No. 26-_____

SUPREME COURT OF THE UNITED STATES

MICHAEL DEVIN FLOYD,

Plaintiff-Appellant,

v.

24 Hour Fitness USA, LLC

Defendants-Appellees.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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NOT FOR PUBLICATION

FILED

JUL 22 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DEVIN FLOYD, Plaintiff - Appellant, v. 24 HOUR FITNESS USA, LLC, Defendant - Appellee.	No. 25-4460 D.C. No. 3:23-cv-00871-EMC MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted July 15, 2026**

Before: BERZON, NGUYEN, and OWENS, Circuit Judges.

Michael Floyd appeals the district court's 1) dismissal of his negligent training and false arrest claims, 2) grant of summary judgment to 24 Hour Fitness USA, LLC ("24 Hour") on his defamation, intentional infliction of emotional distress ("IIED"), negligence, contract, and Unfair Competition Law ("UCL")

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

claims, and 3) denial of various motions and evidentiary challenges. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

I. Dismissal of Negligent Training and False Arrest Claims

a. Negligent Training

A claim for negligent training often involves an employer retaining an employee with a past history of wrongdoing. *See, e.g., C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 875–76 (2012) (analyzing claim in a school setting). And "additional duty limits are suggested by . . . considerations of the extent of moral blame and the policy balance between the prevention of future harm and the burdens created by imposing a duty of care." *Id.* at 878. So "[u]nless the individual alleged to be negligent in a hiring or retention decision knew or should have known of the dangerous propensities of the employee who injured the plaintiff, there is little to no moral blame attached to the person's action." *Id.*

In his First Amended Complaint ("FAC"), Floyd alleged 24 Hour is liable for negligent training and supervision of the employees involved in the July and October 2022 incidents. Floyd did not allege, however, that the employees' conduct, in either incident, was a part of a pattern or practice which put 24 Hour on notice to provide better training. *See id.* Moreover, any failure to retrain after the first incident did not lead to the second incident because the 24 Hour employees

involved were different.[1]

b. False Arrest

Floyd alleged 24 Hour caused him to be falsely arrested for trespassing in October 2022. *See* CACI 1403. But an affirmative defense for false arrest is available if the defendant proves the plaintiff "committed or attempted to commit a crime in [the defendant's] presence." CACI 1404.

Based on his allegations in the FAC, Floyd trespassed when he was asked to leave 24 Hour's property and did not do so. *See* Cal. Penal Code § 602(m). That the trespassing charge was later dismissed does not mean he was not trespassing at the time of the arrest.

II. Summary Judgment on Other Claims

a. Defamation

Floyd alleged 24 Hour employee Walter Kane's statement to the police during the October 2022 incident was defamatory. An element of defamation is the statement of fact is unprivileged. *Smith v. Maldonado*, 72 Cal. App. 4th 637, 645 (1999). "[S]tatements made when a citizen contacts law enforcement personnel to report suspected criminal activity on the part of another person" are privileged under California Civil Code § 47(b). *Hagberg v. Cal. Fed. Bank*, 32

[1] Floyd raises additional new arguments on appeal, but because these arguments were not raised below, we do not consider them. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992).

Cal. 4th 350, 355 (2004).

Kane's statement to the police—that Floyd inappropriately touched other gym members previously and on the day of his arrest—is privileged because it was made "to report [Floyd's] suspected criminal activity." *See id.* Floyd contends because Kane made this statement with malicious intent, it is not privileged. *See* Cal. Civ. Code § 47(b)(5) (privilege does not apply when a person makes a false report knowingly "or with reckless disregard for the truth or falsity of the report"). No reasonable jury could find Kane intentionally lied or acted with "reckless disregard for the truth" because 24 Hour previously received at least two complaints of Floyd inappropriately touching other members, and the membership revocation request form specifically stated Floyd inappropriately "grabbed" another member that day.[2]

b. IIED

Floyd alleged Kane's statement to the police during the October 2022 incident constituted IIED. IIED requires "extreme and outrageous conduct by the defendant." *Christensen v. Superior Ct.*, 54 Cal. 3d 868, 903 (1991). Because

[2] When finding Kane did not make his statement with malicious intent, the district court relied on police reports, which Floyd contends were inadmissible. Even assuming the district court erred admitting those police reports, there is no prejudice here because of the membership revocation request form, which was not objected to. *See infra* n.6; *Boyd v. City & Cnty. of San Francisco*, 576 F.3d 938, 943 (9th Cir. 2009) ("A party seeking reversal for evidentiary error must show that the error was prejudicial.").

there were multiple prior complaints of Floyd harassing other members, Kane's statement to the police was not outrageous.

c. Negligence

Floyd alleged 24 Hour caused Negligent Infliction of Emotional Distress ("NIED") in connection with his arrest. NIED is not a separate tort but a form of negligence and must satisfy the elements of duty, breach, causation, and damages. *Burgess v. Superior Ct.*, 2 Cal. 4th 1064, 1072 (1992).

Although a general presumption exists that 24 Hour owed Floyd a duty of reasonable care, *see* Cal. Civ. Code § 1714(a), the district court reasonably held that public policy factors warrant limiting this duty here, *see Shalghoun v. N. L.A. Cnty. Reg'l Ctr., Inc.*, 99 Cal. App. 5th 929, 946 (2024) ("[C]ourts have the power and obligation to examine whether considerations of public policy warrant limiting" a legal duty of care). The California Supreme Court outlined two factors in analyzing whether public policy should limit the duty of care, one of which asks whether recognizing the duty "would deter socially beneficial behavior." *Id.* at 946–47. 24 Hour had a strong interest in protecting the safety of its members, and that interest warrants limiting the presumptive duty of reasonable care with regard to Floyd's removal from the premises. Moreover, the urgency of preventing potential harassment justifiably limited the scope of investigation 24 Hour undertook before removing Floyd. *See e.g.*, *Brooks v. City of San Mateo*, 229 F.3d

917, 921–22 (9th Cir. 2000) (finding placement of harassing employee on "administrative leave pending an investigation" was "prompt remedial action" in the Title VII context).

