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APPELLATE COURT CASE NUMBER A08-1993  
STATE OF MINNESOTA  
IN COURT OF APPEALS

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SARAH ERDMAN,  
Individually and on behalf of  
others similarly situated,

Plaintiffs/Respondents,

vs.

LIFETIME FITNESS, INC.,

Defendant/Appellant.

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**RESPONDENTS' BRIEF**

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## STATEMENT OF THE ISSUES PRESENTED

**Certified question No. 1:** Where an employer advances bonus payments to an employee, with the understanding that the employee may be required to repay those bonus advancements if he or she does not earn them, and the employer thereafter reduces the employee's paycheck to recover the amount of the unearned and overpaid bonus, is that deduction made to recover "claimed indebtedness running from employee to employer" such that Minnesota Statutes section 181.79 applies?

District Court Ruling: The District Court correctly found that the deductions to Plaintiffs' pay for overpaid bonus were not deductions for "claimed indebtedness." The District Court further correctly found that Minnesota Statutes section 181.79 does not apply to this case, and does not preclude a finding that Plaintiffs are not salaried-exempt employees under Minn. Rule 5200.0211.

Authorities: Minn. Rule 5200.0211, Minn.Stat. §177.25, Minn Stat. §181.79.

**Certified question No. 2:** What is the interaction between Minnesota statutes section 181.79 and Minnesota Rule 5200.0211? Specifically, when an employer makes a deduction to recover "claimed indebtedness", such as overpayment of any sort, but fails to obtain prior written authorization for such deduction, is an affected employee's remedy under section 181.79 (which deals with deductions from wages and requires damages in double the amount of the improper deduction) or Minnesota Rule 5200.0211 (which deals with exemptions from overtime requirements)?

District court ruling: The District Court correctly found that whereas Minn. Rule 5200.0211 and Minn.Stat. §§177.23, 177.25 pertain to the issue of payment of, and

exemptions from, overtime, while Minn.Stat. §181.79 pertains to unauthorized deductions from pay, and Plaintiffs brought a claim only for failure to pay overtime, Minn.Stat. §181.79 did not preclude judgment for Plaintiffs.

Authorities: Minn. Rule 5200.0211, Minn.Stat. §§177.23, 177.25, Minn.Stat. §181.79, *Milner v. Farmers Insurance Exchange*, 748 N.W.2d 608 (Minn. 2008).

**Certified Question No. 3:** Assuming Minnesota Rule 5200.0211 provides a remedy for deductions to recover “claimed indebtedness,” what is the proper scope of that remedy? Specifically, is the loss of exempt status confined to those employees who actually had their salaries reduced, or is exempt status destroyed for all employees who theoretically could have had their salaries reduced, whether they were actually reduced or not, and, in either event, for what time period is the exempt status lost?

District court ruling: The District Court did not analyze the remedy here in the context of “claimed indebtedness” under Minn.Stat. §181.79, but properly analyzed this case under Minnesota’s salary rule Minn. R. 5200.0211 and Minnesota’s overtime statute Minn.Stat. §177.25 which requires overtime to be paid for each week Plaintiffs were non-exempt employees. The District Court properly found that Plaintiffs were not salaried-exempt employees for any week in the class period, because they were never “guaranteed a predetermined wage for each workweek” (emphasis added) as required by the plain language of Minn. R. 5200.0211.

Authorities: Minn. Rule 5200.0211, Minn.Stat. §177.25, Minn.Stat. §181.79, *Milner v. Farmers Insurance Exchange*, 748 N.W.2d 608 (Minn. 2008).

## STATEMENT OF THE FACTS<sup>1</sup>

This is a class action overtime lawsuit against Defendant-Appellant Life Time Fitness (“Defendant” or “Life Time”), a fitness club with locations in Minnesota and across the United States. P’s MSJ at 3. Plaintiffs-Respondents (“Plaintiffs”) are current and former employees of Defendant employed in various managerial and/or executive capacities who worked over 48 hours (often upwards of 50 or more hours) per week and were not paid overtime for such hours. *Id* at 3-4; P’s MSJ EXs A-I.

