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 8 *24 Hour Fitness USA, Inc.*

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 RICHARD CONN, on behalf of himself and
 12 all other persons similarly situated,
 13 Plaintiff,
 14 v.
 15 24 HOUR FITNESS USA, INC., a
 16 corporation; and DOES 1-100,
 17 Defendants.

Case No. 3:19-cv-08010

**DEFENDANT 24 HOUR FITNESS USA,
 INC.'S NOTICE OF REMOVAL**

Removed from Contra Costa Superior Court
 Complaint Filed: November 5, 2019

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1 **TO THE CLERK AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant 24 Hour Fitness USA, Inc. (“24 Hour Fitness”),
3 through undersigned counsel, hereby removes the above-captioned action from the Superior Court
4 of the State of California for the County of Contra Costa to the United States District Court for the
5 Northern District of California, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453.

6 **I. PROCEDURAL BACKGROUND**

7 1. On November 7, 2019, 24 Hour Fitness was served with the Complaint and
8 Summons for the action filed in the Superior Court of the State of California, County of Contra
9 Costa, entitled *Richard Conn, individually, and on behalf of a class of others similarly situated, v.*
10 *24 Hour Fitness USA, Inc. a corporation; and DOES 1-100*, Case No. 19-02183. A copy of the
11 Complaint is attached hereto as Exhibit 1. A copy of the Summons is attached hereto as Exhibit 2.
12 Copies of the Notice of Service of Process are attached hereto as Exhibit 3.

13 2. Defendants Does 1 through 100 are unnamed and unknown, and therefore, have not
14 been served with the Complaint. *See* Ex. 1 (Compl.) ¶ 17 (hereinafter “Compl.”).

15 3. Pursuant to 28 U.S.C. § 1446(a), copies of all additional process, pleadings, and
16 orders served on 24 Hour Fitness in Contra Costa County Superior Court Case No. 19-02183 are
17 attached hereto as Exhibit 4.

18 4. This Notice of Removal is filed within thirty days of 24 Hour Fitness’s receipt of
19 the Summons and Complaint. *See* 28 U.S.C. §1446(b); *see also* Ex. 3.

20 **II. THIS COURT HAS DIVERSITY JURISDICTION PURSUANT TO THE CLASS**
21 **ACTION FAIRNESS ACT**

22 5. Plaintiff purports to represent a class defined as:

23 All California residents, including former California residents, that purchased a
24 Super Sport membership from 24 Hour Fitness when one of the advertised
amenities of Super Sport clubs was that those clubs provided towel service.

25 Compl. ¶ 36. Plaintiff alleges that he and “the putative class purchased memberships at 24 Hour
26 Fitness Super Sport clubs in California between October 2015 June 2019” (hereinafter, the
27 “Alleged Class Period”). *Id.* ¶ 12.

28

1 6. This Court has original jurisdiction over this action pursuant to the Class Action
2 Fairness Act (“CAFA”). *See* 28 U.S.C. §§ 1332(d), 1453. CAFA extends federal jurisdiction over
3 (1) class actions, where (2) any member of the proposed class is a citizen of a state different from
4 any defendant, (3) the putative class consists of more than 100 members, and (4) the amount in
5 controversy exceeds \$5 million, taking into account all damages and equitable relief sought for all
6 of the purported class members’ claims in the aggregate, exclusive of interests and costs. *See* 28
7 U.S.C. §§ 1332(d)(2), (d)(5)(B), (d)(6). Each of these requirements is satisfied in this action.

8 **A. This Is a Purported Class Action Within the Meaning of CAFA**

9 7. A “class action” under CAFA includes any civil action filed under Federal Rule of
10 Civil Procedure 23 or a “similar State statute or rule of judicial procedure authorizing an action to
11 be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

12 8. This lawsuit meets the definition of a class action because it is brought pursuant to
13 a similar State statute as Rule 23—namely, Section 382 of the California Code of Civil Procedure,
14 which authorizes one or more individuals to sue “for the benefit of all” when “the question is one
15 of a common or general interest, of many persons, or when the parties are numerous, and it is
16 impracticable to bring them all before the court.” Cal. Code Civ. Proc. § 382; *see also* 28 U.S.C.
17 §§ 1332(d)(1)(B), (d)(5)(B); Compl. ¶ 42 (“Certification of the Class and each subclass is proper
18 under California Code of Civil Procedure Rule 382.”).

19 **B. There Is Minimal Diversity**

20 9. “CAFA was intended to strongly favor federal jurisdiction over interstate class
21 actions.” *King v. Great Am. Chicken Corp. Inc.*, 903 F.3d 875, 878 (9th Cir. 2018). For purposes
22 of establishing federal jurisdiction, CAFA requires only minimal diversity. A defendant need only
23 show that “any member of a class of plaintiffs is a citizen of a State different from any defendant.”
24 28 U.S.C. § 1332(d)(2)(A). Removal is therefore proper when even one purported class member
25 is a citizen of a state different from a defendant’s state of citizenship. *See id.*; *see also Broadway*
26 *Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1276 (9th Cir. 2017) (“Under CAFA there is sufficient
27 diversity to establish federal diversity jurisdiction so long as one class member has citizenship
28 diverse from that of one defendant.”).

1 10. As explained in the following paragraphs, that standard is met here because the
2 class, as defined by Plaintiff, includes class members whose state of citizenship is outside of
3 California.

4 1. Defendants’ Citizenship

5 11. 24 Hour Fitness is incorporated in California and has its principal place of business
6 in California. *See* Compl. ¶ 20. 24 Hour Fitness is therefore a citizen of California. *See* 28 U.S.C.
7 § 1332(c)(1).

8 12. Unnamed defendants sued as Does are not required to join in a removal petition,
9 and their citizenship is disregarded for purposes of removal. *See* 28 U.S.C. § 1441; *Fristoe v.*
10 *Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980).

11 2. Class Members’ Citizenship

12 13. Plaintiff states that “at all relevant times [he] was a citizen and resident” of
13 California. Compl. ¶ 19.

14 14. Upon information and belief, at least one member of the putative class is a citizen
15 of a state other than California. *See Ehrman v. Cox Comms., Inc.*, 932 F.3d 1223, 1227 (9th Cir.
16 2019) (“A party’s allegation of minimal diversity may be based on ‘information and belief’ and
17 “need not contain evidentiary submissions.” (citations omitted)).

18 15. Plaintiff seeks to represent a class including “[a]ll California residents, including
19 former California residents, that purchased a Super Sport membership from 24 Hour Fitness when
20 one of the advertised amenities of Super Sport clubs was that those clubs provided towel service”
21 during the Alleged Class Period. Compl. ¶ 36. By definition, this class includes class members
22 who no longer reside in California—i.e., “former California residents.” While residency and
23 citizenship are analytically distinct, the express inclusion of class members who have moved out
24 of California is sufficient, upon information and belief, to establish minimal diversity.

