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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

	)	
	)	
GABE BEAUPERTHUY, <u>et al.</u> on behalf	)	No. 06-0715 SC
of themselves and all others	)	
similarly situated,	)	
	)	<u>OPT-IN ORDER</u>
Plaintiffs,	)	
	)	
v.	)	
	)	
	)	
24 HOUR FITNESS USA, INC., a	)	
California corporation d/b/a 24	)	
Hour Fitness; SPORT AND FITNESS	)	
CLUBS OF AMERICA, INC., a	)	
California corporation d/b/a 24	)	
Hour Fitness,	)	
	)	
	)	
Defendants.	)	
	)	
_____	)	

WHEREAS, Plaintiffs Gabe Beauperthuy, et al., filed a motion to facilitate notice under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), and Defendant 24 Hour Fitness USA, Inc., et al., (hereinafter "24 Hour Fitness") opposed Plaintiffs' motion;

WHEREAS, pursuant to this Court's Order of March 6, 2007 Granting In Part And Denying In Part Plaintiffs' Motion For

1 Facilitated Notice Pursuant To 29 U.S.C. §216(b) entered in the  
2 above-captioned matter ("Conditional Certification Order"),

3 IT IS HEREBY ORDERED AS FOLLOWS:

4 1. Plaintiffs' FLSA claims in this case shall proceed as a  
5 conditional collective action under Section 16(b) of the Fair  
6 Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of all  
7 persons who work or have worked for 24 Hour Fitness in any state  
8 in the United States, except California, during the time period  
9 between December 31, 1998 and the present ("Claims Period"), in  
10 any managerial position classified by 24 Hour Fitness as exempt  
11 from overtime requirements.

12 2. The FLSA Notice and Consent to Join forms (attached  
13 hereto as Exhibit "A") are approved.

14 3. CPT Group, Inc. ("Notice Administrator") is approved as  
15 the Notice Administrator for the FLSA Notice pursuant to 29 U.S.C.  
16 §216(b). Plaintiffs shall bear the cost of notice, including but  
17 not limited to fees charged by the Notice Administrator and  
18 copying and mailing fees.

19 4. Within sixty (60) days of the date of this ORDER, 24  
20 Hour Fitness shall produce to plaintiffs' counsel and the Notice  
21 Administrator a machine-readable list of all the names and  
22 addresses of all persons described in paragraph 1 of this ORDER,  
23 so that notice may be timely accomplished. 24 Hour Fitness shall  
24 further produce to the Notice Administrator within ten (10) days  
25 of any request by the Administrator all social security numbers  
26 ("SSN") for any person described in paragraph 1 of this ORDER  
27 whose FLSA Notice is returned by the Post Office. The SSNs shall  
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1 only be provided to the Notice Administrator who shall maintain  
2 them in strict confidentiality, in a password protected database.  
3 The Notice Administrator shall implement physical, technical and  
4 administrative safeguards for the SSNs, including, but not  
5 necessarily limited to, those which restrict access to the SSNs to  
6 employees of the Notice Administrator with a need to know. The  
7 Notice Administrator may not disclose the SSNs to plaintiffs'  
8 counsel or any other third party. Use of the SSNs shall be  
9 limited to performing skip tracing methods to locate the current  
10 address of the person to whom notice should be given. Use and  
11 possession of the list of name and address information provided by  
12 24 Hour Fitness pursuant to this paragraph shall be solely limited  
13 to Plaintiffs' counsel and the Notice Administrator. The Notice  
14 Administrator shall use the information solely for the purpose of  
15 providing notice of this action to persons entitled to file  
16 Consent to Join forms pursuant to paragraph 1 of this ORDER.  
17 Plaintiffs' counsel shall not copy the list or any of the names  
18 and addresses on the list and shall maintain the confidentiality  
19 of the names and addresses. Plaintiffs' counsel shall return the  
20 list of names and addresses to 24 Hour Fitness on or before ten  
21 (10) days after the expiration of the opt-in period. Plaintiffs'  
22 counsel shall use the name and address data only for the following  
23 purposes: to confirm with the Notice Administrator and  
24 Defendants' counsel that the Notice Administrator sends notices to  
25 the individuals on the list; and to send a copy of the FLSA Notice  
26 to prospective class members upon their request.

27 5. The Notice Administrator shall mail the proposed FLSA  
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1 Notice and Consent to Join Form to all persons described in  
2 paragraph 1 of this ORDER as soon as practicable and in no event  
3 later than thirty (30) days after receiving the mailing list  
4 described in paragraph 4 of this ORDER, or a longer period of time  
5 if the parties so stipulate.