Minnesota law requires employees to be paid one and one-half times their regular rate for hours worked over 48 per week, unless they fall under specified exemptions. See M.S.A. §177.25. An employee need not be paid overtime if employed in a “bona fide executive, administrative, or professional capacity.” M.S.A. §§177.23. The requirements for these exemptions are found in Minn.R. 5200.0190; 0200; 0210 respectively.<sup>2</sup> These rules specify certain duties in which the employees must engage to meet the exemption.

However, to meet the exemptions, the employees must be paid a “salary.” This case was brought because Life Time’s employees’ compensation did not meet the Minnesota Fair Labor Standard Act’s (“MFLSA”) “salary” test, which is required in

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<sup>1</sup> Plaintiffs’ Summary Judgment briefing was not included in Defendant’s Appendix. Pursuant to this Court’s Rule 128.03, and in light of Rule 130.01, Plaintiffs’ citations to the facts asserted herein are to the pages and exhibits contained in Plaintiffs’ Memorandum in Support of Motion for Summary Judgment (hereinafter “P’s MSJ”).

<sup>2</sup> See M.S.A. §177.28 (“The commissioner may adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rates established by sections 177.24 and 177.25.”)

order for Defendant to classify Plaintiffs as exempt and lawfully not pay them overtime. P's MSJ at 4.

An employee is only paid a "salary" if they are "guaranteed a predetermined wage for each workweek." Minn.R. 5200.0211. This was not the case here.

Plaintiffs were paid under compensation plans Defendant classifies as corporate bonus pay plans. P's MSJ EX A. Under these plans, Plaintiffs were each paid a predetermined amount of compensation, which was identified by Defendant as base salary, on a semi-monthly basis. In addition to this base salary, each Plaintiff was eligible to receive monthly bonus payments based on year-to-date performance of the particular business units the Plaintiff managed. P's MSJ at 3-4; EXs E & J.

These bonuses were paid out monthly based on the employees' cumulative yearly performance. P's MSJ at 5; EXs A&J. In other words, the bonus paid each month was equal to the year-to-date bonus earned, minus payments made in previous months. Thus, Defendant calculated each Plaintiff's performance numbers each and every month. P's MSJ at 6, EXs E&J.

However, when the amount of bonus payments previously paid exceeded the amount an employee had earned on a yearly basis, a "bonus overpayment" would result. P's MSJ at 6. Defendant would not just deduct this amount against future bonus payments and did not just internalize the loss. *Id* at 6-7; EX J. Defendant purposefully, using the provision in Plaintiffs' compensation plan, took the money from Plaintiffs' *base salary*. This was a written rule in each worker's compensation plan: "LTF reserves the right to reclaim the amount of the previous payments by reducing future semi-monthly

guarantee payments” (2004 plans); “Life Time Fitness reserves the right to reclaim the amount of the overpayment by reducing future semi-monthly base salary payments” (2005 plans); and “Life Time Fitness Inc. reserves the right to reclaim the amount of overpayment by reducing . . . future semi-monthly base salary payments.” (January 1—March 3, 2006 plans). *Id.*

These deductions occurred multiple times to multiple members of the Plaintiff class. D’s MSJ at 5, EX A.

Very simply, no Plaintiff’s pay, at any point in the class period, was guaranteed. Life Time Fitness constantly monitored and reevaluated the workers’ compensation and performance numbers every month. P’s MSJ at 7, EX E. It constantly watched the numbers to see if employees were becoming “in the hole” since that triggered a deduction from base pay. *Id.* at 7-8, EXs E&L. The defense representative testified that each time an overpayment occurred, “it was a definite” that the employee would be subject to a deduction from their supposedly ‘guaranteed’ base pay. P’s MSJ at 8, EX E.