25 16. Further, even if the class were defined as just California residents, there would still
26 be minimal diversity sufficient to support removal. The Complaint makes no mention of
27 *citizenship* with regard to members of the putative class. Thus, there is a sufficient “likelihood
28 that some putative class members were legally domiciled in or subsequently relocated to another

1 state” or “were not United States citizens” to support CAFA diversity jurisdiction. *King*, 903 F.3d
 2 at 879-80; *see id.* at 879 (“A person’s state of citizenship is established by domicile, not simply
 3 residence, and a residential address in California does not guarantee that a person’s legal domicile
 4 [is] in California.”). For this reason, the Ninth Circuit has held that classes defined as residents of
 5 one state can still give rise to minimal diversity under CAFA.¹

6 3. Minimal Diversity Exists

7 17. Minimal diversity is thus satisfied under CAFA, because at least one purported
 8 class member is a citizen of a state different from the state of citizenship of the named defendant.
 9 *See* 28 U.S.C. § 1332(d)(2)(A).

10 C. **The Putative Class Exceeds 100 Members**

11 18. Plaintiff alleges that the putative class consists of “[a]ll California residents,
 12 including former California residents, that purchased a Super Sport membership from 24 Hour
 13 Fitness when one of the advertised amenities of Super Sport clubs was that those clubs provided
 14 towel service” during the Alleged Class Period. Compl. ¶ 36. Plaintiff also alleges that “24 Hour
 15 Fitness uniformly advertised that memberships to its Super Sport clubs also included ... towel
 16 service” and that this “promise” was given to members “when they signed up.” *Id.* ¶ 23. Plaintiff
 17 also alleges that “24 Hour Fitness has nearly 4,000,000 members in over 400 clubs across the
 18 United States ... [including] dozens of Super Sport clubs in California alone.” *Id.* ¶ 38.

19 19. While 24 Hour Fitness disputes these allegations because, among other reasons,
 20 Plaintiff’s membership contract explicitly states that 24 Hour Fitness may eliminate any service,
 21 including towel service, based on these allegations, the class includes more than 100 members.

22
 23
 24 ¹ *See King*, 903 F.3d at 879 (finding it “not implausible that at least a few” putative class members
 25 “were citizens of other states even if they temporarily had a residential address in California, such
 26 as an out-of-state student ... attending college in California” and “very likely that some putative
 27 class members were not United States citizens”); *Mondragon v. Capital One Auto Fin.*, 736 F.3d
 28 880, 884 (9th Cir. 2013) (“That a [putative class member] may have a residential address in
 California does not mean that person is a citizen of California.”); *see also In re Sprint Nextel Corp.*,
 593 F.3d 669, 673-74 (7th Cir. 2010) (proposed class of “residents” includes temporary residents
 who are citizens of “other states”); *McMorris v. TJX Cos.*, 493 F. Supp. 2d 158, 163 (D. Mass.
 2007) (“[T]his putative class that is composed entirely of residents of Massachusetts, does not, by
 definition, foreclose the inclusion of non-citizens as well. This suffices to support the assertion of
 federal jurisdiction in this case.”).

1 Indeed, more than 1,500,000 individuals signed up for a Super Sport membership in California
2 during the Alleged Class Period.

3 20. Accordingly, the requirement of 28 U.S.C. § 1332(d)(5) is satisfied.

4 **D. The Amount in Controversy Exceeds \$5 Million**

5 21. CAFA provides that “[i]n any class action, the claims of the individual class
6 members shall be aggregated to determine whether the matter in controversy exceeds the sum or
7 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). The amount in
8 controversy is first determined by reviewing the allegations of the operative complaint.
9 *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 998 (9th Cir. 2007), *overruled on other*
10 *grounds as stated in Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013)
11 (“Our starting point is ‘whether it is facially apparent from the complaint that the jurisdictional
12 amount is in controversy.’” (citation omitted)). Where a complaint does not state a dollar amount,
13 a defendant’s notice of removal under CAFA need include “only a plausible allegation that the
14 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co.,*
15 *LLC v. Owens*, 574 U.S. 81, 81 (2014).

16 22. Plaintiff has filed a six-count Complaint against 24 Hour Fitness seeking far-
17 ranging relief, including “actual, statutory, and/or punitive damages” incurred by the putative
18 class, attorneys’ fees under several statutory provisions, “pre-judgment and post-judgment
19 interest,” “[p]ayment of a reasonable incentive award to Plaintiff,” injunctive relief requiring 24
20 Hour Fitness “to reinstate towel service at its Super Sport clubs across California,” and “any further
21 legal and equitable relief as this Court deems necessary, just and proper.” Compl., Prayer for
22 Relief; *see also Fritsch v Swift Transp. Co. or Ariz., LLC*, 899 F.3d 785, 793 (9th Cir. 2018)
23 (“Among other items, the amount in controversy includes damages (compensatory, punitive, or
24 otherwise), the costs of complying with an injunction, and attorneys’ fees awarded under fee-
25 shifting statutes or contract.”).

26 23. While Plaintiff does not allege a specific dollar amount in damages, his allegations
27 are sufficient to exceed the \$5,000,000 threshold.

28

1 24. The amount in controversy for Plaintiff’s and putative class members’ breach of
 2 contract claim alone exceeds \$5,000,000. More than 1,500,000 individuals signed up for a Super
 3 Sport membership during the Alleged Class Period. Plaintiff alleges that “24 Hour Fitness
 4 uniformly advertised that memberships to its Super Sport clubs also included ... towel service”
 5 and that this “promise” was given to members “when they signed up.” Compl. ¶ 23. Plaintiff
 6 claims that 24 Hour Fitness breached his contract, and the contracts of the other putative class
 7 members, when it stopped providing towel service in June 2019. *See id.* ¶¶ 9, 59. Plaintiff alleges
 8 that he and the putative class members would consequently have to “purchase a retail towel from
 9 24 Hour Fitness, which would result in a financial burden.” *Id.* ¶ 60. 24 Hour Fitness generally
 10 sells towels for \$4.99 or more, depending on the towel and whether a discount is being offered.
 11 The amount in controversy for the breach of contract claim thus exceeds \$5,000,000.

12 25. In addition, Plaintiff seeks other forms of damages as well as an affirmative
 13 injunction requiring 24 Hour Fitness to reinstate towel service, which drives the amount in
 14 controversy even higher. *See* Compl., Prayer for Relief.

15 26. 24 Hour Fitness denies any and all liability and contends that Plaintiff’s allegations
 16 are entirely without merit. For purposes of this Notice of Removal, however, taking Plaintiff’s
 17 factual allegations as true and legal allegations as correct, the amount in controversy exceeds
 18 \$5,000,000, exclusive of interest and costs, and satisfies the amount in controversy requirements
 19 of CAFA. *See* 28 U.S.C. § 1332(d)(2).²

20 **III. VENUE AND INTRA-DISTRICT ASSIGNMENT**

21 27. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because the
 22 Superior Court where the removed case was pending is located within this district.

23 28. Venue is proper in the Oakland or San Francisco Divisions of this Court pursuant
 24 to Local Rule 3-2(d), as the original action was filed in Contra Costa County Superior Court.

25
 26
 27 ² Should Plaintiff challenge the amount in controversy in a motion to remand, 24 Hour Fitness
 28 reserves the right to further substantiate these examples with additional evidence and to
 demonstrate that other aspects of Plaintiff’s claims, damages theories, and prayer for relief also
 show that in excess of \$5 million is in controversy.