24 Hour did not breach its limited duty to Floyd. 24 Hour took reasonable steps to respond promptly to multiple members' complaints. And 24 Hour provided Floyd with adequate opportunities to respond to the allegations shortly after being removed.[3] Floyd contends the facts supporting summary judgment "are riddled with uncertainty." Because the evidence above is undisputed, and indeed, corroborated by Floyd's deposition and statements, we are not persuaded that summary judgment was improper.

d. Contract-Related Claims

1. Floyd alleged 24 Hour breached the membership agreement ("Agreement"). *See Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). The Membership Policies and Club Rules require members "not engage in . . . any conduct that harasses or is bothersome to members" and "violation of any of the Policies or Rules may also cause 24 Hour, in its sole discretion, to terminate that person's membership." The Agreement similarly states "24 Hour may, at its option, terminate your membership" for "fail[ure] to follow any of 24 Hour's

[3] Separate from his NIED/negligence claim, Floyd challenges the dismissal of his claim for breach of an implied duty of reasonable care. For the same reasons explained at *supra* pp. 5–6, 24 Hour did not breach this duty.

Membership Policies or club Rules." 24 Hour thus did not breach the Agreement when it terminated Floyd's membership on the basis that he violated the Club Rules by harassing other members.[4]

2. Floyd alleged 24 Hour "did not act fairly and in good faith." To the contrary, as described above, 24 Hour had a good faith basis to terminate his membership. *See Gux v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 349–50 (holding the covenant of good faith and fair dealing cannot impose "limits on the contracting parties beyond those incorporated in the specific terms of their agreement"). To the extent the covenant of good faith and fair dealing implied a duty to reasonable investigation before termination, 24 Hour fulfilled that duty by responding to complaints and providing Floyd with adequate opportunities to be heard.

e. UCL Claim

Floyd alleged 24 Hour violated the UCL by not having "a fair harassment policy." The UCL prohibits "any unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Professions Code § 17200. Relevant here, one test to define "unfair" under the UCL is whether the alleged business practice "requires the court to weigh the utility of the defendant's conduct against the gravity of the

[4] Floyd contends there is insufficient evidence he harassed other members. But multiple members complained of Floyd harassing them, which was enough to allow 24 Hour to terminate his membership.

harm to the alleged victim." *Drum v. San Fernando Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010). Another requires the plaintiff's injury "not be outweighed by any countervailing benefits to consumers or competition." *Id.*

Weighing the "utility" or "countervailing benefit" of 24 Hour's conduct against the alleged harm to Floyd, 24 Hour's harassment policy was fair. *See id.* The district court reasonably found the utility of 24 Hour's conduct "significant" because the facility "has a vested interest in reasonably promptly removing a member repeatedly accused of harassing other members." Any due process harm to Floyd, in contrast, was limited. 24 Hour did not immediately remove him from the gym or terminate his membership. Instead, 24 Hour called the police in July and October 2022 after multiple complaints were made against Floyd and only after he refused to leave. And again, 24 Hour gave Floyd an opportunity to be heard shortly after both removals.[5]

III. Other Challenges[6]

We review evidentiary rulings for abuse of discretion. *Valdiva v.*

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[5] Floyd additionally contends the district court erred by considering similar incidents in its analysis. In his complaint, Floyd disclosed he was "banned from their gyms in the area." The district court reasonably concluded these other incidents "underscore[] the justifiability of 24 [Hour's] conduct in responding to multiple members' complaints."

[6] Floyd failed to object to the admission of the membership revocation request form and certain 24 Hour employees' declarations below. His appeals regarding their admission are thus waived. *See Tan Lam v. City of Los Banos*, 976 F.3d 986, 1006 (9th Cir. 2020).

Schwarzenegger, 599 F.3d 984, 993 (9th Cir. 2010); *see also Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017) (challenging admission of evidence). We also review the district court's decision not to appoint counsel in a civil suit for abuse of discretion. *Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014).

a. Denial of Motions to Compel

Floyd appeals the denial of his two motions to compel. Floyd's motions were procedurally deficient and prematurely filed before the initial case management conference. *See* N.D. Cal. Civ. R. 37-1 (meet and confer requirement); Fed. R. Civ. P. 26(d)(1). The district court did not abuse its discretion by denying them.

b. Initialization of the Alleged Victims' Declarations

Floyd challenges the district court's order requiring that 24 Hour provide only the victims' initials in their declarations, to "balance" Floyd's rights against the "alleged victim's rights of privacy."

"[A] party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The district court considers, among other factors, "the severity of the threatened harm," and "the reasonableness of the anonymous party's fears." *Id.* V.H. and H.S.

reported Floyd for harassing them. After those incidents, V.H. was "scared" of Floyd and H.S. "started carrying mace and a taser." Given these circumstances, the district court did not abuse its discretion by allowing V.H. and H.S. to use their initials in their declarations.

c. Admission of Floyd's 24 Hour Profile

Floyd appeals the admission of his 24 Hour profile. 24 Hour authenticated Floyd's membership profile as "records kept in the regular course of [its] business and made contemporaneously or close to contemporaneously with reported statements." Floyd's membership profile was properly admitted as a business record by the district court. *See* Fed. R. Evid. 803(6)(B).

d. Denial of Motion for Appointment of Counsel

Appointment of counsel in a civil case is only granted in "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Floyd's motion did not meet this high standard.

AFFIRMED.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

MICHAEL DEVIN FLOYD,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. 3:23-cv-00871-EMC**
	)	
24 HOUR FITNESS USA, LLC,	)	
	)	
Defendant.	)	
	)	

San Francisco, California
Thursday, April 17, 2025

TRANSCRIPT OF PROCEEDINGS

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Reported By: Ruth Levine Ekhaus, RMR, RDR, FCRR, CCG
Official Reporter, CSR No. 12219

Thursday - April 17, 2025 2:30 p.m.

PROCEEDINGS

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THE CLERK: The Court will now be hearing the case Floyd versus 24 Hour Fitness, U.S.A., LLC, Case Number 23-871.

Plaintiff, please, state their appearance for the record.

MR. FLOYD: Good afternoon. Michael Floyd representing himself.

THE COURT: All right. Thank you, Mr. Floyd.

MS. LAUNEY: Good afternoon. This is Kristina Launey for 24 Hour Fitness.

THE COURT: All right. Thank you, Ms. Launey.

We're here on motion for summary judgment in these matters, cross-motions.

So as I understand -- let me make sure I understand a couple of factual points. As I understand it, there have been complaints filed at various junctures; and that, at one point, Mr. Floyd was escorted out, and was then told at that point that he had to leave, but was told that he could talk to the manager and did talk to the manager the following day.

I think that was the -- was that the July 18th incident?

MR. FLOYD: That is correct.