Every worker’s pay was conditional on meeting the performance goals set forth in the compensation plans. P’s MSJ at 9, EX J & K. Some workers happened to meet theirs; others did not. Life Time Fitness argued its antidote for a worker to prevent these pay cuts was, incredibly, for the employee to “put in lots of overtime”—overtime the employees were not being paid for. *Id.* at 9, EX M.

An employee who is actually “salary” does not have to “put in lots of overtime” to receive all of their base paycheck—their pay is guaranteed, not conditional. This is set

forth in the plain language of the Minnesota statute, and particularly the plain language of the word “guarantee.”

The District Court therefore correctly found that Plaintiffs were not salaried-exempt employees under Minnesota law. In doing so, the District Court rejected the defense arguments that an unrelated statute, dealing with impermissible deductions from an employee’s pay, prohibits liability against them.

## ARGUMENT

### Introduction

It would be very difficult for Life Time to argue that Plaintiffs were “guaranteed a predetermined wage for each workweek” under Minn. R. 5200.0211, which is required for Plaintiffs to be “salary” and for Life Time to not pay them overtime. So Life Time has decided instead to argue that Plaintiffs were not permitted to bring an overtime claim in the first place. The crux of Life Time’s appeal is that Plaintiffs’ only relief for their pay being conditional and not “guaranteed” is a statute prohibiting certain deductions from employees’ pay, Minn.Stat. §181.79, which is completely separate from the overtime laws, Minn. Rule 5200.0211, Minn.Stat. §§177.23, 177.25.

This deduction statute prohibits among other things, an employer from making deductions to employees’ pay for a “claimed indebtedness” without first obtaining written authorization from the employee.

Life Time’s first claim is that the District Court erred in finding that the deductions Life Time made here were not for claimed indebtedness. Life Time is wrong.

The deductions made here were not for any type of loan, but because Plaintiffs were not meeting the performance goals set forth in their compensation plans.

In any event, the deduction statute is entirely inapplicable here. This is addressed in the second issue, which looks at the interplay between the deduction statute and the overtime rules. Life Time asserts that Plaintiff should have, and could only have made a claim under Minn.Stat. §181.79, for improper pay deductions for “claimed indebtedness”. However, no language in either law precludes Plaintiffs from pursuing their overtime claim when their pay is conditional and not “guaranteed”. When deductions made to an employee’s pay preclude the employee’s pay from being “guaranteed”, this also violates the overtime salary rule – which is the situation here. The laws protect employees in different ways. The District Court was therefore correct in applying the overtime laws to Plaintiffs’ overtime claims, and not accepting Life Time’s position that the deduction statute trumps here.

Third, Life Time argues that the loss of overtime exemption should be limited to only the weeks where employees actually had pay cuts. Life Time asks this Court to apply the deduction statute remedy, not the overtime remedy; limit Life Time’s exposure because Life Time thinks its otherwise ‘absurd’ and ‘unfair’; and apply inapplicable federal law to limit liability. None of these arguments have merit. The plain language of Minn. Rule 5200.0211 and Minn.Stat. §§177.23, 177.25 support the District Court ruling that Plaintiffs were not guaranteed pay for each week in the class period, and are thus non-exempt employees entitled to overtime for each week in the class period.

The District Court decided the legal issue in this case—whether Plaintiffs are salaried-exempt employees—based on the undisputed record of this case and the plain language of Minnesota statutory authority. Life Time urged the District Court, as it does here, to reword the language of the statutes, but this is not allowed. Life Time’s dissatisfaction with the plain language of the law does not create grounds for reversal.

**I. Appellate Standard of Review**

In reviewing the District Court’s denial of Life Time’s motion for summary judgment, this Court asks “(1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

Because, there are no issues of material fact here, the Court will review whether the District Court correctly applied the law to this case. Questions of law are subject to de novo review. *Weston v. McWilliams & Assoc. Inc.*, 716 N.W. 2d 634, 638 (Minn. 2006)(citing *Leftov. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn.1998)).

