1 2 3 4 5 6 7 8	COMP Mark R. Thierman, Nev. Bar No. 8285 mark@thiermanbuck.com Joshua D. Buck, Nev. Bar No. 12187 josh@thiermanbuck.com Leah L. Jones, Nev. Bar No. 13161 leah@thiermanbuck.com THIERMAN BUCK LLP 7287 Lakeside Drive Reno, Nevada 89511 Tel. (775) 284-1500 Fax. (775) 703-5027 Attorneys for Plaintiff EIGHTH JUDICIA	L DISTRICT COURT	
9 10	CLARK COUNTY, NEVADA		
01 11 11	CHANTELLE STEINMAN, on behalf of herself and all others similarly situated,	A-19-787192-C Case No.: Dept. No.:Department 9	
THIERMAN BUCK LLP         THIERMAN BUCK LLP         THIERMAN BUCK LLP         7287 Lakeside Drive         10         7287 Lakeside Drive         10         7287 Lakeside Drive         10         7         10         7         10         10         10         10         10         10         10         10         10         10         10         10         10         10         10 <td cols<="" td=""><td>Plaintiff, vs. 24 HOUR FITNESS; DOES 1 through 50; inclusive, Defendant(s).</td><td><ul> <li>CLASS ACTION COMPLAINT</li> <li>(EXEMPT FROM ARBITRATION PURSUANT TO NAR 5)</li> <li>1) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;</li> <li>2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,</li> <li>3) Injunctive Relief.</li> <li>ARBITRATION EXEMPTION CLAIMED: CLASS ACTION</li> <li>LIEN REQUESTED PURSUANT TO NRS 608.050</li> <li>JURY TRIAL DEMANDED</li> </ul></td></td>	<td>Plaintiff, vs. 24 HOUR FITNESS; DOES 1 through 50; inclusive, Defendant(s).</td> <td><ul> <li>CLASS ACTION COMPLAINT</li> <li>(EXEMPT FROM ARBITRATION PURSUANT TO NAR 5)</li> <li>1) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;</li> <li>2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,</li> <li>3) Injunctive Relief.</li> <li>ARBITRATION EXEMPTION CLAIMED: CLASS ACTION</li> <li>LIEN REQUESTED PURSUANT TO NRS 608.050</li> <li>JURY TRIAL DEMANDED</li> </ul></td>	Plaintiff, vs. 24 HOUR FITNESS; DOES 1 through 50; inclusive, Defendant(s).	<ul> <li>CLASS ACTION COMPLAINT</li> <li>(EXEMPT FROM ARBITRATION PURSUANT TO NAR 5)</li> <li>1) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;</li> <li>2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,</li> <li>3) Injunctive Relief.</li> <li>ARBITRATION EXEMPTION CLAIMED: CLASS ACTION</li> <li>LIEN REQUESTED PURSUANT TO NRS 608.050</li> <li>JURY TRIAL DEMANDED</li> </ul>
24	COMES NOW Plaintiffs Chantelle Steinman on behalf of herself and all others similarly		
25	situated and allege the following:		
26	All allegations in the Complaint are based upon information and belief except for those		
27	allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in the		
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Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery. 2

### JURISDICTION AND VENUE

1. This Court has original jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$15,000 and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and Nevada Revised Statute ("NRS") sections 608.050 and 608.140. See Neville v. Terrible Herbst, Inc., 133 Nev. Adv. Op. 95, 406 P.3d 499 (Dec. 7, 2017).

2. Plaintiff also claims a private cause of action to foreclose a lien against the 9 property owner for wages due pursuant to NRS 608.050. 10

Plaintiff Steinman made a proper demand for wages due pursuant to NRS 608.140 3. 11 on December 19, 2018. 12

4. Venue is proper in this Court because the Defendant named herein maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Clark County, Nevada.