6 6. As soon as practicable and in any event no later than 20  
7 days prior to the close of the opt-in period, the Notice  
8 Administrator shall give notice (and supplemented notices as  
9 necessary) to all counsel the names of putative class members  
10 whose FLSA notices are returned by the Post Office as  
11 undeliverable, who cannot be located through the National Change  
12 Of Address (NCOA) database or skip tracing methods. Within  
13 fourteen (14) days of such notice, 24 Hour Fitness shall provide a  
14 copy of the Notice and Consent to Join Forms to each such  
15 individual on the list who is a current 24 Hour Fitness employee  
16 at that time. 24 Hour Fitness shall not transmit any  
17 communication to the persons described in paragraph 1 that  
18 undermines the FLSA notice or attempts to discourage participation  
19 in the collective action.

20 7. Each "Consent to Join" form must be postmarked or faxed  
21 to the Notice Administrator no later than sixty (60) days after  
22 the date that the Notice Administrator mails the notice. Within  
23 ten (10) days of the close of the opt-in period described above,  
24 all Consent to Join forms shall be filed with the Court.  
25 Individuals for whom Consent to Join forms are not filed within  
26 such time shall not participate in this lawsuit.

27 8. After 24 Hour Fitness has produced to plaintiffs'  
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1 counsel and the Notice Administrator the machine-readable list of  
2 all the names and addresses of all persons described in paragraph  
3 1 of this ORDER, the parties shall meet and confer and 24 Hour  
4 Fitness shall describe the method it used to choose which persons  
5 were to be included and plaintiffs shall assert any objections  
6 plaintiffs have to the process used by 24 Hour Fitness. If the  
7 parties are unable to resolve any issues, either party may request  
8 leave to file a motion with the Court. If such leave is granted,  
9 the time for the Notice to be mailed set forth in paragraph 5  
10 shall be tolled until the dispute that is the subject of the  
11 motion is resolved.

12  
13 IT IS SO ORDERED.

14  
15 Dated: May 9, 2007.

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UNITED STATES DISTRICT JUDGE

**United States District Court**  
For the Northern District of California

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**EXHIBIT A**

**NOTICE OF COLLECTIVE ACTION**

**THIS IS NOT A LAWSUIT AGAINST YOU. PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.**

**TO:** All persons who have worked for 24 Hour Fitness in any state in the United States, except California, during the time period between December 31, 1998 and the present ("Claims Period"), in any managerial position classified by 24 Hour Fitness as exempt from overtime requirements.

**RE:** Fair Labor Standards Act ("FLSA") Lawsuit Filed Against 24 Hour Fitness

**1. INTRODUCTION**

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiffs, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit if you so desire.

As described more fully below, if you are eligible and wish to participate in this collective action, you must timely complete and submit the "Consent to Join" form attached to this Notice.

**2. DESCRIPTION OF THE LAWSUIT**

On February 1, 2006, the named plaintiffs filed a Complaint in the U.S. District Court for the Northern District of California against 24 Hour Fitness on behalf of themselves and certain groups of past and present employees of 24 Hour Fitness in states *other*

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1 than California. Plaintiffs allege that 24 Hour Fitness failed to  
2 pay them and past and present employees in managerial positions who  
3 were classified as exempt from overtime requirements by 24 Hour  
4 Fitness, the wages and overtime pay to which they were entitled  
5 under the federal Fair Labor Standards Act ("FLSA"). Plaintiffs  
6 allege they are entitled to unpaid wages and overtime for such work  
7 performed after December 31, 1998.

8 Plaintiffs also seek liquidated damages and attorneys' fees and  
9 costs.

10 24 Hour Fitness denies any and all liability, including  
11 Plaintiffs' allegations that it failed to correctly compensate  
12 employees or that it is liable to Plaintiffs for violations of the  
13 FLSA.

14 **3. THE CURRENT STATE OF THIS LAWSUIT**

15 This lawsuit is in the very early stages of litigation. The  
16 Court has conditionally certified this case as a collective action  
17 and ordered this Notice be sent to you.

18 If you do join, you may be required to participate in the  
19 discovery process. You may be required to answer written questions,  
20 under oath, concerning the overtime hours you claim, if any, that  
21 you worked which were not compensated. You may also be required to  
22 answer questions, under oath, in an oral deposition and/or give  
23 testimony at a trial and travel to do so.