**II. The District Court correctly found that Minnesota Statute section 181.79 is inapplicable to this action.**

With respect to the first certified question, Life Time submits that “Section 181.79 generally contemplates employers making paycheck deductions for certain enumerated categories of items, including ‘to recover...claimed indebtedness running from employee to employer’ without penalty.” Appellant’s Brief at 17.

Life Time asserts that the deductions it made to Plaintiffs’ base pay here to recover bonus overpayments are deductions to recover “claimed indebtedness.” Life Time

requests the Court so find so that it can get to its next argument (in certified question no. 2), which is that deductions for “claimed indebtedness” must first be authorized in writing by the employee, and that a violation of this rule provides for a specific remedy—double the amount of the deduction—and not a violation of the overtime salary rule.

The District Court correctly found that the bonus recoupments were not “claimed indebtedness”.<sup>3</sup>

The deductions here were not for “claimed indebtedness” Minn.Stat §181.79 prohibits deductions for

lost or stolen property, damage to property, or to recover any other claimed indebtedness running from employee to employer, unless the employee, after the loss has occurred or the claimed indebtedness arisen, voluntarily authorizes the employer in writing to make the deduction or unless the employee is held liable in a court of competent jurisdiction for the loss or indebtedness.

The nature of the deduction here is of a different quality. The deductions here were made because Plaintiffs could not maintain the bonus numbers needed to get a bonus payment rather than a pay deduction. Plaintiffs were not loaned this bonus money. They did not sign a note agreeing to pay said funds back at the end of the year, or if they quit, etc.<sup>4</sup>

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<sup>3</sup> More importantly, the District Court correctly determined that Minn.Stat. §181.79 was not applicable to this case and in any event did not preclude a violation of Minn. Rule 5200.0211’s salary requirements. This is further discussed in the next section.

<sup>4</sup> Plaintiffs also note that in *Baden-Winterwood v. Life Time Fitness*, 2007 U.S. Dist. LEXIS 49777 (S.D. Ohio July 10, 2007) a case brought for Life Time employees for overtime violations under federal law, Life Time argued it could not be liable because it was merely ‘recouping a salary advance.’ The District Court rejected that argument and looked at the nature of the deduction—which was because of employee performance. (A. 255-256).

Life Time, the party with the burden to prove the exemption here, does not cite a single case to show that claimed indebtedness can be construed in this context.

Thus the District Court was correct in its finding that Minn.Stat. §181.79 has no bearing on the question here—whether Plaintiffs were salaried employees under the separate Minn. Rule 5200.0211.

**III. The District Court correctly found that Life Time violated Minnesota Rule 5200.0211.**

The focus of the second certified question is when there is a deduction for a claimed indebtedness to an employee's pay (assuming this Court even finds that to be the case) which is not authorized by Minn.Stat. §181.79, is an employee's remedy limited to Minn.Stat. §181.79 (which requires damages in double the amount of the improper deduction) or can such an unauthorized deduction also violate Minnesota Rule 5200.0211 which requires a salaried employee to be "guaranteed a predetermined wage" in order to be exempt from the overtime requirements.

The Defendant submits that section 181.79 provides the only remedy in this case. Defendant submits that Plaintiffs could have brought an action for twice the amount of any pay deduction, but cannot also claim that the deductions (and the pay plans which constantly subjected Plaintiffs to deduction) precluded their pay from being guaranteed under the salary exemption test. This argument fails.