### PARTIES

5. Plaintiff Chantelle Steinman (hereinafter "Plaintiff" or "Steinman") is a natural 17 person who is and was a resident of the State of Nevada and had been employed by Defendant as 18 a non-exempt hourly employee from January 1, 2007 to October 15, 2018. 19

6. Defendant 24 Hour Fitness is a foreign corporation doing business in the State of 20 Nevada. 24 Hour Fitness is a privately owned and operated fitness center chain, headquartered 21 in San Ramon, California. According to its Website it is the world's largest fitness chain based 22 on membership and operates 13 fitness clubs in the State of Nevada alone. 23

7. At all relevant times, the acts and omissions of Defendant proximately caused the 24 complaints, injuries, and damages alleged herein. At all relevant times herein, Defendant 25 approved of, condoned and/or otherwise ratified each and every one of the acts or omissions 26 complained of herein. 27

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8. The Defendant named herein is the employer of the Plaintiff and all Class

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Members alleged herein. The Defendant is an employer engaged in commerce under the provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time and the Complaint will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes that each Defendant sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to "Defendant" or "Defendants" herein shall mean "Defendants and each of them."

## **FACTUAL ALLEGATIONS**

9. Plaintiff Steinman had been employed by Defendant as a non-exempt hourly employee from January 1, 2007 to October 15, 2018. Plaintiff Steinman was first employed as a front desk attendant at an hourly rate of pay of approximately \$8.00. The last position Ms. Steinman held was Kids Club Supervisor and her hourly rate of pay upon separation of employment was about \$10.75.

10. Defendant maintains an unlawful policy of not paying daily overtime to nonexempt hourly employees who earned 1 ½ times less than the applicable minimum wage

11. On many occasions, Plaintiff worked a full eight (8) hour shift on one calendar day and then was required to returned early the next morning to work a day shift. Thus, the number of hours worked in a workday under Nevada law was over 8 hours in a 24-hour period of time.

19 12. For instance, during the summer months, June, July, and August, when kids are
20 out of school, Defendant scheduled Plaintiff Stienman to work and Plaintiff did work over 8 hours
21 in a 24-hour period of time. On a regular basis, Plaintiff would work 6:00 a.m. to 2:00 p.m. and
22 then get called in to work additional hours from 6:00 p.m. to 10:00 p.m. while still having to come
23 back in the next day for her 6:00 a.m. shift, six (6) days a week.

13. In addition, Plaintiff Steinman and other similarly situated employees would
regularly work overtime three (3) to four (4) days a week of approximately 15 minutes and would
rarely receive a lunch break.

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1 14. Despite having worked more than 8 hours in a 24-hour period of time, Defendant
 2 failed to compensate Plaintiff at 1 ½ times her regular rate of pay for the overtime hours she
 3 worked.

15. Upon information and belief, Defendant maintains a company-wide policy and practice of refusing to pay daily overtime wages to Nevada employees who worked over 8 hours in a workday.

16. This "no daily overtime" policy has always been common to all non-exempt hourly paid employees at Defendant's locations in the state of Nevada.

17. At all times relevant herein, Defendant has been aware that their policy and practice of failing to fully compensate Plaintiff and all others similarly situated for all hours worked was willful, oppressive, fraudulent, and illegal. Further, Defendants' practice as set forth herein is anti-competitive in that these illegal practices make one of Defendants' largest cost items, labor, lower than as compared to other fitness operators who comply with the labor laws of the State.

# **CLASS ACTION ALLEGATIONS**

18. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

19. Plaintiff brings this action on behalf of herself and all other similarly situated employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

20 20. The Nevada Overtime Class is defined as "All hourly paid non-exempt persons
21 employed by Defendant in the state of Nevada who earned less than 1 <sup>1</sup>/<sub>2</sub> times the applicable
22 minimum wage and who worked over eight (8) hours in a workday at any time within 3 years
23 from December 19, 2018 until judgment."

24 21. The Waiting Time Penalty Class is defined as "All Nevada Overtime Class
25 Members who are former employees of Defendant."