24 **4. PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

25 The U.S. District Court has ordered this FLSA Notice to be  
26 distributed to all persons who currently work or have worked for 24  
27 Hour Fitness, in any state, except California, between December 31,

1 1998 and the present, in any managerial position classified by 24  
2 Hour Fitness as exempt from overtime requirements.

3 **5. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

4 If you were employed by 24 Hour Fitness for any period between  
5 December 31, 1998 and the present in a managerial position that 24  
6 Hour Fitness treated as exempt from overtime, and you believe that  
7 24 Hour Fitness has failed to pay you for all hours worked or for  
8 all overtime compensation to which you are entitled, you have the  
9 right to join the pending FLSA lawsuit against 24 Hour Fitness.

10 If you want to participate in this lawsuit, you must take  
11 affirmative steps to indicate your intent to join the action. You  
12 must complete, sign and fax or mail a copy of the "Consent to Join"  
13 form, which is attached to this Notice, to CPT Group, Inc., who is  
14 the court-appointed Notice Administrator. If mailed, your signed  
15 "Consent to Join" form must be postmarked no later than *[insert date*  
16 *60 days after the mailing date]*.

17 If faxed, your signed "Consent To Join" form must be  
18 successfully faxed no later than *[insert date 60 days after the*  
19 *mailing date]*.

20 If your "Consent to Join" form is not postmarked by that date,  
21 or not successfully faxed to the Notice Administrator (CPT Group) by  
22 that date, you will not be allowed to participate in this lawsuit.

23 Having a "Consent to Join" form filed does not guarantee that  
24 you will be able to participate in the trial of this lawsuit as this  
25 may depend upon a final ruling from the District Court that you and  
26 the named Plaintiffs are "similarly situated" under federal law.  
27 Failing to return and have filed a "Consent to Join" form postmarked

1 on or before the deadline means that you cannot participate in any  
2 settlement or judgment for damages under the FLSA as part of this  
3 lawsuit.

4 **6. STATUTE OF LIMITATIONS**

5 Normally, the FLSA contains a limitations period of at least  
6 two years and potentially up to three years for the filing of a  
7 claim for unpaid overtime wages, after which the claim is forever  
8 barred. However, in this case the Court has tolled the statute of  
9 limitations to allow all Plaintiffs to sue for conduct which  
10 occurred any time after December 31, 1998. In the event that you  
11 decide not to file a Consent to Join in this lawsuit, you should  
12 consult with your own attorney as to the statute of limitations  
13 which would apply to your claim.

14 **7. EFFECT OF JOINING THIS SUIT**

15 If you file a "Consent to Join" form and the Court later  
16 permits your claims to proceed to trial as part of the collective  
17 action, you will be bound by any judgment regarding the FLSA claims  
18 in the lawsuit, whether favorable or unfavorable to Plaintiffs.  
19 While the suit is proceeding, you may be required to provide  
20 relevant information, and may be required to give sworn testimony  
21 in a deposition or in Court and travel to do so.

22 If you choose to join this collective action, you will be  
23 represented by the law firm currently representing the Plaintiffs.  
24 If you join the suit, you will not be required to pay attorney's  
25 fees or expenses in advance. Class counsel may be paid either by  
26 the Defendant, or they may, either in addition to or instead of  
27 payment from Defendant, receive a percentage of any money judgment

1 or settlement in favor of you, or others similarly situated, as  
2 agreed by contract and/or ordered by the Court.

3 As an alternative to joining this lawsuit, you may file your  
4 own lawsuit with any counsel of your choosing, or do nothing.

5 If you return a Consent to Join form, you should be aware that  
6 important decisions concerning the prosecution of this case  
7 including for the FLSA claims may be made on your behalf.

8 **8. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT**

9 If you choose not to join this collective action, you will not  
10 be affected by any judgment, whether it is favorable or unfavorable  
11 to Plaintiffs and the collective class. If you choose not to file  
12 a Consent to Join form, you are free to file your own lawsuit. If  
13 you choose not to file a Consent to Join form, the statute of  
14 limitations will continue to run until such time as you file a  
15 lawsuit on your own behalf.

16 **9. NO RETALIATION PERMITTED**

17 FEDERAL LAW PROHIBITS 24 HOUR FITNESS OR ITS AGENTS FROM TAKING  
18 ANY ACTION AGAINST YOU BECAUSE YOU ELECT TO JOIN THIS ACTION BY  
19 FILLING OUT AND RETURNING THE "CONSENT TO JOIN" FORM, OR OTHERWISE  
20 EXERCISING YOUR RIGHTS UNDER THE FLSA.