1 **IV. REMOVAL PROCEDURE**

2 29. 24 Hour Fitness was served with the Complaint and Summons by personal service
3 to its registered service agent on November 7, 2019. *See* Ex. 3. Accordingly, this Notice of
4 Removal is timely under 28 U.S.C. § 1446(b) as it is filed within 30 days of service.

5 30. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders are
6 attached hereto. *See* Ex. 4.

7 31. 24 Hour Fitness will serve written notice of the removal of this action upon all
8 adverse parties promptly, and will file such notice with the Clerk of Contra Costa County Superior
9 Court, as required by 28 U.S.C. § 1446(d).

10 32. By removing this action, 24 Hour Fitness does not waive, and expressly preserves,
11 its right to compel arbitration pursuant to the contract between Plaintiff and 24 Hour Fitness. *See*,
12 *e.g.*, *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 921 (9th Cir. 2009); *Morvant v. P.F.*
13 *Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 847 (N.D. Cal. 2012).

14 **V. CONCLUSION**

15 33. This Court has original jurisdiction over Plaintiff's claims by virtue of the Class
16 Action Fairness Act, 28 U.S.C. § 1332(d)(2). This action is thus properly removable to federal
17 court pursuant to 28 U.S.C. §§ 1441 and 1453.³

18 **WHEREFORE**, Defendant 24 Hour Fitness USA, Inc. removes the above-captioned
19 action to this Court.

20 DATED: December 6, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

23 By: /s/ Elizabeth L. Deeley

Elizabeth L. Deeley

Joseph C. Hansen

25 Attorneys for Defendant

26 *24 Hour Fitness USA, Inc.*

27
28 ³ In the event the Court has any questions regarding the basis for removal, 24 Hour Fitness respectfully requests that the Court issue an Order to Show Cause so that 24 Hour Fitness may have the opportunity to address those questions.

EXHIBIT 1

FILED

2019 NOV -5 P 3:24

CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

FAX FILE

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7 Attorneys for Plaintiff
8 RICHARD CONN individually, and on
9 behalf of a class of others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT _____, FOR ALL
PURPOSES.

11 **FOR THE COUNTY OF CONTRA COSTA**

12 RICHARD CONN individually, and on behalf
13 of a class of others similarly situated,

Case No. C19 - 02183 -

14 Plaintiff,

COMPLAINT - CLASS ACTION

15 v.

JURY TRIAL REQUESTED

16 24 HOUR FITNESS, USA, INC., a
17 corporation; and DOES 1-100,

18 Defendant.

1 Plaintiff Richard Conn (“Plaintiff”), individually and on behalf of all others similarly
2 situated (“the Class”), alleges, upon personal knowledge as to himself and upon information and
3 belief as to other matters, as follows:

4 **NATURE OF ACTION**

5 1. Defendant 24 Hour Fitness, USA, Inc. (“24 Hour Fitness”) is one of the largest
6 fitness club operators in the United States.

7 2. In order to use its fitness clubs, consumers are required to first sign up for a
8 membership: an agreement between the consumer and 24 Hour Fitness that is memorialized in a
9 binding contract.

10 3. The membership entitles the consumer to access to certain levels of 24 Hour
11 Fitness clubs. In ascending order of price those club levels include: Active (lowest level and least
12 expensive), Sport, Super Sport, and Ultra Sport (highest level and most expensive). Consumers
13 have access to the club level that they purchase in their membership as well as all levels below the
14 level reflected in their membership.

15 4. The higher the level of the club the more amenities are offered to the consumer. 24
16 Hour Fitness sells consumers higher levels of membership contracts based on the greater amenity
17 offerings that clubs like Super Sport and Ultra Sport include.

18 5. One of the key amenities available at only the Super Sport and Ultra Sport club
19 levels is towel service. Towel service allows members to use towels provided by 24 Hour Fitness
20 at the club for a variety of reasons, including but not limited to showering, to sanitize equipment
21 from others’ sweat, to wipe sweat from oneself, and other reasons.

22 6. Furthermore, 24 Hour Fitness’ memberships require, as a condition to use any of
23 the facilities or services at its clubs, that members use a towel, clearly stating that: “You must have
24 a towel with you during workouts to protect and clean the machines you use.”

25 7. For years, 24 Hour Fitness advertised, as a material included service of its
26 memberships, that consumers who purchased Super Sport memberships would be provided towel
27 service at its Super Sport clubs. This promise was made in amenity documents given to members
28 when they signed up, uniformly made by 24 Hour Fitness staff to members and prospective

1 members, and uniformly made in 24 Hour Fitness' online representations about the amenities
2 included with memberships to its Super Sport clubs. In exchange, consumers uniformly paid more
3 money for access to Super Sport clubs relying on 24 Hour Fitness' promise that towel service
4 would be provided at those clubs.

5 8. On May 6, 2017, 24 Fitness appointed a new Chief Executive Office, Chris
6 Roussos.

7 https://www.24hourfitness.com/company/press_room/press_releases/2017/20170516.html. After
8 appointing Mr. Roussos 24 Fitness began slowly implementing several cost-saving measures,
9 including but not limited to eliminating towel service at its Super Sport clubs.

10 9. By June 2019, 24 Hour Fitness Super Sport clubs had uniformly stopped providing
11 towel service to members that purchased Super Sport memberships in breach of its agreements
12 with its members and despite the uniform representations it had made to members about towel
13 service being an included amenity at its Super Sport clubs.

14 10. Instead of providing towel service to its Super Sport members, 24 Hour Fitness
15 now attempts to sell members towels at retail price – another measure intended to increase its
16 profits.

17 11. 24 Hour Fitness intentionally misrepresented its towel service to consumers in
18 order to increase its profits and membership numbers while becoming one of the leading sports
19 club operators in the United States.

20 12. Plaintiff and the putative class purchased memberships at 24 Hour Fitness Super
21 Sport clubs in California between October 2015 June 2019, relying in part on 24 Hour Fitness'
22 material misrepresentation that they would be provided towel service at those clubs.

23 13. Plaintiff and the putative class were uniformly damaged by 24 Hour Fitness'
24 decision to stop providing towel service at its Super Sport clubs.

25 14. Despite Plaintiff's request that 24 Hour Fitness reinstate towel service (*see* Exhibit
26 A, Plaintiff Conn's June 13, 2019 CLRA letter), 24 Hour Fitness refused to do so. 24 Fitness has
27 not reduced its membership fees to members based on its reduction in services provided to
28 members at its Super Sport clubs. In fact, it has in many instances raised its membership fees. 24

1 Hour Fitness has unjustly retained its ill-gotten membership fees, uniformly, from Plaintiff and the
2 putative class all while further increasing its profits by no longer having the expense of providing
3 towel service to members at its Super Sport clubs.

4 **PARTIES**

5 15. Plaintiff Conn is an individual resident of Los Angeles County, California.

6 16. 24 Hour Fitness is a corporation that is qualified to conduct business in the State of
7 California. 24 Hour Fitness owns and operates hundreds of fitness clubs throughout California,
8 and advertises and markets its memberships directly to consumers in California.

