

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

24 HOUR FITNESS USA, INC.

and

ALTON J. SANDERS, an individual

Case 20-CA-35419

**MOTION TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT  
OF 24 HOUR FITNESS USA, INC.**

The Chamber of Commerce of the United States of America respectfully requests leave to file a brief *amicus curiae* and supplemental *amicus curiae* letter in support of 24 Hour Fitness USA, Inc. (“24 Hour Fitness”) in the above-captioned case.

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of more than three million businesses and professional organizations of every size, in every sector, and in every region of the country. A principal function of the Chamber is to represent the interest of its members by filing amicus briefs in cases involving issues of vital concern to the nation’s business community. Given the enormous costs, risks, and evolving burdens and liabilities confronting businesses in the United States, the interests of the business community at large encompass a statement of position that is broader and more far-reaching than the more limited interests of the litigants.

This case presents the question of whether an employer violates Section 7 and Section and Section 8(a)(1) of the National Labor Relations Act (“NLRA”) by placing new employees in an arbitration program that requires such employees to waive the procedural right to participate

in a class or collective action but allows them to opt-out of the arbitration program as part of the new hire process. Many of the Chamber's members and affiliates regularly enter into agreements to arbitrate with their employees because arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with traditional litigation.

Arbitration is effective, speedy, fair, inexpensive and less adversarial than litigation in court. Based on the legislative policy reflected in the Federal Arbitration Act ("FAA") and the Supreme Court's consistent endorsement of arbitration over the past several decades, Chamber members have entered into countless agreements to arbitrate with their employees. These arbitration agreements typically require that disputes be resolved on an individual, rather than class-wide, basis, as class actions interfere with the simplicity, informality, and expedition that are characteristic of arbitration. A decision in this matter agreeing with Administrative Law Judge Schmidt's opinion that an agreement to arbitrate containing a class action waiver, even if the agreement allows employees to opt-out of the arbitration program, would undermine existing agreements and erode the benefits offered by arbitration as an alternative to litigation. Because the advantages of arbitration would be lost if the Board finds that this arbitration agreement violates the NLRA, the Chamber has a strong interest in the outcome of this case. The Chamber's extensive interest in the issues presented by this case is further demonstrated by previous submission of amicus briefs in *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012), Case No. 12-60031 (5th Cir. 2012) and amicus letters in *Neiman Marcus*, Case No. 20-CA-33510.

The Chamber has already been granted leave to file an amicus brief by Administrative Law Judge Schmidt and seeks here to re-file its amicus brief, as well as a supplemental letter, in support of 24 Hour Fitness' exceptions to Judge Schmidt's decision. The Chamber therefore respectfully requests leave to file its amicus brief and supplemental letter, filed

contemporaneously with this motion, to provide input with respect to whether an employer violates Section 7 and Section and Section 8(a)(1) of the NLRA by placing new employees in an arbitration program that requires such employees to waive the procedural right to participate in a class or collective action but allows them to opt-out of the arbitration program as part of the new hire process.

Dated: February 7, 2013

Respectfully submitted,

/s/ Kristina A. Yost

Willis J. Goldsmith

Kristina A. Yost

JONES DAY

222 East 41<sup>st</sup> Street

New York, New York 10017

(212) 326-3939

Robin S. Conrad

Shane B. Kawka

NATIONAL CHAMBER

LITIGATION CENTER

1615 H Street, NW

Washington DC 20062

(202) 463-5337

Counsel for *Amicus Curiae*

Chamber of Commerce of the

United States of America

**STATEMENT OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years, and not a party to the within action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On February 7, 2013, I served the within document:

**MOTION TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT  
OF 24 HOUR FITNESS USA, INC.**

- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☒ Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is [mdavis@jonesday.com](mailto:mdavis@jonesday.com).

Carmen Leon, Esq.  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1735  
Tel: (415) 356-5130  
Email: [carmen.leon@nlrb.gov](mailto:carmen.leon@nlrb.gov)  
[Jill.Coffman@nlrb.gov](mailto:Jill.Coffman@nlrb.gov)  
[Frances.Tsang@nlrb.gov](mailto:Frances.Tsang@nlrb.gov)

Judith A. Scott  
SERVICE EMPLOYEES INT'L UNION  
1800 Massachusetts Avenue, NW  
Washington, DC 20036  
Tel: (202) 730-7455  
Email: [judy.scott@seiu.org](mailto:judy.scott@seiu.org)

Cliff Palefsky  
MCGUINN, HILLSMAN & PALEFSKY  
535 Pacific Ave  
San Francisco, CA 94133-4628

Michael Rubin  
Caroline P. Cinotta  
ALTSHULER BERZON LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
Tel: (415) 421-7151  
Email: [mrubin@altshulerberzon.com](mailto:mrubin@altshulerberzon.com)  
[ccincotta@altshulerberzon.com](mailto:ccincotta@altshulerberzon.com)

Marshall Babson  
SEYFARTH SHAW LLP  
620 Eighth Avenue  
New York, NY 10018  
Tel: (212) 218-5500  
Email: [mbabson@seyfarth.com](mailto:mbabson@seyfarth.com)

Garry G. Mathiason  
Alan Levins  
LITTLER MENDELSON, P.C.  
650 California Street, 20th Floor

Tel: (415) 421-9292  
Email: [CP@mhpsf.com](mailto:CP@mhpsf.com)

San Francisco, CA 94018  
Tel: (415) 433-1940  
Email: [gmathiason@littler.com](mailto:gmathiason@littler.com)  
[alevins@littler.com](mailto:alevins@littler.com)

Daniel Nash  
Gregory Knopp  
AKIN, GUMP, STRAUSS, HAUER & FELD,  
L.L.P.  
2029 Century Park E., Ste. 2400  
Los Angeles, CA 90067-3010  
Email: [dnash@akingump.com](mailto:dnash@akingump.com)  
[gknopp@akingump.com](mailto:gknopp@akingump.com)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 7, 2013, at San Francisco, California.

---

/s/ Mindy Davis  
Mindy Davis