21 **10. ADMINISTRATOR**

22 CPT Group, Inc.  
23 16630 Aston  
24 Irvine, California 92606  
25 Facsimile: 949-852-9340  
26 Telephone: 888-687-3491

27 **11. PLAINTIFFS' COLLECTIVE ACTION COUNSEL**

28 Thomas G. Foley, Jr. State Bar No. 065812  
Philip D. Dracht, State Bar No. 219044  
**FOLEY BEZEK BEHLE & CURTIS, LLP**  
15 West Carrillo Street

1 Santa Barbara, California 93101  
2 Telephone (805) 962-9495  
3 Fax: (805) 965-0722  
4 tfoley@foleybezek.com; pdracht@foleybezek.com

5 Richard E. Donahoo, State Bar No. 186957  
6 Thomas J. Welch, State Bar No. 242065  
7 **DONAHOO & ASSOCIATES**  
8 505 North Tustin Avenue, Suite 160  
9 Santa Ana, California 92705  
10 Telephone (714) 953-1010  
11 Fax: (714) 953-1777  
12 rdonahoo@donahooandassoc.com

13 **12. DEFENDANTS' LEGAL REPRESENTATION**

14 Henry D. Lederman  
15 Lisa C. Chagala  
16 **LITTLER MENDELSON, P.C.**  
17 2175 North California Blvd., Ste. 835  
18 Walnut Creek, CA 94596  
19 (925) 932.2468  
20 hlederman@littler.com

21 **13. FURTHER INFORMATION**

22 For further information about this lawsuit, including any part  
23 of this notice, please contact Plaintiffs' counsel at the following  
24 toll-free number: 1-800-549-1789 or email. PLEASE DO NOT CONTACT THE  
25 COURT OR ANY COURT PERSONNEL FOR INFORMATION.

26 **THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED**  
27 **STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. THE**  
28 **COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF**  
**PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES.**

IT IS SO ORDERED.

Dated: May 9, 2007.



UNITED STATES DISTRICT JUDGE

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**FILING INFORMATION**

**1. INSTRUCTIONS FOR FILING CONSENT TO JOIN FORMS**

If you choose to join this FLSA collective action, your "Consent to Join" form must be completed, signed and returned. Your "Consent to Join" form must be postmarked or fax-dated no later than *[insert date 60 days after the mailing date]*.

**CHANGE OF ADDRESS**

If you send a "Consent to Join" form to the Notice Administrator and then move or change your address, please advise Plaintiffs' counsel:

Thomas G. Foley, Jr. State Bar No. 065812  
Philip D. Dracht, State Bar No. 219044  
**FOLEY BEZEK BEHLE & CURTIS, LLP**  
15 West Carrillo Street  
Santa Barbara, California 93101  
Telephone (805) 962-9495  
Fax: (805) 965-0722  
tfoley@foleybezek.com; pdracht@foleybezek.com

Richard E. Donahoo, State Bar No. 186957  
**DONAHOO & ASSOCIATES**  
505 North Tustin Avenue, Suite 160  
Santa Ana, California 92705  
Telephone (714) 953-1010  
Fax: (714) 953-1777  
rdonahoo@donahooandassoc.com

**2. FURTHER INFORMATION**

To obtain further information about this lawsuit, including your right to join, please contact Plaintiffs' counsel at the address or phone number listed directly above.

**CONSENT TO JOIN LAWSUIT AS A PARTY PLAINTIFF**

Beauperthuy, et al. v. 24 Hour Fitness, et al., United States District Court for the Northern District of California. Case Number C-06-00715 SC.

I understand that this lawsuit is being brought under the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. I consent, agree, and opt-in to become a party plaintiff to this lawsuit. I agree to be bound by any adjudication or settlement of this action by the Court, whether it is favorable or unfavorable, and agree to designate the class representatives as my agents, and I understand that I will be bound by the decisions and agreements made by an entered into by said representatives. I hereby designate the law firms of Foley, Bezek, Behle & Curtis, LLP and Donahoo & Associates, to represent me in this action.

I am a current or former employee of 24 Hour Fitness, and I worked in the following position(s) at 24 Hour Fitness:

<u>Position</u>	<u>Club Location</u>	<u>Dates Employed (Month/Year)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

Name (Printed): \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Email address: \_\_\_\_\_

This form must be returned by mail POSTMARKED (or successfully faxed) NO LATER THAN [insert date] to:

CPT Group, Inc.  
16630 Aston  
Irvine, California 92606  
Facsimile: 949-852-9340

**United States District Court**  
For the Northern District of California

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