9 17. Plaintiff does not know the true names and capacities of Does 1-100 and therefore
10 uses fictitious names. Plaintiff will amend the complaint pursuant to the Federal Rules of Civil
11 Procedure to allege the names and capacities when ascertained.

12 18. Plaintiff is informed and believes that 24 Hour Fitness, its subcontractors, agents,
13 directly or else through other persons acting on its behalf, conspired to, agreed to, contributed to,
14 assisted with, and/or otherwise caused all of the wrongful acts, defects, and omissions which are
15 the subject matter of this complaint.

16 **JURISDICTION AND VENUE**

17 19. At all relevant times Plaintiff Conn was a citizen and resident of Los Angeles
18 County, California.

19 20. 24 Hour Fitness is a for-profit corporation organized under the laws of California
20 with its principal place of business in San Ramon, California.

21 21. This Court has jurisdiction over the subject matter of this class action, which is
22 properly filed in the Contra Costa County, because 24 Hour Fitness' obligations and liability arose
23 from business activities conducted out of its headquarters in San Ramon, California; those
24 business activities provide and attendant liability provide the basis for the allegations in this
25 complaint.

26 **STATEMENT OF FACTS**

27 22. Plaintiff Conn purchased a 24 Hour Fitness Super Sport membership on April 5,
28 2018, in the state of California.

1 23. 24 Hour Fitness uniformly advertised that memberships to its Super Sport clubs
2 also included a material amenity; namely, towel service. This promise was made in amenity
3 documents given to members when they signed up, uniformly made by 24 Hour Fitness staff to
4 members and prospective members, and uniformly made in 24 Hour Fitness' online
5 representations about the amenities included with memberships to its Super Sport clubs.

6 24. Members are not permitted to use any of 24 Hour Fitness' Super Sport facilities or
7 amenities without also using a towel.

8 25. The process of members bringing their own towels, transporting them, and washing
9 them every time they visit a Super Sport club adds a significant burden that was obviated by 24
10 Hour Fitness' towel service. Towel service was a material reason for consumers choosing the
11 more expensive Super Sport clubs.

12 26. In June 2019, 24 Hour Fitness uniformly stopped providing towel service at its
13 Super Sport clubs. Despite Plaintiff's request that towel service be reinstated 24 Hour Fitness
14 refused. 24 Hour Fitness has also not lowered its membership fees for members with Super Sport
15 memberships. Instead 24 Hour Fitness has illegally retained all monies gained from its Super
16 Sport memberships that were advertised as including towel service, despite towel service
17 uniformly stopping at all Super Sport clubs in the California.

18 27. Plaintiff and the putative class are uniformly harmed by 24 Hour Fitness' illegal
19 acts. 24 Hour Fitness refuses to change its practices without court intervention.

20 28. Plaintiff saw and relied on 24 Hour Fitness' material misrepresentation that towel
21 service would be included with its Super Sport memberships.

22 29. With towel service no longer provided at Super Sport clubs, Plaintiff's membership
23 is worth less than when towel service was included.

24 30. 24 Hour Fitness intended that consumers would rely on its promise that towel
25 service would be included in its Super Sport memberships manifested by its uniform promulgation
26 of towel service as an amenity justifying a higher price for Super Sport memberships.

27 31. When making their decision to purchase Super Sport memberships, Plaintiff and
28 the putative class reasonably relied on representations, advertising and marketing from 24 Hour

1 Fitness about the services that would be included in its Super Sport memberships, including towel
2 service.

3 32. If 24 Hour Fitness had made Plaintiff aware that towel service would cease,
4 Plaintiff would have made a different purchasing decision for his fitness membership.

5 33. At no point prior to paying their membership fees was it communicated to Plaintiff
6 or the putative class that towel service could or would cease at Super Sport clubs.

7 34. When towel service ceased at 24 Hour Fitness' Super Sport clubs, Plaintiff and the
8 putative class were uniformly harmed.

9 35. On information and belief, 24 Hour Fitness made its decision to discontinue towel
10 service at its Super Sport clubs in order to increase its profits in a competitive industry in which it
11 seeks to become the market leader.

12 **CLASS ACTION ALLEGATIONS**

13 36. This action is brought on behalf of the following classes:

14 All California residents, including former California residents, that purchased a
15 Super Sport membership from 24 Hour Fitness when one of the advertised
amenities of Super Sport clubs was that those clubs provided towel service.

16 37. Excluded from the Classes are 24 Hour Fitness, its legal representatives, assigns,
17 and successors, and any entity in which the 24 Hour Fitness has a controlling interest. Also,
18 excluded from the Classes is the judge to whom this case is assigned, the Judge's immediate
19 family, and Plaintiff's counsel and their employees. Plaintiff reserves the right to amend the
20 above-stated class definitions based on facts learned in discovery, as well as adding subclasses as
21 the Court sees fit.

22 38. 24 Hour Fitness has nearly 4,000,000 members in over 400 clubs across the United
23 States. https://www.24hourfitness.com/company/press_room/press_releases/2017/20170516.html.

24 That includes dozens of Super Sport clubs in California alone.

25 <https://www.24hourfitness.com/Website/clubList/CA>. The Class is so numerous that joinder of all
26 members of the Class is impractical.

27 39. Common questions of law and fact exist as to all members of the Class and
28 predominate over any questions affecting only individual Class members. These common legal

1 and factual questions include but are not limited to the following:

- 2 a. Whether 24 Hour Fitness was unjustly enriched by selling Super Sport
3 memberships to the Class for sums of money that represented those
4 memberships would also include towel service when beginning June 2019, they
5 do not at which point 24 Hour Fitness refused to refund the diminution of value
6 to the Class;
- 7 b. Whether 24 Hour Fitness breached its membership contracts with the Class
8 when it discontinued providing towel service to Super Sport members in the
9 Class despite promising that amenity to the Class.
- 10 c. Whether 24 Hour Fitness negligently, willfully, and/or knowingly caused the
11 sale of Super Sport memberships to the Class as coming with towel service
12 despite discontinuing towel service in June 2019.
- 13 d. Whether 24 Hour Fitness' conduct violated California's consumer protection
14 laws.
- 15 e. Whether a reasonable consumer would have relied on 24 Hour's advertising the
16 inclusion of towel service in 24 Hour Fitness' sale of Super Sport memberships
17 to the Class.
- 18 f. Whether 24 Hour Fitness should be required to reinstates towel service at its
19 Super Sport clubs in California.
- 20 g. To what extent, without towel service, are the Class' Super Sport memberships'
21 value diminished.

22 40. Plaintiffs' claims are typical of the Class' and within each subclass and are based
23 on the same facts, legal theories and/or primary rights of all Class members, because each Class
24 member's Super Sport membership is worth less than when they purchased it once towel service
25 discontinued. The class action procedure is also superior to individual lawsuits due to the massive
26 volume of potential individual lawsuits and the similarities that persist in each Class member's
27 claims when compared against the predicted amount of recovery per Class member.

28 41. Plaintiff will adequately and fairly protect the interests of the Class and each

1 subclass. He has retained counsel experienced in class action litigation. Neither Plaintiff nor his
2 counsel have any interest that might cause them to not vigorously pursue this action in the Class'
3 and subclass' best interests.