26 22. Class treatment is appropriate under Rule 23's class certification mechanism
27 because:

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a. <u>The Classes are Sufficiently Numerous</u>: Upon information and belief, Defendant employs, and has employed, in excess of 100 Nevada Overtime Class Members within the applicable time period. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff alleges that Defendant's records will establish the members of the Classes as well as their numerosity.

b. <u>Plaintiff's Claims are Typical to Those of Fellow Class Members</u>: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiff: whether Defendant compensated Plaintiff and members of the Class daily overtime wages when they worked over 8 hours in a workday and whether members of the Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay them minimum, regular, and overtime wages owed.

c. <u>Common Questions of Law and Fact Exist</u>: Common questions of law and fact exist and predominate as to Plaintiff and the Class Members, including, without limitation: whether Defendant failed to pay Plaintiff and the Class Members one and one-half times their regular rate for all hours worked in excess of 8 hours a workday and whether Defendant failed to pay the Waiting Time Penalty Class Members all their wages due and owing in violation of NRS 608.020-050.

d. <u>Plaintiff is an Adequate Representative of the Class</u>: Plaintiff will fairly
and adequately represent the interests of the Classes because Plaintiff is a member of the Nevada
Overtime Class, has issues of law and fact in common with all members of the Classes, and her
interests are not antagonistic to Class Members. Plaintiff and her counsel are aware of their
fiduciary responsibilities to Class Members and are determined to discharge those duties
diligently by vigorously seeking the maximum possible recovery for Class Members.

e. <u>Predominance/Superior Mechanism</u>: Class claims predominate, and a class action is superior to other available means for the fair and efficient adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to compensate its employees in accordance with Nevada wage and hour law. The prosecution of individual remedies by each Class Member

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1 2 3	will tend to establish inconsistent standards of conduct for Defendent and result in the impairment			
		will tend to establish inconsistent standards of conduct for Defendant and result in the impairment		
	2	of Class Members' rights and the disposition of their interest through actions to which they were		
	3	not parties.		
	4	<u>FIRST CAUSE OF ACTION</u> Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140		
<b>č LLP</b> ive 1 v.thiermanbuck.com	5	(On Behalf of Plaintiff and the Nevada Overtime Class)		
	6	23. Plaintiff realleges and incorporates by this reference all the paragraphs above in		
	7	this Complaint as though fully set forth herein.		
	8	24. NRS 608.140 provides that an employee has a private right of action for unpaid		
	9	wages.		
	10	25. NRS 608.018(1) provides as follows:		
	11	An employer shall pay 1 1/2 times an employee's regular wage rate		
	12	whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant		
BUCI side Dr 7 8951 x (775 m ww	13	to NRS 608.250 works: (a) More than 40 hours in any scheduled week of work; or (b) More than 8 hours in any workday unless by		
THIERMAN BUCK LLP7287 Lakeside DriveReno, NV 89511(775) 284-1500 Fax (775) 703-5027Email info@thiermanbuck.com www.thiermanbuck.com	14	mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.		
	15	26. NRS 608.018(2) provides as follows:		
	16	An employer shall pay 1 1/2 times an employee's regular wage rate		
	17	whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate		
	18	prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.		
	19	27. As described above, Defendant maintains a policy and/or practice of illegal shift		
	20	jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime		
	21	Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class		
	22	Members have suffered damage in the form of denied overtime compensation according to		
	23	Nevada law.		
	24	28. Wherefore, Plaintiff demands for herself and all Nevada Overtime Class Members		
	25	that Defendant pay Plaintiff and Nevada Overtime Class Members one and one-half times their		
	26	"regular rate" of pay for all hours worked in excess of eight (8) hours in a workday during the		
	27	relevant time period together with attorneys' fees, costs, and interest as provided by law.		
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### **SECOND CAUSE OF ACTION** Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140 (On Behalf of Plaintiff and the Waiting Time Penalty Class)

29. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

30. NRS 608.140 provides that an employee has a private right of action for unpaid wages.

31. NRS 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

32. NRS 608.030 provides that "[w]henever an employee resigns or quits his or her employment, the wages and compensation earned and unpaid at the time of the employee's resignation or quitting must be paid no later than...[t]he day on which the employee would have regularly been paid the wages or compensation; or[s]even days after the employee resigns or quits...whichever is earlier."

33. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

21 34. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee 22 for the purpose of collecting the wages or compensation owed to them "in the sum agreed upon 23 in the contract of employment for each day the employer is in default, until the employee is paid 24 in full, without rendering any service therefore; but the employee shall cease to draw such wages 25 or salary 30 days after such default."

