

CHIMICLES & TIKELLIS LLP  
Timothy N. Mathews (to apply *pro hac vice*)  
One Haverford Centre  
361 West Lancaster Avenue  
Haverford, Pennsylvania 19041  
Tel: (610) 642-8500  
Fax: (610) 649-3633  
TNM@chimicles.com

*Counsel for Plaintiff Dipti Shah and  
Members of the Proposed Class*

# Exhibit A

## New Membership Orientation



**Member Name:** DIPTI SHAH  
**Membership:** Single      Keep Fit Plus  
**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!

#### Your Membership Packet Includes:

- A copy of your Membership Agreement
- A copy of the Membership Policies

**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.*

#### Resources and Benefits:

- EasyPay, the convenient and simple way to make in-club purchases of products and services using your membership card
- Share the gift of health; refer a friend and get rewarded
- You24 online magazine <http://you24.24hourfitness.com/>
- Comprehensive website [www.24hourfitness.com](http://www.24hourfitness.com)
- Manage your membership account online, anytime

#### 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

#### For each workout, please bring the following:

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

#### '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.

#### 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.*



**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.

**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, 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 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**

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 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.

**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 specialty 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 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 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.

**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.**



### Club of Enrollment

club number: 00534 street address: 5860 West Las Positas Blvd  
city: Pleasanton state: CA zip: 94566

### Club Membership Agreement

IT92906

membership: Single Keep Fit Plus 00534  
club access: All Fit-Lite, Express Clubs, Active Clubs and Sport Clubs

### Personal Information

last name: SHAH first name: DIPTI  
street address: 6355 PASEO SANTA MARIA  
city: PLEASANTON state: CA zip: 94566  
home ph.: (925) 426-9905  
work ph.: ext.:  
birthdate: January 15, 1962 age: 47 gender: F  
e-mail address: DIPU.SHAH@COMCAST.NET  
employer: corp. id:

master agreement #: IT92906 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: \$210.23 total due now: \$449.99  
prepaid dues: \$239.76 deposit received: \$449.99  
processing fee: \$0.00 balance due: \$0.00  
nutri-kit received: N (non-refundable)  
nutri-kit:  
taxes/fees/surcharge: \$0.00 sold by: George O Connor  
emp #: 5249



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: 36 paid period: March 27, 2009 thru March 26, 2012  
free bonus months: 0 free bonus period: thru  
your total prepaid term: 36 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: [Signature] date signed: March 27, 2009

### 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: \$99.99 pay by: March 27, 2012

### 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: DIPTI SHAH
member #: IT92906
agreement # IT92906

Payments for Total Due Now

total due now: \$449.99
deposit received: \$449.99
balance due: \$0.00
(non-refundable)

Payments Schedule for Total Due Now

payment amount:
payment amount:
payment amount:
payment date:
payment date:
payment date:

Authorization for Balance Due

account type:
account holder name:
expiration date:
name of depository institution:
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 24 Hour Fitness, P.O. Box 787, Carlsbad, CA, 92018.

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.

authorized signature:
date signed:

Membership Monthly Dues

monthly dues \$0.00
EFT begin date:

Authorization for Dues Direct Payments

account type:
account holder name:
expiration date:
name of depository institution:
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 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.

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:
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.

# Exhibit B

# Chimicles & Tikellis LLP

ATTORNEYS AT LAW

One Haverford Centre  
361 West Lancaster Avenue  
Haverford, PA 19041  
Telephone: (610) 642-8500  
Telecopier: (610) 649-3633  
E-mail: Mail@Chimicles.com

Writer's Direct E-mail:  
TNM@Chimicles.com

Nicholas E. Chimicles  
Pamela S. Tikellis \*  
Robert J. Kriner, Jr. \*  
Steven A. Schwartz  
Kimberly Donaldson Smith  
Joseph G. Sauder  
Timothy N. Mathews  
A. Zachary Naylor \*  
Matthew D. Schelkopf  
Benjamin F. Johns  
Catherine Pratsinakis  
Christina Donato Saler  
Alison G. Gushuc  
Scott M. Tucker \*  
Tiffany J. Cramer \*  
Vera G. Belger  
Joseph B. Kenney

April 15, 2016

**VIA CERTIFIED MAIL**

24-Hour Fitness  
P.O. Box 787,  
Carlsbad, CA, 92018.  
Attn: Legal Department

**NOTICE OF VIOLATIONS OF CALIFORNIA'S CONSUMERS  
LEGAL REMEDIES ACT AND DEMAND FOR RELIEF.**

OF COUNSEL  
Anthony Allen Geyelin  
David M. Maser

Dear Sir or Madam:

*\*Attorneys admitted to  
Jurisdiction other than PA*

Our client, Dipti Shah ("Claimant"), purchased a so-called "lifetime membership" to 24-Hour Fitness ("24 Hour") in March 2009, based on representations made by 24-Hour and its employees that she would be entitled to a lifetime membership at a cost of just \$99 per year. Based on these representations, Claimant paid \$449.99 upfront in prepaid dues and initiation fees. Claimant consistently maintained her lifetime membership by continuing to pay \$99 per year thereafter. On or about February 26, 2016, however, 24-Hour informed Claimant that she would be required to pay \$149.99 per year to maintain her membership going forward.