4 42. Certification of the Class and each subclass is proper under California Code of
5 Civil Procedure Rule 382.

6 43. Plaintiff and his counsel anticipate that notice to the proposed Class will be
7 effectuated by mailing notice to 24 Hour Fitness' members whom 24 Hour Fitness has access to in
8 the regular course of business.

9 **FIRST CAUSE OF ACTION**

10 ***(Unjust Enrichment – By Plaintiff on behalf of the Class, against 24 Hour Fitness and
11 Does 1-100)***

12 44. Plaintiff and the Class repeat and reallege each and every allegation above as if set
13 forth in full herein.

14 45. 24 Hour Fitness uniformly represented that its Super Sport club memberships
15 included the amenity of towel service. Plaintiff and the Class relied on that representation and
16 paid certain amounts of monies to 24 Hour Fitness for Super Sport club memberships that
17 included the amenity of towel service.

18 46. 24 Hour Fitness received such monies from Plaintiff and the Class for the specific
19 Super Sport club memberships it sold to consumers. Had Plaintiff and the Class known or had
20 reason to know that they would not have towel service, they would have, at least, paid less monies
21 to 24 Hour Fitness for their Super Sport club memberships.

22 47. 24 Hour Fitness unjustly retained, and continues to retain, such monies that it
23 received from Plaintiff and the Class and as a result, has been unjustly enriched to the detriment of
24 Plaintiff and the Class.

25 **SECOND CAUSE OF ACTION**

26 ***(Negligent/Intentional Misrepresentation – By Plaintiff on behalf of the Class, against
27 24 Hour Fitness and Does 1-100)***

28 48. Plaintiff and the Class repeat and reallege each and every allegation above as if set
forth in full herein.

1 they would have access to towel service at Super Sport clubs. That promise was manifested: in
2 express, uniform statements made by 24 Hour Fitness staff at the time they sold memberships to
3 Plaintiff and the Class; in express on-line advertising by 24 Hour Fitness contemporaneous to
4 when Plaintiff and the Class purchased their memberships, and in amenity documents provided to
5 Plaintiff and the putative class contemporaneous with them executing the membership agreements.

6 58. In exchange for 24 Hour Fitness' promise, Plaintiff and the putative class agreed to
7 pay certain membership fees to 24 Hour Fitness.

8 59. 24 Hour Fitness breached its agreements with Plaintiff and the class when it ceased
9 providing towel service to Super Sport club members.

10 60. No longer having access to towel service has damaged Plaintiff and the Class.
11 Without towel service Plaintiff and the Class can be prohibited from using any of the facilities and
12 services at Super Sport clubs. Plaintiff and the class are otherwise damaged by being burdened
13 with the inconvenience of bringing their own towels, transporting them to and from the Super
14 Sport clubs, and laundering them. The only other option available to Plaintiff and the Class is to
15 purchase a retail towel from 24 Hour Fitness which would result in a financial burden.

16 **FOURTH CAUSE OF ACTION**

17 ***(Violation of California's Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750,***
18 ***et seq. – By Plaintiff Conn on behalf of the Class, against 24 Hour Fitness and Does 1-***
100)

19 61. Plaintiff Conn and the California Subclass repeat and reallege each and every
20 allegation above as if set forth in full herein.

21 62. 24 Hour Fitness made multiple, uniform, and material misrepresentations to
22 Plaintiff and the California Class; specifically, that purchase of its Super Sport club memberships
23 included towel service.

24 63. Towel service was a material misrepresentation not only due to the utility and
25 convenience it provides to Plaintiff and the California Class, but also because Plaintiff and the
26 California Class are prohibited from using any of the facilities or services in Super Sport clubs
27 without a towel. Plaintiff and the California Class would have, at least, paid less for a
28 membership without the access to towel service.

1 64. 24 Hour Fitness' multiple, uniform, and material misrepresentations to Plaintiff and
2 the California Class were not true because it discontinued all towel service at Super Sport clubs in
3 June 2019.

4 65. 24 Hour Fitness intended that Plaintiff and the California Class would rely on its
5 multiple, uniform, and material misrepresentations regarding access to towel service at its Super
6 Sport clubs. 24 Fitness' intent is manifested by its promulgation of towel service being available
7 as a distinguishing, additional service above and beyond the services provided at Sport and Active
8 level clubs.

9 66. Plaintiff and the California Class reasonably relied on 24 Hour Fitness' multiple,
10 uniform, and material misrepresentations that they would have access to towel service.

11 67. Plaintiff and the California Class were and currently remain damaged as a result of
12 24 Hour Fitness' multiple, uniform, and material misrepresentations by no longer having access to
13 towel service at 24 Hour Fitness Super Sport clubs.

14 68. Plaintiff's and the Class' reasonable reliance on 24 Hour Fitness' multiple,
15 uniform, and material misrepresentations were a substantial factor in causing their damages.

16 69. That material representation to Plaintiff and the California Subclass represented
17 characteristics, uses and benefits that 24 Hour Fitness' Super Sport memberships did not possess
18 in violation of law.

19 70. 24 Hour Fitness intended that consumers would rely on the characteristics, uses and
20 benefits it represented.

21 71. 24 Hour Fitness' unfair and deceptive representations occurred in trade or
22 commerce.

23 72. 24 Hour Fitness' representation was unfair and deceptive resulting in an
24 ascertainable economic injury to Plaintiff and the California Subclass.

25 73. Despite Plaintiff's request that 24 Hour Fitness reinstate towel service at its Super
26 Sport clubs 24 Hour Fitness has refused to do so, thus satisfying the requirements of California
27 Civil Code § 1782.

28 ////

FIFTH CAUSE OF ACTION

(Violation of California Business and Professions Code, Cal. Bus. & Prof. Code §§ 17200, et seq. – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100)

74. Plaintiffs and the California Subclass repeat and reallege each and every allegation above as if set forth in full herein.

75. 24 Hour Fitness represented through in-person sales, advertising, marketing that its Super Sport memberships included towel service when they do not. 24 Hour Fitness knew it would end towel service but still sold Super Sport memberships to Plaintiff and the California class intending that they would choose a Super Sport membership instead of another membership level or another sport club altogether. That material representation to Plaintiff and the California Subclass represented characteristics, uses and benefits that 24 Hour Fitness' Super Sport memberships did not have rendering that act unfair, unlawful and fraudulent.

76. 24 Hour Fitness intended that consumers would rely on the characteristics, uses and benefits it represented regarding towel service at its Super Sport clubs.

77. 24 Hour Fitness unfair and deceptive representations occurred in trade or commerce.

78. Defendant's representation was unfair and deceptive resulting in an ascertainable economic injury to Plaintiff and the California Subclass requiring restitution.

79. Despite Plaintiff's request that 24 Hour Fitness reinstate towel service at its Super Sport clubs 24 Hour Fitness has refused to do so.

SIXTH CAUSE OF ACTION

(Violation of California Business and Professions Code §§ 17500, et seq. – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100)

80. Plaintiff Conn and the California Subclass repeat and reallege each and every allegation above as if set forth in full herein.