THE COURT: Okay. And then -- but there was no

termination.

MR. FLOYD: Well, I was told I was banned at the time. And, you know, after the police came and, of course, me arguing, and I've never seen these people before, they finally say, well, come back the next day and speak with a higher manager than the manager who told me I was banned at the time.

THE COURT: Right. And you did talk to that --

MR. FLOYD: And I did come back and talk to the general manager.

THE COURT: Right. Mr. Bryant.

MR. FLOYD: Ms. Bryant, that's correct.

THE COURT: Ms. Bryant.

And then -- but you did come back to the club in September, when there is an alleged incident about the dumbbells on the rack and yelling at the -- you were there. I mean, you may not agree with what happened, but you were there in the club.

MR. FLOYD: Not sure if it happened or -- I was never informed.

THE COURT: But my point is, you came back to the club in September.

MR. FLOYD: Yes. I visited the club many times. So I mean, after that July incident, they told me I could come back; I just was there, just like any other gym; right? So July, August, September I was -- I was there.

THE COURT: All right. Even being -- after being escorted out in July, you were able to come back in September.

MR. FLOYD: That is correct.

THE COURT: But then there was the incident on October 1st, when you were then escorted out of the gym without getting a chance to get your shower and get your stuff; right? And then, after that, you were told your membership was being terminated.

MR. FLOYD: That is correct.

THE COURT: But, according to your statement, at some point you, again, had a chance to talk with either the general manager or somebody at the club about what happened.

MR. FLOYD: Yes. So of course, I guess, I -- after I was arrested and then they released me, I went back to the club, tried to get some clarity. They told me my membership was suspended and to come back on Monday.

So I believe I was arrested on Saturday; and Monday I went back, spoke with the general manager, tried to get more clarity on it, told her what happened, you know, tried to ask her more about it. And she said she was doing an investigation.

I went back the next day. I went back -- could have been the following day; I have it more written down in the declaration of the complaint. But I kept returning back, trying to figure out what was going on, how to get my

membership reinstated and, you know, removed from the suspension.

THE COURT: All right. And at this juncture, what was the last thing you heard from -- about your suspension, about your termination?

MR. FLOYD: So I went back -- it was the day I received the call from the district manager. I went back -- I think I waited a week because they told me to give them some time to investigate. So I think I waited a week or so. I went back and they -- that's when somebody -- I don't believe it was the actual general manager -- but somebody who was a -- who was present told me somebody will be calling me shortly. And that's when the district manager called me and informed me my membership was terminated.

THE COURT: That's the -- Kesan Pillai?

MR. FLOYD: Pillai. Kesan Pillai.

THE COURT: Kesan Pillai. And that was the last communication?

MR. FLOYD: Yes. That was the call -- well, the last time I heard from them before starting this lawsuit.

So I mean, communications, me trying to get my membership reinstated continued. You know, I sent e-mails and letters to the corporate addresses. I think I have those written down in the declaration in the complaint.

THE COURT: Okay. What -- what's in the record about,

after this conversation between Mr. Floyd and Kesan Pillai, in his declaration or his statement, he states that he was told he was going to get a letter and never got a letter after that?

MS. LAUNEY: The letter is in the record, that he received -- or that he was sent regarding the revocation of his membership.

THE COURT: And that's the letter dated?

MS. LAUNEY: October 11th, Your Honor.

THE COURT: October 11?

MS. LAUNEY: Yes, 2022.

THE COURT: Well, according to his statement, he received a call from Pillai on October 13, and that's when he had this conversation and then was told that he would get an additional letter.

Is there anything after October 13?

MS. LAUNEY: I don't believe he received an additional letter, Your Honor; but, obviously, there is a lot of correspondence here. I can check the record.

MR. FLOYD: I received an additional letter.

THE COURT: You did receive an additional letter?

MR. FLOYD: Late. It could have been weeks later, but I received an additional letter.

THE COURT: Is that in the record?

MR. FLOYD: The letter does not state -- I'm not sure if it's on the record. I'm not sure would why I would have

need for it. But the letter came weeks after, and it just stated pretty much very, very vague things, you know. I -- they say I didn't properly conduct myself, but it doesn't explain the actual conduct; and it just says my membership is terminated.

THE COURT: Okay. But Exhibit E is the October 11th letter, which said that you've been terminated.

MR. FLOYD: That was -- I probably could have received it in late October. If it's dated October 11th, I received the letter late October.

THE COURT: Okay. So what this boils down to, it seems to me, is a lot of the claims here -- whether it's infliction of emotional distress, whether it's breach of the covenant of good faith and fair dealing -- pertains to, as I understand it, two things: One is the expeditious removal of Mr. Floyd on two occasions, July and in October; and then, termination without adequate investigation.

And my understanding of the law is that with respect to whether or not, for instance, there was any negligence here, first, you have to find a duty; and if there is a duty, then you have to determine what that duty was and whether it was breached in this case.

And it seems to me that in assessing those things, you have to look at what the context is and whether expeditious action by 24 Hour was reasonable and consistent with either

they had a duty to do so and fulfilled it, or there was no duty to do anything differently.

However you look at it, I think the law looks at what was the immediate situation, what was the countervailing interest if they didn't take action. And here, my understanding is that 24's position is that they had rights of other folks at issue; other people complained. And that it is very common in sexual harassment situations, whether it's in the employment -- workplace, or others, to take action to separate people, to create some distance while some investigation was going on.

And it seems to me it's not a breach of a duty to take that action, particularly after there have been multiple complaints, and if there is at least some chance to do some investigation.

And in this instance, Mr. Floyd was given an opportunity to give his side of the story to that first manager, and then ultimately again to the district manager in the second time around with respect to the termination.

And so I don't see, frankly, a problem, under the circumstances, of having to separate and remove Mr. Floyd from the premises, especially given the close quarters that people find themselves in, and the nature of the facility, and the nature of the complaints.

I think the only question is: What process is due?

What would be a fair investigation under the circumstances?

And here, there was the right to be heard. I mean, at least Mr. Floyd was given an opportunity to tell his side of the story. Maybe it wasn't -- it didn't register well or it was determined that that still wasn't enough given the number of complaints; but I'm hard pressed to find that that's negligence or breach of the duty of fair dealing or an unfair practice under the 17200, where there have been -- I think there probably was a count -- maybe five complainants at various times during those several months.

