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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHANTELLE STEINMAN, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

24 HOUR FITNESS; DOES 1 through 50;
inclusive,

Defendant(s).

Case No.: A-19-787192-C
Dept. No.: Department 9

CLASS ACTION COMPLAINT

**(EXEMPT FROM ARBITRATION
PURSUANT TO NAR 5)**

- 1) Failure to Pay Overtime in Violation of NRS 608.018 and 608.140;
- 2) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140; and,
- 3) Injunctive Relief.

**ARBITRATION EXEMPTION
CLAIMED: CLASS ACTION**

**LIEN REQUESTED PURSUANT TO NRS
608.050**

JURY TRIAL DEMANDED

COMES NOW Plaintiffs Chantelle Steinman on behalf of herself and all others similarly situated and allege the following:

All allegations in the Complaint are based upon information and belief except for those allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in the

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1 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable
2 opportunity for further investigation and discovery.

3 **JURISDICTION AND VENUE**

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

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

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

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

16 **PARTIES**

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

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

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

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

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

7 **FACTUAL ALLEGATIONS**

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

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

15 11. On many occasions, Plaintiff worked a full eight (8) hour shift on one calendar
16 day and then was required to returned early the next morning to work a day shift. Thus, the
17 number of hours worked in a workday under Nevada law was over 8 hours in a 24-hour period of
18 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.

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

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.

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

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

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

15 **CLASS ACTION ALLEGATIONS**

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

18 19. Plaintiff brings this action on behalf of herself and all other similarly situated
19 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 ½ 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. The Classes are Sufficiently Numerous: 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. Plaintiff’s Claims are Typical to Those of Fellow Class Members: 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. Common Questions of Law and Fact Exist: 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. Plaintiff is an Adequate Representative of the Class: 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. Predominance/Superior Mechanism: 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

1 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 **FIRST CAUSE OF ACTION**
5 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140**
6 **(On Behalf of Plaintiff and the Nevada Overtime Class)**

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

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

11 25. NRS 608.018(1) provides as follows:

12 An employer shall pay 1 1/2 times an employee's regular wage rate
13 whenever an employee who receives compensation for employment
14 at a rate less than 1 1/2 times the minimum rate prescribed pursuant
15 to NRS 608.250 works: (a) More than 40 hours in any scheduled
16 week of work; or (b) More than 8 hours in any workday unless by
17 mutual agreement the employee works a scheduled 10 hours per day
18 for 4 calendar days within any scheduled week of work.

19 26. NRS 608.018(2) provides as follows:

20 An employer shall pay 1 1/2 times an employee's regular wage rate
21 whenever an employee who receives compensation for
22 employment at a rate not less than 1 1/2 times the minimum rate
23 prescribed pursuant to NRS 608.250 works more than 40 hours in
24 any scheduled week of work.

25 27. As described above, Defendant maintains a policy and/or practice of illegal shift
26 jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Nevada Overtime
27 Class worked over 8 hours in a workday). As a result, Plaintiff and Nevada Overtime Class
28 Members have suffered damage in the form of denied overtime compensation according to
Nevada law.

29 28. Wherefore, Plaintiff demands for herself and all Nevada Overtime Class Members
that Defendant pay Plaintiff and Nevada Overtime Class Members one and one-half times their
"regular rate" of pay for all hours worked in excess of eight (8) hours in a workday during the
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]henver 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]henver 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.”

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

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12. For such other and further relief as the Court may deem just and proper.

DATED: January 8, 2019

Respectfully Submitted,

THIERMAN BUCK LLP

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