81. 24 Hour Fitness made multiple, uniform, and material misrepresentations to Plaintiff and the California Class; specifically, that purchase of its Super Sport club memberships

1 included towel service.

2 82. Towel service was a material misrepresentation not only due to the utility and
3 convenience it provides to Plaintiff and the California Class, but also because Plaintiff and the
4 California Class are prohibited from using any of the facilities or services in Super Sport clubs
5 without a towel. Plaintiff and the California Class would have, at least, paid less for a
6 membership without the access to towel service.

7 83. 24 Hour Fitness' multiple, uniform, and material misrepresentations to Plaintiff and
8 the California Class were not true because it discontinued all towel service at Super Sport clubs in
9 June 2019.

10 84. 24 Hour Fitness intended that Plaintiff and the California Class would rely on its
11 multiple, uniform, and material misrepresentations regarding access to towel service at its Super
12 Sport clubs. 24 Fitness' intent is manifested by its promulgation of towel service being available
13 as a distinguishing, additional service above and beyond the services provided at Sport and Active
14 level clubs.

15 85. Plaintiff and the California Class reasonably relied on 24 Hour Fitness' multiple,
16 uniform, and material misrepresentations that they would have access to towel service.

17 86. Plaintiff and the California Class were and currently remain damaged as a result of
18 24 Hour Fitness' multiple, uniform, and material misrepresentations by no longer having access to
19 towel service at 24 Hour Fitness Super Sport clubs.

20 87. Plaintiff's and the Class' reasonable reliance on 24 Hour Fitness' multiple,
21 uniform, and material misrepresentations were a substantial factor in causing their damages.

22 88. That material representation to Plaintiff and the California Subclass represented
23 characteristics, uses and benefits that 24 Hour Fitness' Super Sport memberships did not possess
24 in violation of law.

25 89. 24 Hour Fitness intended that consumers would rely on the characteristics, uses and
26 benefits it represented.

27 90. 24 Hour Fitness' unfair and deceptive representations occurred in trade or
28 commerce.

JURY DEMAND

Plaintiffs hereby demands a trial by jury of all issues so triable.

DATED: November 4, 2019

EMPLOYEE JUSTICE LEGAL GROUP

By: 

Jacob Karczewski
Attorneys for Plaintiff
Richard Conn

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EXHIBIT A

Law Offices of Jacob Karczewski, PLLC

4311 North 30th Street
Tacoma, WA 98407
jacobklaw@gmail.com
253-229-3173

June 13, 2019

24 Hour Fitness USA, Inc.
12647 Alcosta Boulevard, Suite 500
San Ramon, California 94583

To Whom It May Concern:

I represent Richard Conn, a member at one of your California Super Sport fitness clubs. This letter serves as Mr. Conn's notice, pursuant to California's Consumer Legal Remedies Act ("CLRA") section 1782, of my intent to bring a class action lawsuit against 24 Hour Fitness USA, Inc. ("24 Hour"), if the following conduct is not remedied:

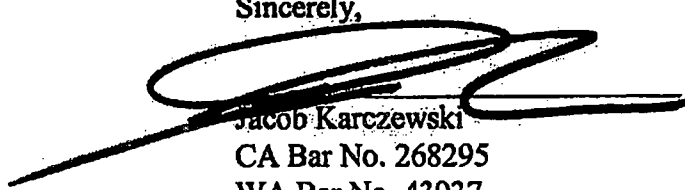
- 24 Hour made consistent representations related to available amenities in its differently priced sports clubs across the United States;
- 24 Hour up-sold memberships to consumers based on higher-tiered sports clubs having certain additional amenities, one such amenity which was expressly represented to be available is towel service;
- As of, at least, June 1, 2019, towel service has been terminated at all 24 Hour fitness clubs in the United States, in contravention to representations made to induce members to purchase Super Sport (or higher) memberships;
- Termination of towel service for members at Super Sport (or higher) sports clubs reduces the value of the service being provided by 24 Hour in violation of its membership agreements with members;
- Termination of the towel service renders 24 Hour's previous representations about towel service fraudulent.

The above identified conduct violates the following subsections of Cal. Civ. Code § 1770: (a)(2), (a)(4), (a)(5), (a)(7), (a)(9), (a)(19).

Mr. Conn formally requests that you reinstate towel service at all 24 Hour Super Sport (and higher) clubs immediately. In 30 days if the above identified conduct is not remedied, Mr. Conn will be filing a class action lawsuit for damages against 24 Hour.

We look forward to having this conduct remedied immediately.

Sincerely,



Jacob Karczewski
CA Bar No. 268295
WA Bar No. 43937

FAX FILE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jacob Karczewski, Esq. (SBN 268295) EMPLOYEE JUSTICE LEGAL GROUP, PC 3055 Wilshire Boulevard, Suite 1120 Los Angeles, California 90010 TELEPHONE NO.:(213) 382-2222 FAX NO.:(213) 382-22 ATTORNEY FOR (Name):Richard Conn		<div style="text-align: right; font-weight: bold; font-size: 1.2em;">FILED</div> <div style="text-align: center; font-weight: bold;">FOR COURT USE ONLY</div> <div style="text-align: center; font-size: 1.2em;">2019 NOV -5 P 3:23</div> <div style="text-align: center; font-size: 0.8em;"> CLERK OF THE SUPERIOR COURT COUNTY OF CONTRA COSTA </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS:725 Court St MAILING ADDRESS: CITY AND ZIP CODE: Martinez, California 94553 BRANCH NAME: Wakefield Taylor Courthouse		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">C19-02183-</div> JUDGE: DEPT:
CASE NAME: Conn v. 24 Hour Fitness, USA, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-5 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 <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post judgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. monetary b. non monetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): See Attachment Number 1.
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: November 5, 2019

Jacob Karczewski, Esq.

(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 complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach-Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgement (Out of County)
Confession of Judgement (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief for Late Claim
Other Civil Petition

PETITIONER/PLAINTIFF Richard Conn RESPONDENT/DEFENDANT 24 Hour Fitness USA, Inc.	CASE NUMBER
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Attachment Number 1.

- 1) **First Cause of Action: Unjust Enrichment – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100);**
- 2) **Second Cause of Action: Negligent/Intentional Misrepresentation – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100);**
- 3) **Third Cause of Action: Breach of Contract – By Plaintiff and the putative Class, against 24 Hour Fitness and Does 1-100;**
- 4) **Fourth Cause of Action: Violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq. – By Plaintiff Conn on behalf of the Class, against 24 Hour Fitness and Does 1- 100;**
- 5) **Fifth Cause of Action: Violation of California Business and Professions Code, Cal. Bus. & Prof. Code §§ 17200, et seq. – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100; and**
- 6) **Sixth Cause of Action: Violation of California Business and Professions Code §§ 17500, et seq. – By Plaintiff on behalf of the Class, against 24 Hour Fitness and Does 1-100.**

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553

CONN VS. 24 HOUR FITNESS

MSC19-02183

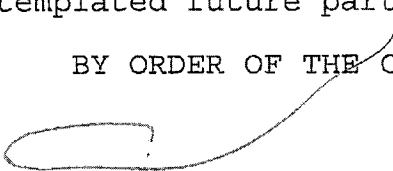
NOTICE OF ASSIGNMENT TO DEPARTMENT THIRTY-NINE FOR CASE
MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