MR. FLOYD: If I can say, those five complaints, I was never informed of any; right? So at the time when I'm talking to the district manager, he needs to tell me my membership is terminated, the only thing I know is that, you know, what the guy -- what the manager, Kane, said in the locker room on 10/1. That's the only thing I was informed of.

So he informs me that a woman complains that I was inappropriately grabbing her. And we find out through discovery that that didn't happen; right? So that's where the problem comes in; right?

So what we have now, with these other four complaints -- and now you say I touched somebody on his stomach, three months prior -- right? -- nobody is telling me anything, and there's no problems in the gym, and no woman in the gym actually telling me anything; right? I don't know who

these people are or protective liar cousins -- like I put in my briefs -- are. Right?

And if I could say, I have something written down as far as argue -- arguments. So, of course, we're going on, can we take the defendant's actions, you know, as not a breach of duty and perceived as actions taken in good faith; right?

The first removal, they say that I was banned; right? So they didn't tell me before that there were problems, but they have on their notes as well that they said they had a handful of members complain, and I've been causing problems months prior; and we have no notes on these problems or these --

THE COURT: But that's what you were told that day of the removal in July.

MR. FLOYD: That's what I was told. But there's no notes on these handfuls of members. There's no notes on these handfuls of complaints that happened prior.

So me removed by a manager I have never seen before. Now coming back talking to the general manager. She gives me no further information whatsoever, but I'm able to continue my membership.

And, you know, we have declarations from their protective liars that state things different than what the manager stated in his deposition -- Martinez did in his deposition. Martinez events somewhat relate with mine in that

I did not talk to them during that day. I didn't actually talk to anybody during that day when I was removed; but I was banned and they said the problem or whatever happened, happened that day as well.

THE COURT: Well, let me ask -- let me ask the defendant: What does the record show that Mr. Floyd was told, let's say, on the first removal on the 18th? What was conveyed to him in terms of the reason why or what the complaints were? And where would I find that?

MS. LAUNEY: The record shows the reason was -- well, we do have testimony from him, as well as the witnesses, as to what the discussion was on that date; and we also have his member record where it's noted as to what occurred on that date as well.

THE COURT: Does the member -- so what -- where is the best place to find what was told --

MS. LAUNEY: The member record --

THE COURT: -- what was told to him? I see 7/18 --

MS. LAUNEY: Yeah. In the member record, which is at Document 96-4 -- it's in various places in the record, but at Document 96-4, page 22 of 30, there is an entry that says -- on 7/18 (as read):

"We have had a handful of female members come and complain that he has been harassing during their workouts. On one occasion, on July 9th, 2022, he

went up to a female guest and touched her mid-workout. She responded with 'Please don't touch me,' but he went on to" -- or it says, "we went on to say," I think a typo there, "'When was the last time a man touched you like that?'"

THE COURT: So is this record something that is available to Mr. Floyd or is this an internal record?

MS. LAUNEY: This was an internal record. He was provided it at some point and --

THE COURT: When was he provided with this record?

MS. LAUNEY: I'm sorry.

MR. FLOYD: I can tell you. I was -- first received the record as the evidence against me in the Alameda County Superior Court for the trespassing. It was part of the discovery packet that I received.

THE COURT: It wasn't until a court proceeding?

MR. FLOYD: Yeah. It wasn't until I was removed and it could -- it was -- I have it written down; it was sometime, I believe, in March 2023. So the removal happened in October 2022. In March 2023, I'm now getting all these notes that they have, and saying that I touched somebody, and saying -- and that quote, which I did not say that either, so...

THE COURT: All right. So let me go back to my question.

At the time that he was removed and he came back the next day to talk to the general manager, what had he been told about the reasons for his removal? Not what was in the record, what you knew or what your client knew, but what was he told?

MS. LAUNEY: Right. He would have been told a version of the same thing.

And apologies for having to look multiple places.

The -- so on July 18th, Martinez told him to leave due to reports from two female members that he was harassing them during their workouts and that he should return to speak with the general manager, Alyese Bryant. And on that date, he refused to leave, and that's what forced Martinez to contact the police for assistance in removing him from the gym.

And in support of that, we cited to both plaintiff's deposition testimony and Martinez's deposition testimony and Martinez's declaration.

MR. FLOYD: What Martinez states in his deposition was that the complaint happened days prior, on July 9th, but then on the 18th is when he was informed. His -- his perceived-to-be first day on the job --

THE COURT: Right.

MR. FLOYD: -- he was informed.

THE COURT: The reason why I asked is I wanted to know whether you were told any specifics at all, and you were given some specifics even though -- even though it was from sometime

earlier.

MR. FLOYD: I was not given any specifics whatsoever. I was told I was banned and I was told I had to leave. He said there was a complaint, but there was no specifics as to who the complaint was, if it was male or female, or what I actually did. So I mean, he's now claiming in his deposition that it happened nine days prior; right?

I checked into that facility at least five times before those nine days prior. Of course, this is his first day there, and he's now saying that he's the one who's finally alerted. So...

THE COURT: All right. You say you looked at the depositions and his declaration -- the declaration didn't say a lot, but you're saying his deposition and Mr. Floyd's deposition will say what was conveyed on the 19th -- or the 18th.

MS. LAUNEY: On the 18th; correct.

THE COURT: What about --

MS. LAUNEY: And then on the 19th as well, as both the plaintiff testified, as Ms. Bryant testified, and then as Mr. Martinez put into his declaration on the 19th, the plaintiff returned to the gym and spoke with Bryant and Martinez in Bryant's office about the complaints against him.

He's correct that he was not informed of the member identities or the specific details of the incidents to protect

the members' safety; but he was informed of the complaints and that the complaints were --

THE COURT: What was he told about that?

MS. LAUNEY: He was that harassing the members and --

MR. FLOYD: I wasn't even told that. I was just told that there was complaints against me. All right? So I'm not -- when you say "harassment," are you -- you assume I'm harassing somebody, but the complaint could be anything; right?

So I leave the office believing it could be anything; right? So I mean, of course, if anybody has complained --

THE COURT: Is the deposition testimony in evidence?

MS. LAUNEY: Yeah, the deposition --

MR. FLOYD: The general manager, Bryant, states in her deposition that she can't recall what she told me; right? That's believable because now here we are more than two years later, but she did not tell me anything July 18th.

I go back. I give her my declaration, so she has, at least, my -- my view of it. But, I mean, they told me, like it says in the actual complaint about the problems -- right? -- they told me there's multiple complaints; right? And the complaint happened that day; right?

