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 41st 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.

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
Jill.Coffman@nlrb.gov
Frances.Tsang@nlrb.gov

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
ccincotta@altshulerberzon.com

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

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

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

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

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

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