1. This matter has been assigned to Department 39, Judge E. Weil presiding, for all purposes; Department 39 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
2. All counsel are required to appear in Dept. 39 on 01/08/20 at 8:30 a.m.
 - (a) If the case has been designated as complex, and no counter-designation has been filed, the Court will hold its first case management conference at that time.
 - (b) If the case has been assigned to Department 39 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possibility of early mediation, the identities of possible other parties, and their respective plans for discovery.
5. Until the time of the conference the following INTERIM ORDERS shall be in effect:
 - A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.
 - B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
 - C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

- D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

BY ORDER OF THE COURT



Superior Court of California, County of Contra Costa

UNLIMITED JURISDICTION
Civil Actions
PACKET

What you will find in this packet:

- **Notice To Plaintiffs (CV-655a-INFO)**
- **Notice To Defendants (CV-655d-INFO)**
- **ADR Case Management Stipulation and Order (CV-655b)**
- **Case Management Statement (CM-110)**
- **Alternative Dispute Resolution (ADR) Information (CV-655c-INFO)**

You Can Get Court Forms FREE at: www.cc-courts.org/forms

Superior Court of California, County of Contra Costa

NOTICE TO PLAINTIFFS
In Unlimited Jurisdiction Civil Actions

AFTER YOU FILE YOUR COURT CASE:

1. **Have the forms the clerk gives you served on all defendants in this case:**
 - a. The Complaint
 - b. The Summons
 - c. The Notice of Case Management Conference (shows hearing date and time)
 - d. The Notice to Defendants (Local Court Form CV-655d-INFO)
 - e. Blank: Case Management Statement (Judicial Council Form CM-110)
 - f. Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
 - g. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c-INFO)
2. **Within 60 days of the date you filed the complaint you must prove that the forms have been served on (delivered to) the defendants correctly by filing the Proof of Service form (POS-010) (completed by the person who did the service) with the court.**
3. **Go to the case management conference on the date indicated on The Notice of Case Management Conference.**
4. **Consider using mediation, arbitration, or neutral case evaluation (ADR) to resolve the dispute. All parties must answer questions about ADR on the *Case Management Statement* form. For more information, see the enclosed ADR information, visit www.cc-courts.org/adr, or email adrweb@contracosta.courts.ca.gov**
5. **You may delay the first case management conference while you try to resolve the dispute in ADR. If all parties agree to use ADR, complete and file the Stipulation and Order to Attend ADR and Continue First Case Management Conference 90 Days form to tell the court you want to use this option.**

All civil actions (*except juvenile, probate, family, unlawful detainer, extraordinary writ, and asset forfeiture*¹) and personal injury cases where a party is claiming damages² must meet the Civil Trial Delay Reduction time limits for filing documents and moving their cases forward. These time limits are listed in California Rule of Court 3.110 and Local Court Rules; Title Three. If parties miss these deadlines, a judge might issue an order (*Order to Show Cause*) for them to explain in court why they should not have to pay a fine or have their case dismissed.

VIEW LOCAL COURT RULES AT: (WWW.CC-COURTS.ORG/RULES)

¹ *Health and Safety Code §11470 et seq.*

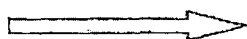
² *Including claims for emotional distress and/or wrongful death.*

Superior Court of California, County of Contra Costa

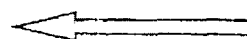
NOTICE TO DEFENDANTS
In Unlimited Jurisdiction Civil Actions

YOU ARE BEING SUED. The packet you have been served should contain:

- a. The Summons
- b. The Complaint
- c. The Notice of Case Management (shows hearing date and time)
- d. Blank: Case Management Statement (Judicial Council Form CM-110)
- e. Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b)
- f. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c-INFO)



WHAT DO I DO NOW?



You must:

1. **Prepare your response** YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
2. **Complete the *Case Management Statement* (CM-110)**
3. **File and serve your court papers on time** Once your court forms are complete, you must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mail you must file your response in 40 days.
4. **Prove you served your court papers on time** by having your server complete a *Proof of Service*, (Judicial Council form POS-040), that must be filed at the court within 60 days.
5. **Go to court** on the date and time given in the *Notice of Case Management Conference*.
6. **Consider trying to settle your case before trial** If you and the other party to the case can agree to use mediation, arbitration or neutral case evaluation, the *Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days* can be filed with your other papers. For more information read the enclosed ADR information, visit www.cc-courts.org/adr, or email adrweb@contracosta.courts.ca.gov.

IMPORTANT! The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

COURT FEES: You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheet]; FW-001 [application]; and FW-003 [order].

COURT FORMS: Buy forms at the Law Library (1020 Ward Street, Martinez, CA) or download them for free at: www.courtinfo.ca.gov/forms/

WHAT KIND OF RESPONSES CAN I FILE?

1. If you disagree with some or all of what the plaintiff says in the complaint because you believe, or know it is not true, you can file an ANSWER.
2. If you have a claim in the same case against the plaintiff, you may file a CROSS-COMPLAINT.
3. If you want to ask the court to do something on your behalf, you may file a MOTION (See *TYPES OF MOTIONS below*)

HOW DO I PREPARE AN ANSWER?

There are two kinds of Answers you can use, depending on whether the Complaint was verified. You can tell if a Complaint is verified because it says "Verified Complaint" and/or has a signed oath on the last page.

For complaints that are NOT verified:

Use Judicial Council form PLD-050 -- General Denial

For complaints that ARE verified:

- a. For personal injury, property damage, and wrongful death claims, use Judicial Council PLD-PI-003 (do not check number 2).
- b. For contract claims, use Judicial Council PLD-C-010 (do not check number 3a).
- c. Be sure to deny every claim with which you disagree. For example, you might write: "*I believe, or know, that the information in paragraph #__ is untrue/incorrect.*" Continue your list until you have addressed each paragraph in the Complaint.

NOTE: The Judicial Council Answer forms have spaces for your affirmative defenses. Be sure to include them or you may not be able to use them later. To find out what your affirmative defenses might be, go to the law library and ask the librarian to help you find the information you need.

If you want to file a Cross-Complaint, you must do so at the same time you file the Answer.

- a. For a personal injury, property damage, and/or wrongful death Cross-Complaint, use Judicial Council form PLD-PI-002.
- b. For a contract Cross-Complaint, use Judicial Council PLD-C-001.

TYPES OF MOTIONS

Written motions are documents that ask the court to do something. You may have to file an *Answer* at the same time. At this point in the case, you can only make Motions from the following list:

1. Demurrer (*the facts stated in the complaint are wrong, or the deadline to file the lawsuit has passed*);
2. Motion to Strike (*the complaint is unclear, does not follow the law, "doesn't matter", etc.*);
3. Motion to Transfer (*the complaint is in the wrong court or there's a more appropriate court*);
4. Motion to Quash Service of Summons (*you were not legally served*);
5. Motion to Stay (*put the case on hold*); or
6. Motion to Dismiss (*stops the case*).

NOTE: Motions are very complicated and you may want to hire a lawyer to help you.