We now have declarations from their members saying that --

THE COURT: Hold on.

MR. FLOYD: -- something happened that day.

THE COURT: Hold on. Cho.

MR. FLOYD: Yeah. Sure.

THE COURT: Show me the record.

MR. FLOYD: Show you the record what?

THE COURT: No, I'm asking your opponent.

MR. FLOYD: Oh.

THE COURT: The deposition testimony of Bryant, is that attached to the Martinez declaration or where is it?

MS. LAUNEY: Right. So Martinez --

THE COURT: Number 96-4?

MS. LAUNEY: 96-3 is the Martinez deposition testimony.

THE COURT: I have Scalero declaration is 96-3.

MS. LAUNEY: Yeah, it's attached to the Scalero declaration. If you want the Martinez deposition testimony --

THE COURT: I was asking for the Bryant one. She's the manager who talked to him on October 2nd or whatever?

MS. LAUNEY: Yeah. The Alyese Bryant deposition testimony is also at 96-3.

THE COURT: Exhibit C?

MS. LAUNEY: Yes, Your Honor. And it looks like it would be at page 8/22 to 9/23.

THE COURT: Well, I'll look it up. I'm having problems with my computer. So what page?

MS. LAUNEY: For Bryant?

THE COURT: Yeah.

MS. LAUNEY: Page 8, line 22, to page 9, line 23, and then again at page 19, lines 6 through 8. Though that testimony does not speak specifically to what she told him. So her declaration is probably a better source.

MR. FLOYD: Yeah. The deposition.

In her deposition, I asked her specifically what she told me on July 18th, and she said she did not recall.

THE COURT: All right. Let me ask the defendant.

So where you believe I would find what was told in October would be in the Bryant deposition, plaintiffs' deposition, and in the Martinez declaration?

MS. LAUNEY: Correct.

THE COURT: All right. And what is your legal position as to whether or not that was sufficient to satisfy either legal duty not to commit negligence or the good faith and fair dealing obligation to be fair or the duty under 17200 to do a fair process?

MS. LAUNEY: Whether my client actually told Mr. Floyd the details of the complaints made against him on that specific date, I think, frankly, is immaterial, Your Honor.

The ultimate revocation of his membership happened because of the collective incidents of complaints by multiple different members that were documented, and of which he was informed on prior occasions, culminating in the incident on

October 1st, when he -- when he was confronted about, again, bothering a female member, he refused to leave, became confrontational to the point where the police had to handcuff him and take him out of the gym.

The gym has a responsibility, under its membership rules and policies, to which Mr. Floyd agreed, to ensure that members feel safe, are not harassed, are not subjected to unwanted touching. And it had multiple complaints of Mr. Floyd not obeying those rules.

He was aware that he had not been obeying those rules, yet on this occasion, when they asked him to leave, he was confrontational and refused to leave. That was the ultimate reason why his gym membership was revoked.

The gym strictly complied with the policies and rules, and therefore strictly complied with its obligations under 17200. Under all contract law and under the principles of good faith and fair dealing. Having not removed him would have been negligent and put the risk of its other members at harm.

MR. FLOYD: There is at no point where they informed me that I was causing a problem or the specific problem that I caused until October 1st when their manager walked in, lied, said there was multiple complaints that night -- which we know through discovery that there was only one complaint that night -- or what they're alleging through discovery was that there was one complaint that night.

THE COURT: Let me --

MR. FLOYD: He also said that I inappropriately touched somebody, which I did not inappropriately touch somebody because that was not the complaint that night. So their handfuls of female members that complained, me using weights and asking somebody to, you know, I guess, to not take my weights when I'm using the weights, even walking somebody to her car, these are not things or actions which are -- anybody can be perceived as a membership violation. And they were also never told to me. So they're saying --

THE COURT: Well, some of these things you don't deny happened.

MR. FLOYD: No, I don't -- if they happened, I was never informed they caused any problem. So when you say I don't deny it happened, I have no idea if it happened. So I can't deny that because -- you know, I don't know.

They don't sound like -- they don't sound like actual problems that would generate reports. They sound like things that perhaps if somebody knew me from, you know, me being there for months on, and them trying to now doctor up different complaints about me and then here is what we have right now.

We have three, four months after, I now receive a discovery packet with all these alleged complaints. This is three or four months after membership was terminated. See, these -- anything from July to October was never told to me.

Right?

And so, you know -- and where the unfairness of it comes from is not just in how they dealt with all of the complaints against me, it's about how they dealt with a complaint that I had; right?

So there was a complaint from me towards a different member that was treated completely different -- right? -- to where they can, you know, they can -- you can reasonably look at it and say that, hey, you know, there was a fair chance and due process was given to me and the other member.

But everything that they alleged was a complaint against me which is -- you know, I'm telling you, there was no complaints against me. We have a manager, for his first day on duty, receiving a complaint nine days prior, which they say was, actually --

THE COURT: Whether it was told to you or not, there is a business log that has -- hold on. You've got to let me talk. Okay?

MR. FLOYD: Yeah. Sure.

THE COURT: You need to listen to me.

MR. FLOYD: Yeah.

THE COURT: So hold on.

MR. FLOYD: Okay.

THE COURT: So there is a record, your membership record, that has all these events in there.

MR. FLOYD: Those events were never -- I was never informed.

THE COURT: Well, I understand that you weren't --

MR. FLOYD: They could write that down days after because they -- now I'm -- I'm writing letters to them since October 2022, informing them that, hey, you know, I am planning on filing a lawsuit against them because all I was told was that somebody complained that I touched her inappropriately. So...

THE COURT: So let me ask counsel.

MR. FLOYD: Sure.

THE COURT: This log was done contemporaneous; this is a business record?

MS. LAUNEY: That is correct, Your Honor.

THE COURT: And this was not made after the fact?

MS. LAUNEY: No, Your Honor.

THE COURT: This is done in the regular course?

MS. LAUNEY: It is done in the regular course, Your Honor.

THE COURT: And so when something is noted as July 18th, 2022, at 8:37 p.m., that -- that's the time when this was noted?

MS. LAUNEY: Correct. It is entered at the time that the event occurs.

THE COURT: And you would -- you would submit that

that's admissible as a business record?

MS. LAUNEY: Yes, Your Honor, I would.