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3mail info@thiermanbuck.com www.thiermanbuck.com (775) 284-1500 Fax (775) 703-5027 11 **THIERMAN BUCK LLP** 7287 Lakeside Drive 12 Reno, NV 89511 13 14 15 16 35. By failing to pay Nevada Overtime Class Members their overtime wages in
 violation of state law, Defendant has failed to timely remit all wages due and owing to the Waiting
 Time Penalty Class Members.

36. Despite demand, Defendant willfully refused and continues to refuse to pay Waiting Time Penalty Class Members all the wages that were due and owing upon the termination of their employment.

37. Wherefore, the Waiting Time Penalty Class Members demand thirty (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty (30) days of pay as waiting penalties under NRS 608.050 and 608.140, together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

### **<u>THIRD CAUSE OF ACTION</u>** Injunctive/Declaratory Relief (On Behalf of Plaintiff and the Nevada Overtime Class)

38. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

39. As Defendant has failed to compensate Plaintiff and members of the Overtime Class at the correct overtime wage rate for all the overtime hours that they worked pursuant to NRS 608.018, Defendant has wrongfully withheld wages properly-owed to the Plaintiff and the Overtime Class Members.

40. Plaintiff and the Nevada Overtime Class will suffer irreparable injury if Defendant
is not enjoined from the future wrongful, oppressive, and fraudulant retention of wages owed.

41. As a result of the aforementioned unlawful payment practices, Plaintiff submits
that there has been a likelihood of success on the merits that Plaintiff and the Class Members have
been damaged, that there is irreparable harm, and Plaintiff requests that this Honorable Court
enter an Order that restrains Defendant from attempting to enforce the alleged unlawful payment
practices.

42. Plaintiff requests that this Honorable Court enter a declaration of rights/obligations
in regard to all such unlawful payment practices in this matter.

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K LLP rive 1 ) 703-5027 w.thiermanbuck.com	1	43. Fu	arther, disputes and controversies have arisen between the parties relative to the	
	2	lawfulness of the	payment practices, and Plaintiff is entitled to have an order entered pursuant to	
	3	Chapter 30 of the Nevada Revised Statutes construing the payment practices and adjudging and		
	4	declaring Plaintiff and the Class Members' rights and remedies thereunder including such an		
	5	Order stating that such payment practices are unlawful.		
	6	44. Pl	aintiff has been required to retain the services of an attorney and is entitled to a	
	7	reasonable award of attorneys' fees and costs.		
	8	JURY TRIAL DEMANDED		
	9	Pursuant to NRCP 38(b) a separate demand for jury trial shall be served upon Defendant.		
	10	PRAYER FOR RELIEF		
	11	Wherefore Plaintiff, by herself and on behalf of all Class Members, prays for relief as		
	12	follows relating to her class action allegations:		
V BUC sside D V 895 ax (77: som wv	13	1. Fo	or an order certifying this action as a class action on behalf the proposed Classes	
THIERMAN BUCK LLP 7287 Lakeside Drive Reno, NV 89511 (775) 284-1500 Fax (775) 703-5027 Email info@thiermanbuck.com www.thiermanbuck.com	14	ar	nd providing notice to all Class Members so they may participate in this lawsuit;	
	15	2. Fo	or an order appointing Plaintiff as the Representative of the Classes and her	
	16	co	ounsel as Class Counsel;	
	17	3. Fo	or damages according to proof for overtime compensation under NRS 608.018	
	18	ar	nd 608.140 for all hours worked over 8 hours per day;	
	19	4. Fo	or waiting time penalties pursuant to NRS 608.040050 and 608.140;	
	20	5. Fo	or a lien on the property where Plaintiff and all Nevada Class Members labored	
	21	քւ	ursuant to NRS 608.050;	
	22	6. Fo	or interest as provided by law at the maximum legal rate;	
	23	7. Fo	or injunctive relief;	
	24	8. Fo	or declaratory relief;	
	25	9. Fo	or reasonable attorneys' fees authorized by statute;	
	26	10. Fo	or costs of suit incurred herein;	
	27	11. Fo	or pre-judgment and post-judgment interest, as provided by law; and,	
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