Minn.Stat. §181.79, titled "wages deductions for faulty workmanship, loss, theft, or damage" protects all employees—hourly or salaried—from unauthorized deductions to their pay. It is entirely separate from Minnesota's salary rule, Minn. R. 5200.02100,

enacted 9 years thereafter, which provides a test for determining whether an employee meets the salary test for overtime exemption purposes. Law is not enacted to address problems already taken care of. The two regulations protect employees in different ways. The deduction statute, Minn.Stat. §181.79 protects all employees—hourly or salaried—from unauthorized deductions to their pay. The salary rule Minn R. 5200.02100 protects employees classified as “salaried-exempt” and not receiving overtime by setting standards to make sure that such employees are in fact being “guaranteed a predetermined wage” and thus are truly salaried.

Yet the Defendant asserts that the deduction statute—a statute having nothing whatsoever to do with overtime wages—should trump the salary exemption rule properly promulgated by the Minnesota Department of Labor. This would improperly eliminate the authority expressly provided to the DOL to “adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rates established by sections 177.24 and 177.25.” Minn.Stat. §177.28.

Moreover, the Defendant’s reading would render the salary test completely meaningless.

The defense argues that if deductions are permitted by Minn.Stat. §181.79, they do not violate the salary test.<sup>5</sup>

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<sup>5</sup> This issue is not raised by the facts of this appeal. Even if the deductions here were for “claimed indebtedness” (which Plaintiffs do not agree with), Life Time does not contest that it did not have the necessary written authorization by Plaintiffs to make such deductions proper under Minn.Stat. §181.79.

The defense argues that if deductions are *not* permitted by Minn.Stat. §181.79, they also do not violate the salary test.

Favoring one statute with the result of completely precluding the protection of the other does not satisfy Life Time's cited case of Milner v. Farmers Insurance Exchange, 748 N.W.2d 608 (Minn. 2008) which it interprets as requiring all of Minnesota's wage and hour laws to be construed in light of one another.

Life Time relies heavily on Milner, but Milner does not help Life Time. It helps Plaintiffs. In Milner, one of the issues the Court was deciding was to whom civil penalties should be paid in the event of an MFLSA violation. *Id.* at 16. The Court found there was no plain language in the MFLSA to dictate to whom civil penalties were payable, so the Court looked at what it first deemed to be a related statute, the Minnesota Payment of Wages Act (PWA), Minn.Stat. §§181.01-171. *Id.* Because the MFLSA addresses minimum wage and hour standards, and the PWA addresses how often wages must be paid and establishes penalties for wages that are paid late, the Court found that "together, these acts provide a comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other." *Id.*

Here, the Minnesota overtime statutes and rules (in Chapter 177; and Minn. Rule 5200.0211) and Minn.Stat. §181.79 for "Wage Deductions" do not provide a "comprehensive statutory scheme"—they address different wrongs. Thus it would be incorrect to interpret the deduction statute as providing the exclusive remedy for pay deductions in cases where pay deductions also prevent an employee's pay from being "guaranteed" under the salary rule.

Moreover, there is no language in any of these statutes or rules to reach the result Life Time advocates for here. The statutes do not refer at all to one another, let alone deem the deduction statute as the sole remedy in cases like this. As the Court in *Milner* held, where the legislature intends a particular result, it uses particular language. *Id.* at 618 (holding that where PWA specified that civil penalties are payable to the aggrieved party and the MFLSA did not, the plain language of the statute precluded awarding civil penalties to the aggrieved party).

The remaining defense argument is that the District Court's ruling here is somehow going to 'wreak havoc on all of Minnesota's unsuspecting employers.' The District Court's ruling does not dictate this result. The District Court's finding that Plaintiffs' pay was not salary was specific to the unique facts of this case. The decision turns on the particular written policy of Life Time, applicable not to all its workers, or to any other persons in the state, but only to 126 people. This case has no impact on any other Minnesota employers. Plaintiffs fail to understand how finding Plaintiffs' pay was not salary here, under the facts of this case, takes away the ability of Minnesota courts to make the proper inquiries into whether an employee's pay is conditional or guaranteed in separate, future cases.