THE COURT: All right. Let me ask you this:

If I were to grant summary judgment on these matters, there is still a matter pertaining that has not been moved on which is essentially the defamation claim; as I understand it, the claim that it was -- that the police were told that you touched somebody on October 1st, when, in fact, that did not happen, so that was an exaggeration of what occurred.

I believe, that's your defamation claim; is that right?

MR. FLOYD: That is definitely an exaggeration. It's under exaggeration of what happened. So the way he presented it to the police, the police wrote it in their reports as sexual battery; right? Almost like I'm going around gym -- because he said there was multiple complaints that night, and female members were complaining. And he alleged I grabbed a girl on her ass. And he -- you know, very blatant about it.

And it seemed, like, you know, in the eyes -- even in the eyes of the officers it made it seem as if I was a repeated criminal inside of the 24 Hour Fitness gym; right?

And -- but we know from even what they provide in their doctored business -- their doctored business reports, and even from what their testimonies from their employees state that the multiple complaints that night was a lie. The

inappropriate touching that night was a lie. And it's not just what that one manager's actions were.

It was the actions from the general manager and the district manager; right? So when I'm told that I'm going -- that an investigation is going to occur and to check back later, it can be even seen that, quite possibly, I'm not sure if any investigation was conducted whatsoever; right?

So if we had any discussion with any alleged victim, or the actual employee who spoke to the alleged victim, it would have led them to see, hey, you know, what they said didn't happen; right? Or what one of managers, Kane, said didn't happen.

So, you know, me talking to the general manager and the district manager, both trying to provide them my story, my declaration, and them, you know, just taking it and kind of flicking it aside and not getting any confirmation from anyone else.

And, you know, then also -- now one of the managers, Kane, can't be located for a deposition. So I mean, that's -- that's part of it.

But if I can say anything -- if I can just say one thing about the summary judgment for the current claims, which we are requesting summary judgment for.

The actions by the two managers that removed me from the gym are not the only actions. You know, we have the

actions from the general manager Bryant; right?

So the general manager on 7/18, did not -- the day after 7/18 happened, did not tell me any further information. I gave her the declaration, but she just acknowledges it. She tells me continue; right? There's no claim of harassment or what I did to harass anybody. So I'm just receiving a problem that there were reports.

And then, after the second removal, she speaks to me multiple times. She -- you know, I'm telling her I didn't do anything. And I'm visiting the gym, wasting my time during business hours, which she informs me she's conducting an investigation, but there's no investigation whatsoever because any investigation would have led to what I have uncovered through discovery -- right? -- and that's there's, you know, only one complaint, although they said there were several. And the complaint was about a sexual comment, although that didn't happen either.

So, you know, there's a lot of lies going on, and a lot of -- I guess, a lot of -- a lot of shifty behavior, if I could just say that.

THE COURT: Let me just ask for your comment on the -- generally on the claim of an inadequate investigation, and that had an adequate investigation been done, the decision to terminate would have been reversed.

MS. LAUNEY: I'm --

MR. FLOYD: What did you say?

THE COURT: I'm asking her to comment on your comment that the investigation was not adequate.

MS. LAUNEY: As I think I previously noted, Your Honor, the ultimate reason for Mr. Floyd's revocation of his membership was him becoming confrontational, refusing to leave on October 11th.

As a result of the culmination --

THE COURT: October 1st.

MS. LAUNEY: I'm sorry. October 1st. The letter was on October 11th. The letter informing him of the revocation was on October 11th.

The incident on October 1st, where, when, after member complaints, he refused to leave and became confrontational; in fact, even acting threatening with 24 Hour Fitness membership to the point -- membership -- excuse me -- management to the point where the police had to intervene.

THE COURT: So it's not based on the actual complaints and behavior, but on the resistance and noncooperation on the 1st, that was the basis of the termination?

MS. LAUNEY: It is based on the series of complaints that were made. I cannot say, as not being the decision-maker, whether, absent the confrontation, his membership would have been revoked, but that was the reason.

THE COURT: The prior complaints were part of the

decision-making process.

MS. LAUNEY: They were noted in the letter to him regarding the revocation.

THE COURT: All right. So what I wanted you to respond to is the claim that those incidents weren't adequately -- being relied upon, but not adequately investigated.

Do you have any comments on that?

MS. LAUNEY: Well, first of all, there's no obligation to investigate the complaints, when the complaints were made to 24 Hour Fitness that a member is made uncomfortable, and the rules say that there needs to be an environment where members feel safe, they aren't bothered.

Mr. Floyd has also admitted to some of the conduct about which the members complained.

MR. FLOYD: No. Well, I can also say that it would be unfair, one, because they did investigate properly a complaint that I made. So me, as the complainer, was treated a lot different than the alleged perpetrator.

And I'd say, two, the letter that they provided me, no, did not say anything other than, you know, general accusations, "Your misconduct was inappropriate," but no exact -- you know, no exact reasons, no exact misconduct or what was inappropriate.

THE COURT: Let me ask you, the incident on July 18th,

when you allegedly tried to speak to one woman as she stepped out of the bathroom, and she felt that you were too close to her space; then her friend stepped in and said she didn't want to speak to you; and you allegedly raised your voice and said "She can speak for herself," and grabbed her arm.

At one point in your brief you say, well, that's still is not enough to make somebody -- you know, that's not a ground to remove me, or that's not a ground for them to feel uncomfortable.

Do you deny or do you admit that that contact happened that day?

MR. FLOYD: That contact did not happen that day.

THE COURT: Did that conversation happen that day?

MR. FLOYD: I'm not -- no, no. Nothing along those lines happened that day. Of the day of the July 18th, I didn't talk to anybody, and it was more towards the beginning of my workout when I was confronted by Mr. Martinez. And Mr. Martinez, in his deposition, does state that whatever is going on in those declarations happened on July 9th. So Martinez -- even Martinez says, no, there was no contact that day; but whoever these people are came up and talked to him on July 9th.

So there's a lot of different stories that are -- and I know what you're saying, the declarations say things a lot different from the depositions and there's a lot of different

stories right now; right?

And even, you know, what they even say in their notes on July 9th, about July 9th being the one where I touched him on the stomach; right? I mean, that touching on the stomach is, you know, nothing to where -- similar to what those declarations state. So that's --

THE COURT: But you're denying this incident about somebody who came out of the bathroom --

MR. FLOYD: You said I'm lying?

THE COURT: No, I'm saying are you denying that incident occurred?

MR. FLOYD: Yes. Well, on -- on July 18th.

