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16 *Plaintiff Russell Marchewka*

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

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

21 Plaintiff,

22 vs.

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

25 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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

6 **NATURE OF THE ACTION**

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

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

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

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

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

23 **THE PARTIES**

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

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

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

6 **JURISDICTION AND VENUE**

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

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

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

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

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

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

23 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **FIRST CAUSE OF ACTION**

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

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

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

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

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

22 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

1 lost money or property.

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

6 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

3 **FIFTH CAUSE OF ACTION**

4 **(Fraud)**

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

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

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

20 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

13 **JURY TRIAL DEMANDED**

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

15 DATED: April 29, 2016

**FINKELSTEIN THOMPSON LLP**

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17 Rosemary M. Rivas

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*Counsel for Individual and Representative  
Plaintiff Russell Marchewka*



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

I, Rosemary M. Rivas, declare as follows:

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

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

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

/s/ Rosemary M. Rivas  
Rosemary M. Rivas