Further, this is a case where deductions were made because Plaintiffs for each week in the class period worked under a plan where their performance—how long and hard they worked; how well they managed their own business units—dictated whether they got a bonus or a pay cut. As noted by the District Court:

[E]ach variation of the Plan explicitly provided for the possibility that an employee's future semi-monthly base salary payment could be reduced. Since an employee's base pay was always at risk for reduction, the employee could not have been assured a predetermined wage for each workweek.

The pay of every employee covered by the Plan was conditional on meeting the performance goals set in the plan. In order to meet those goals, Plaintiffs were encouraged to put in overtime, for which they were not compensated. Life Time violated the MFLSA by classifying Plaintiffs as exempt, when they were entitled to payment for overtime. (A: 105).

Thus this is precisely the situation contemplated by the Minnesota Department of Labor which explains that "A salary is defined as a guaranteed predetermined wage for each workweek that **does not vary** based on productivity or weather. It is not an hourly rate." Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005).<sup>6</sup>

However, even in a case like Life Time's proffered example, which conversely has the employer having a policy of recouping from base pay the cost of lost equipment, there is little reason to fear an avalanche of litigation. As noted by the defense, the salary rule has been in effect for 9 years. There has only been one other case the parties know of even addressing the salary rule. See *Wiebush v. City of Champlin*, 2003 Minn. App.

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<sup>6</sup> The defense disagrees that the deductions here were related to Plaintiffs' performance/productivity. This argument was not only rejected by the District Court, but also by the United States District Court for the Northern District of Ohio in *Baden-Winterwood v. Life Time Fitness*, which similarly determined that under federal law Plaintiffs' pay deductions were due to the "quality or quantity" of their work, and in fact deemed Life Time's argument to the contrary "disingenuous." (A. 256-258). Life Time cannot conveniently ignore the entire reason behind recouping the overpayments. Bonus payments (and thus deductions) were based on the profitability numbers of the particular business unit each Plaintiff ran. If these numbers slipped, Plaintiffs pay would be docked. Thus Plaintiffs' pay was always conditional. This is precisely the type of 'variation' in pay, the Department of Labor prohibits.

LEXIS 648 (Minn. Ct. App., May 29, 2003)<sup>7</sup>. Plaintiffs doubt the present case will now open the flood gates.

**IV. Plaintiffs are entitled to overtime wages for each week they were not “guaranteed a predetermined wage” under Minn. R. 5200.0211.**

Life Time asserts the loss of exemption should be limited to only weeks where deductions were made and only for those particular Plaintiffs affected. Life Time makes four arguments in this regard.

First, Life Time argues that the remedy should be guided by Minn.Stat. §181.79, which according to Life Time shows the legislature’s “preference” to have a narrow remedy for pay deductions. As explained in the previous section, this statute has no bearing here. The deduction statute and the overtime statute deal with two distinct violations and provide separate remedies. Minn.Stat. §177.25 deals with overtime and exempt status. It requires payment of time-and-a-half for all workers who are not exempt. It does not provide for loss of the exemption only in weeks the worker’s pay is reduced. The exemption is lost for any week the worker’s wage amount is conditional; any week the worker’s pay is not “guaranteed.”

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<sup>7</sup> This Court in *Wiebush* reversed summary judgment for the employer, who had successfully argued in the district court that the plaintiff-employee was salaried-exempt under Minnesota law. This Court reversed noting “the fact that appellant’s periodic paychecks were constant, as salaried employees tend to be, does not prove that he was not hourly” and pointed to deposition testimony which showed that if the employee worked less than a certain number of hours, he would be paid less if he did not have sufficient comp, vacation, or sick time to make up for the deficiency. *Id* at 6. The Court found this evidence, coupled with the fact that there were conflicting company documents listing his pay as both salary and hourly raised a material issue of fact which precluded summary judgment for the employer. 2003 Minn. App LEXIS 648 at 7.