THE COURT: Or whatever date, when somebody was coming out of the bathroom, and you were trying to talk to her, and her friend kind of got in the way and said don't talk to her. I mean --

MR. FLOYD: Like I said, these things -- this is very similar to where -- you know, the weights, me using the weights; right?

Somebody is using the weights I'm using, I say: Hey, I using weights.

If I'm talking to one female and her friend says, "Oh, hey, you know, don't talk to my friend," or something like that, you know these things could happen; right?

But when you're saying did they happen or did it

generate a complaint or did anybody tell me at that time that it was a problem; no. But I could tell you they didn't happen on July 18th. I can tell you it didn't happen on July 9th.

You know, it's like the September thing; right? I can't deny and say I have never used the weights or told somebody, "Hey, you know, I'm using those weights, don't touch it," and I can't say -- you know, I'm not -- I guess, I'm not sure if it happened on September 9th. But I can say for July 18th that, no, I did not talk to anybody on July 18th. I was just in the gym. So...

THE COURT: But you don't know whether, on some other date, there may have been some incident where somebody came out of the bathroom and you started talking to them, and her friend said "No, don't talk to her"?

MR. FLOYD: It is possible, but if somebody did say, don't -- if I'm talking to a female, and the female says -- and an opposing female then butts into the conversation -- right? -- there's nothing -- this isn't anything that's generating a complaint of harassment. This isn't anything that harassing behavior, if, you know, a friend jumps in and says, "Hey, you know, don't talk to my friend." It's almost something more of a jealousy type of thing at that point. So I'm not really sure -- you know, it's possible; but it didn't happen on the 9th or the 18th.

THE COURT: Okay.

MR. FLOYD: So -- and like I said, those declarations come from their protective liar cousins; right?

So here we are, I tell them months along the line, that, "Hey, I'm going to file a lawsuit." And so now, all of a sudden, here we have in state court, we have five different complaints now written down about me. You know, through various times on membership, which I was never informed any of them about.

And we have these declarations from their protective liar cousins, who -- I mean, these things could have happened in the gym; right? She could basically ask anybody who was in the gym who had any knowledge of me to write down stories of what happened, you know, concerning me, just so they could have remembered about me.

And now, here, we have it in their ledger, in their business records, and here we have it in their declarations from the protective liar cousins.

But I can say that would -- there's no event besides October 1st, where I was told of an exact inappropriate conduct; and there was no event before October 1st, where any woman or man told me that, hey, I'm causing a problem of harassment.

So I mean, what we see now in the declarations and in their ledgers are, of course, events covering up the fact that, hey, I was removed, you know; and, hey, they did lie; hey,

nobody did tell me that that was a section -- I didn't touch anybody inappropriately -- right? -- which was what the trespassing was for.

And they didn't -- and the other problem is they didn't drop the trespassing charge when requested in state court; right? I'm requesting in state court different evidence. You know, and they're also, you know, preventing me from gaining evidence, squashing -- quashing attempts of me seeking evidence in state court. So...

THE COURT: All right. Let me --

MR. FLOYD: So, you know, basically fighting me on a groundless thing, saying that, hey, you know, I touched somebody, when I completely didn't.

THE COURT: Okay. Let me -- let me ask --

MR. FLOYD: Yeah. Sure.

THE COURT: -- one last question.

Ms. Launey, I don't think you had a chance to answer this, and that is: If I were to grant summary judgment to the defendant on the ones -- on the claims that you have moved on, there's still a defamation claim about falsely representing to the police that he had touched the buttocks of a woman when, in fact, he didn't.

That still -- that's still in the case.

MS. LAUNEY: Well, Your Honor, there was an instruction from you to not supplementary brief that because,

remember, he added that claim per an amendment that was granted while the briefing was pending.

We did include argument in it, in our reply, noting that this is why this claim would fail as well; and that is because the comments made to the police would be privileged, and also that those comments were not knowingly false. It was in the heat of the --

THE COURT: And then didn't I -- I thought I -- maybe it was on the first motion to dismiss that I thought I indicated that could be a factual question, whether it was done knowingly falsely or not, because malicious reporting can defeat the privilege.

And so is there still a factual question here about -- about that?

MS. LAUNEY: I do not think there's a factual question about it. We do have the recording from the police's body cam that was submitted and requested to be taken judicial notice of stating exactly what was stated.

And I mean, ultimately, he was told what -- the manager was told what he was told, and was telling the police what had happened. It wasn't a publication through a third party, it was the police asking: Why are we here? What's going on?

And it wasn't for any purpose other than the police were there to help remove the member. The reason why he was

being removed, other than him refusing to leave the facility willingly, was the only reason why the police were involved.

So there was not any knowingly false representation as to what had happened because that really was not -- what had happened with the member, because that was not relevant to the plaintiff refusing to leave when asked.

THE COURT: Well, that goes to a different question. And that goes to causation, whether it relates to any claim of false imprisonment, et cetera, et cetera. This is just a straight defamation claim. And your assertion is that there's no evidence of any -- that would support a claim of malice in making that statement.

MS. LAUNEY: Correct.

MR. FLOYD: Well --

THE COURT: And that you would -- hold on.

And that you would -- you've not had an opportunity to brief that question other than in your reply brief.

MS. LAUNEY: Correct, Your Honor.

THE COURT: And you have had -- not had an opportunity to move on that claim on summary judgement.

MS. LAUNEY: Correct, Your Honor.

MR. FLOYD: We're here trying to determine whether their actions were taken as, you know, reasonable business actions that were not a breach of any duty, and they were taking proper exercise of management discretion; right?

The issue is it was not; it was a lie. It was a definition of my calendar -- of my character to say that to the police at the time; right?

THE COURT: Well, the law is there's a privilege when you go to the police to report something. You have to have intentionally lied to the police in order to overcome the privilege.

MR. FLOYD: And one thing they also did state -- well, she also just stated was that it was my refusal to leave at that instant.

Well, like I said, I was not -- it was an hour and a half -- what was told in the deposition of one of their employees is that somebody made a complaint, and then an hour and a half later is when the police arrived.

So here we are, an hour and a half later. I have no idea there is a complaint. And they're now trying to tell me that, hey, you know, you have to leave, right now, at that instant.

A manager I've never seen before, claiming he's a manager -- and so, of course, my first question, my first response is not to just leave that moment, it's to ask questions, who said what, or what was said, or what did I do wrong, what the problem was. And multiple complaints that night, that was a lie; the sexual assault, sexual battery is what they called it, that was a lie.