WHERE CAN I GET MORE HELP?

- **Lawyer Referral Service:** (925) 825-5700
- **Bay Area Legal Aid:** (800) 551-5554
- **Contra Costa County Law Library** Martinez: (925) 646- 2783 Richmond: (510) 374-3019
- **Ask the Law Librarian:** www.247ref.org/portal/access_law3.cfm

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

 Plaintiff(s) / Cross Plaintiff(s)

vs.

ADR Case Management Stipulation and Order
(Unlimited Jurisdiction Civil Cases)

 Defendant(s) / Cross Defendant(s)

CASE NO: _____

▶ ALL PARTIES STIPULATING TO ADR AND DELAYING THEIR CASE MANAGEMENT CONFERENCE 90 DAYS MUST **SUBMIT THE ORDER FOR THE JUDGE'S SIGNATURE AND FILE THIS FORM AT LEAST 15 DAYS BEFORE THEIR CASE MANAGEMENT CONFERENCE.** (NOT AVAILABLE IN COMPLEX LITIGATION CASES.)

▶ PARTIES MUST ALSO SEND A COPY OF THIS **FILED** STIPULATION AND ORDER TO THE ADR OFFICE: EMAIL: adrweb@contracosta.courts.ca.gov FAX: (925) 608-2109 MAIL: P.O. BOX 911, MARTINEZ, CA 94553

Counsel and all parties agree to delay their case management conference 90 days to attend ADR and complete pre-ADR discovery as follows:

1. Selection and scheduling for Alternative Dispute Resolution (ADR):

- a. The parties have agreed to ADR as follows:
- i. Mediation (Court-connected Private)
 - ii. Arbitration (Judicial Arbitration (non-binding) Private (non-binding) Private (binding))
 - iii. Neutral case evaluation
- b. The ADR neutral shall be selected by (date): _____ (no more than 14 days after filing this form)
- c. ADR shall be completed by (date): _____ (no more than 90 days after filing this form)

2. The parties will complete the following discovery plan:

- a. Written discovery: (Additional page(s) attached)
- i. Interrogatories to:
 - ii. Request for Production of Documents to:
 - iii. Request for Admissions to:
 - iv. Independent Medical Evaluation of:
 - v. Other:
- b. Deposition of the following parties or witnesses: (Additional page(s) attached)
- i. _____
 - ii. _____
 - iii. _____
- c. No Pre-ADR discovery needed

3. The parties also agree: _____

4. Counsel and self-represented parties represent they are familiar with and will fully comply with all local court rules related to ADR as provided in Title Three; Chapter 5, **will pay the fees associated with these services**, and understand that if they do not, without good cause, comply with this stipulation and all relevant local court rules, they may be subject to sanctions.

Counsel for Plaintiff (print)		Fax
Signature		
Counsel for Plaintiff (print)		Fax
Signature		

Counsel for Defendant (print)		Fax
Signature		
Counsel for Defendant (print)		Fax
Signature		

Pursuant to the Stipulation of the parties, and subject to the Case Management Order to be filed, **IT IS SO ORDERED** that the Case Management Conference set for _____ is vacated and rescheduled for _____ at (8:30 a.m. / _____) **Plaintiff / Plaintiff's counsel must notify all parties of the new case management conference.**

Dated: _____

 Judge of the Superior Court

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. days (specify number):
- b. hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference (specify code section):

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221

- b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
--	-----------------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

- Additional cases are described in Attachment 13a.

- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.

- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party

Description

Date

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.



CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the *Case Management Form (CM-110)*;
- File a *Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days* (local court form); or
- Agree to ADR at your first court appearance.

Questions? Email adrweb@contracosta.courts.ca.gov or call (925) 608-2075

MEDIATION

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties email, fax or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediators regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.

JUDICIAL ARBITRATION (non-binding)

In judicial arbitration, an independent attorney (arbitrator) looks at the evidence, listens to the parties and their witnesses, and decides how the case will be settled. Judicial arbitration is less formal than court. Parties email, fax or visit the ADR Programs office to get a list of arbitrators. If they cannot agree on an arbitrator, the court will assign one. The judge can send cases to arbitration if there is less than \$50,000 in dispute. The person who started the court case can make sure the case goes to arbitration if they agree to limit the amount they are asking for to \$50,000. Parties can also agree they want to use judicial arbitration. The arbitrator must send their decision (award) to the court within 10 days of the last hearing. The award becomes a court judgment unless a party asks the court to review the case within 60 days. Parties must use the ADR-102 form to ask for a new court hearing (called a trial de novo.) Judicial arbitrators charge \$150 per case or per day.

PRIVATE ARBITRATION (non-binding and binding)

Private, non-binding arbitration is the same as judicial arbitration, except that the parties do not go through the ADR Programs office to choose an arbitrator, and the arbitrator's award will not become a judgment of the court unless all parties agree. Parties must pay the arbitrator's normal fees.

Binding arbitration is different from judicial or private non-binding arbitration because the arbitrator's decision is final. Parties give up their right to have a judge review their case later (except for reasons listed in California Code of Civil Procedure, Section 1286.2.) Binding arbitration rules are listed in California Code of Civil Procedure, Sections 1280-1288.8. Parties may also agree any time before the judge has made a decision that ends the case to switch to binding arbitration. Parties choose the arbitrator on their own, and must pay the arbitrator's normal (not \$150) fees.

SETTLEMENT MENTOR CONFERENCE

Settlement mentors are independent, experienced trial attorneys that a judge has assigned to help parties look for ways to settle their case. The conference is free and is held in the courthouse. It is often held on the morning of trial, but it can be scheduled anytime. These conferences usually last two or three hours. Parties do not present evidence and do not call witnesses. Parties can ask the settlement mentor to keep some information confidential (private) from the other party, but not from the judge. The settlement mentor can share any information with the judge, or involve the judge in settlement discussions. All principals, clients, and claims representatives must attend the settlement mentor conference.

NEUTRAL CASE EVALUATION

In neutral case evaluation, an independent attorney (evaluator) reviews documents and listens to each party's side of the case. The evaluator then tells the parties what they think could happen if the case went to trial. Many people use the evaluator's opinion to reach an agreement on their own, or use this information later in mediation or arbitration to settle their case.

Parties email, fax or visit the ADR Programs office to get a list of evaluators. After parties have agreed on an evaluator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the evaluator at least 5 court days before evaluation starts. ALL parties and their attorneys must go to neutral case evaluation. The evaluation can be held whenever and wherever the parties and the evaluator want, as long as they finish before the court deadline. If the parties go through the court's ADR program, evaluators do not charge any fees for the first half hour spent scheduling or preparing for the evaluation conference. They also do not charge fees for the first two hours of the evaluation. If parties need more time, they must pay that evaluators regular fees. Some evaluators ask for a deposit before evaluation starts. Evaluators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the evaluation. A party whose court fees have been waived (cancelled) may ask if their evaluation fees or deposit can be waived.

TEMPORARY JUDGE

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

COMMUNITY MEDIATION SERVICES

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at adrweb@contracosta.courts.ca.gov

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [24 Hour Fitness Sued After Removing Towel Service from Super Sport Fitness Clubs](#)