Second, Life Time argues for limited exposure because of the DOL's emphasis on the "workweek" standard in determining compliance with the MFLSA. This does not help Life Time. The District Court properly found that Life Time's pay was not guaranteed as required for each week in the class period. Thus Plaintiffs were not salaried exempt for each week in the class period, and whatever hours Plaintiffs can prove at trial they worked over 48 hours per week, they will be entitled to overtime for.

Third, Life Time argues that Plaintiffs would be getting an 'absurd windfall' if the ruling stands. Life Time basically argues that it is unfair for Plaintiffs to get overtime for all weeks in the class period when pay deductions only occurred in certain weeks. However, it was also unfair for Plaintiffs pay to always be conditional; for Plaintiffs to always be working under the threat of losing their base pay. More importantly however, purported 'unfairness' cannot change the plain language of Minnesota law. The District Court correctly applied the plain language of Minn. R. 5200.0211: "An employee is paid a salary, if the employee, through an agreement with an employer, is guaranteed a predetermined wage for each workweek." The rule does *not* say "an employee is paid a salary if he is paid a predetermined wage, except for those weeks where the employee's pay is actually reduced." The standard is whether an employee's pay is conditional or guaranteed; not whether the employee has had deductions to their pay or not. Life Time cannot change what the statutory language says. See Milner, 748 N.W.2d at 617.

The District Court was correct when it applied the plain language of Minnesota rule:

Life Time argues that only a small number of employees actually faced reduction of their base salary payments, and that each of these Plaintiffs received 100% of his or her base salary on a yearly basis. However, each variation of the Plan explicitly provided for the possibility that an employee's future semi-monthly base salary payment could be reduced. Since an employee's base pay was always at risk for reduction, the employee could not have been assured a predetermined wage for each workweek. (A. 104-105)(emphasis added).

Finally, Life Time argues in a couple of footnotes that the Minnesota court should apply federal law, which Life Time submits provides for a remedy limited to weeks of actual pay cuts. Plaintiffs disagree with this interpretation of federal law, but it is irrelevant. Minnesota law does not apply the regulation or tests advocated by the defense. *See* Minn. Rule 5200.0211, Minn.Stat. §177.25. As the Minnesota Supreme Court noted in *Milner* 748 N.W. 2d at 617, "We decline to look to the federal FLSA as it is structured differently than the MFLSA." Furthermore, the defense suggestion that it is somehow improper for Minnesota law to provide greater protection to its employees than federal law is disingenuous. Congress set minimum wage and overtime requirements, 29 U.S.C. §§206, 207, and expressly provided for states to enact their own, more protective laws:

29 U.S.C. §218. Relation to other laws

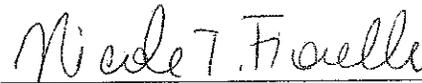
(a) No provision of this Act ... or of any order thereunder shall excuse noncompliance with any Federal or **State law** or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act ... or a maximum workweek lower than the maximum workweek established under this Act. (emphasis added).

Accordingly, the District Court's ruling that Plaintiffs were not salaried-exempt employees for any week during the class period is properly supported by the plain language of Minnesota law and should be affirmed

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request this Court affirm the decision of the District Court granting Plaintiffs summary judgment and denying same to Appellant.

Respectfully submitted,  
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DATED: January 27, 2009

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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SARAH ERDMAN,  
Individually and on behalf of  
others similarly situated,

Plaintiffs/Respondents,

vs.

LIFETIME FITNESS, INC.,

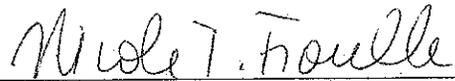
Defendant/Appellant.

**CERTIFICATION OF BRIEF  
LENGTH**

APPELLATE COURT CASE NUMBER:  
A08-1993

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a monospaced font, being Times New Roman in 13-point. The length of this brief is 4,775 words. This brief was prepared using the word count feature of the Microsoft® Office Word 2007 word-processing software.

Respectfully submitted,  
**DWORKEN & BERNSTEIN CO., L.P.A.**



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