It has come to the attention of Claimant and consumers who have purchased 24-Hour lifetime memberships that 24-Hour has engaged in deceptive and misleading consumer practices in connection with the marketing and sale of its lifetime memberships, in violation of the Consumers Legal Remedies Act ("CLRA"), CAL. CIV. CODE § 1750 *et seq.*, as well as other legal violations, including but not limited to fraud, fraudulent inducement of contract, breach of warranty, and violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200).

WILMINGTON OFFICE  
222 Delaware Ave, Suite 1100  
Wilmington, Delaware 19801  
Telephone: (302) 656-2500  
FAX: (302) 656-2501

Attn: Legal Department  
24-Hour Fitness  
April 15, 2016  
Page 2 of 4

Those violations include, at minimum, the following sections of CAL. CIV. CODE § 1770:

- (a) Representing that the lifetime memberships have characteristics, uses, or benefits which they do not have, in violation of California Civil Code Section 1770(a)(5);
- (b) Advertising lifetime memberships with the intent not to sell them as advertised, in violation of California Civil Code Section 1770(a)(9); and
- (c) Representing that a transaction confers or involves legal rights when it does not in fact involve or confer those rights, in violation Section 1770(a)(14).

This notice is being served on behalf of Claimant and all other consumers who entered into lifetime memberships sold by 24-Hour that have not been honored by 24-Hour. More specifically, it has come to Claimant's attention that 24-Hour trained its employees to represent that these were lifetime memberships at a set rate that would not increase for the lifetime of the member, notwithstanding that the contracts did not include these rights or benefits. Claimant and consumers were damaged by these CLRA violations (as well as other violations mentioned above) because they have been required to pay more than the rate that was represented as a lifetime guaranteed rate, and further because they would either have not purchased a 24 Hour Fitness membership at all, or would not have agreed to pay as much, for a lifetime membership that did not confer the rights and benefits which were advertised.

Claimant demands, on behalf of herself and all other similarly situated consumers, that 24-Hour cease attempting to collect increased fees on lifetime membership contracts and, further, that 24-Hour refund all fees collected above the rate that was promised as a lifetime membership rate.

Please direct all communications or responses regarding this notice to the undersigned. If you intend to cure these violations, please notify the above counsel within 30 days of receipt of this notice. We, of course, hope that you will act immediately to rectify this situation and stand ready to



Attn: Legal Department  
24-Hour Fitness  
April 15, 2016  
Page 3 of 4

discuss a reasonable resolution of this matter on the terms outlined above or on similar terms acceptable to Claimant and similarly situated persons.

If you have any questions, require any additional information or would like to discuss these matters further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Mathews', is written over a large, horizontal, hand-drawn oval scribble.

Timothy N. Mathews

TNM/klw

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

24-Hour Fitness  
P.O. Box 787  
Carlsbad, CA 92018



9590 9403 0605 5183 3465 38

2. Article Number (Transfer from service label)

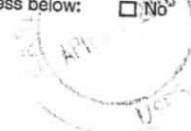
7015 0640 0004 6943 7341

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
**X** *Thom McLean*  Agent  
 Addressee

B. Received by (Printed Name) *Russell Thomas* C. Date of Delivery *4/20*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No



3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input checked="" type="checkbox"/> Return Receipt for Merchandise  |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

Domestic Return Receipt

# Exhibit C

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1 TYCKO & ZAVAREEI LLP  
2 Kristen Law Sagafi (Cal. Bar No. 222249)  
3 ksagafi@tzlegal.com  
4 Martin D. Quiñones (Cal. Bar No. 238293)  
5 mquinones@tzlegal.com  
6 483 Ninth Street, Suite 200  
7 Oakland, CA 94607  
8 Tel: (510) 254-6808

9 Attorneys for Plaintiff and Putative Class

10 **SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA**

11 DIPTI SHAH, on behalf of herself and all  
12 others similarly situated,

13 PLAINTIFF,

14 v.

15 24 HOUR FITNESS USA, INC., a California  
16 corporation,

17 DEFENDANT.

CASE NO.

**DECLARATION OF DIPTI SHAH**

18 I, DIPTI SHAH, declare as follows:

- 19 1. I am a named plaintiff in the above-captioned litigation.
- 20 2. I have personal knowledge of the matters set forth below except to those matters  
21 stated herein which are based on information and belief, which matters I believe to be true.
- 22 3. If called as a witness I could and would competently testify to the matters included  
23 herein.
- 24 4. I reside in Pleasanton, CA, in the County of Alameda.
- 25 5. On or about March 27, 2009, I entered into a 24 Hour Fitness membership agreement  
26 and prepaid three years of gym membership dues because the representative promised me a fixed  
27 membership renewal fee of \$99.99 per year for life. On or about February 26, 2016, 24 Hour Fitness  
28 USA, Inc. (“Defendant”) sent me a notice that my renewal rate was going to increase to \$149.99 or  
\$50.00 more than the previously promised lifetime renewal rate of \$99.99.

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6. I am informed and believe that venue is proper in this Court under California Civil Code §1780(c) because I reside in this County and Defendant conducts business in this County.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct and that this declaration was executed on June 1, 2016 in Pleasanton, California.

By:   
DIPTI SHAH