So, you know, it's -- it's not past the point of was it a privileged statement; it was not a privileged statement. You know, you can read the police report about what they actually thought about me at that time, in the moment.

THE COURT: All right. I'll take the matter under submission. Thank you.

MR. FLOYD: I have a couple of other things to say about --

THE COURT: No. I've terminated -- we've been at it now for almost an hour, so we're done.

MS. LAUNEY: Thank you, Your Honor.

THE COURT: Thank you.

MR. FLOYD: Okay.

THE COURT: Thanks.

(Proceedings adjourned at 3:14 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Sunday, April 27, 2025



Ruth Levine Ekhaus, RMR, RDR, FCRR, CCG, CSR No. 12219
Official Reporter, U.S. District Court

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 5 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Mr. MICHAEL DEVIN FLOYD,

Plaintiff - Appellant,

v.

24 HOUR FITNESS USA, LLC,

Defendant - Appellee.

No. 25-4460

D.C. No.
3:23-cv-00871-EMC
Northern District of California,
San Francisco

ORDER

Before: BERZON, NGUYEN, and OWENS, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing. The petition for panel rehearing, Dkt. No. 22, is **DENIED.**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA, LLC,

Defendant.

Case No. 23-cv-00871-EMC

ORDER ON DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT

Docket No. 127-1

United States District Court
Northern District of California

I. INTRODUCTION

Plaintiff Michael Devin Floyd, proceeding pro se, has filed suit against Defendant 24 Hour Fitness USA, LLC ("24H"). Mr. Floyd alleges that 24H violated his rights by, *inter alia*, having him removed from a gym on two different occasions and then terminating his gym membership. This Court granted 24H's first motion for summary judgment, dismissing Mr. Floyd's claims of negligent infliction of emotional distress (NIED), breach of contract, breach of the implied duty to perform with reasonable care, breach of the implied covenant of good faith and fair dealing, and a violation of California Business and Professions Code § 17200. Dkt. 130. Before the Court is 24H's second motion for summary judgment on Mr. Floyd's remaining claims of defamation and Intentional Infliction of Emotional Distress. *See* Dkt. 127-1. Under Civil Local Rule 7-1(b), the Court finds the matter suitable for disposition without oral argument. For the reasons below, the Court **GRANTS** 24H's motion.

II. BACKGROUND

A. Factual Background

The undisputed facts and any facts subject to dispute but viewed in Mr. Floyd's favor establish the following.

1. General Background

On January 5, 2022, Mr. Floyd signed up for a gym membership with 24H and entered into the relevant membership agreement ("Agreement"). Dkt. 96-4, Ex. A – Agreement. The Agreement requires that members "not engage in any conduct in any 24 Hour facility that includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any conduct that harasses or is bothersome to members, guests or employees." *Id.* Ex. B – 24H Membership Policies and Club Rules. Section 6 of the Agreement on Termination for Cause states that 24H may, at its option, terminate an individual's gym membership if the individual fails to follow any of the Club Rules or any part of the Agreement, or the individual's "conduct is improper or harmful to the best interest of 24 Hour or its members." *Id.*

The relevant incidents occurred at the 24H gym located at 2480 Whipple Road in Hayward, California. Dkt. 96-4 at 2 (Martinez Decl. ¶ 2).

2. Complaints Against Mr. Floyd and Subsequent Revocation of Membership

24H recorded entries regarding five member complaints about Mr. Floyd's conduct between July 9, 2022 and October 1, 2022. *See* Dkt. 96-4 at 18 (Ex. C – Mr. Floyd's Member Profile showing other members' complaints regarding Mr. Floyd's conduct). In sum, women gym members reported that Mr. Floyd engaged in harassing behavior, including inappropriate touching during workouts. *Id.* (July 9, 2022 and October 1, 2022 incidents). One member, V.H., stated that Mr. Floyd followed her, stood too close, grabbed her arm when she tried to leave, and made her feel unsafe and watched, while her friend H.S. confirmed the incident and described both of them being left in tears. Dkts. 96-5 ¶ 6 and 96-6 ¶¶ 3–6 (July 18, 2022 incident). That day, a 24H employee named Michael Martinez asked Mr. Floyd "to leave and return to speak with [his] General Manager ("GM") Alyese Bryant ("Bryant") the next day." Dkt. 96-4 at 4 (Martinez Decl. ¶ 12). On July 19, 2022, Mr. Floyd "returned to the gym to speak with GM Bryant about these complaints." *Id.* In his deposition, Mr. Floyd confirmed that he "did have an opportunity to speak with managers and provide [his] side of the story." Dkt. 96-3 at 77 (Floyd Dep. 151:2-5).

H.S. later reported that Mr. Floyd yelled at her over dumbbells, intimidated her, and made

her feel so unsafe that she began carrying mace and a taser and avoided walking to her car alone. Dkt. 96-5 ¶¶ 5, 7–8 (September 9, 2022 incident). Subsequently, a member reported that Mr. Floyd followed her to her car on September 30, 2022. Dkt. 96-4 at 20. On October 1, 2022, Mr. Floyd's membership profile reflects that multiple members had reported inappropriate touching and the police removed him for trespass. *Id.* at 20-21.

On October 3, 2022, 24H's general manager Alyese Bryant completed a revocation request form ("Form") detailing the October 1, 2022 incident and the four preceding incidents. Dkt. 96-4 at 24 (Ex. D – "Member Threaten to Revoke or Revoke Request Form"). Regarding the October 1, 2022 incident, the Form states, "Michael Floyd approached a female member and grabbed [her] while she was working out, when the member to[ld] Michael to not touch her[,] he responded "I don't care if you don't like it report it." *Id.*[1]

Thereafter, in October 2022, 24H terminated Mr. Floyd's membership because he had "engaged in inappropriate conduct by acting confrontational and displaying improper [and] harassing behavior towards other members while using the facility." Dkt. 96-4 at 4 (Martinez Decl. ¶ 18); *see* 24H's First Motion for Summary Judgment, Ex. E (Letter from Membership Services).

3. <u>October 1, 2022 Interaction with Police and the Statement at Issue</u>

On October 1, 2022, the Hayward Police Department responded to a report from 24H employee Andrew Pratt that Mr. Floyd had inappropriately touched members. Dkt. 127-2 at 12.[2] Specifically, on October 1, 2022, the police "dispatch relayed that the reporting party Andrew Pratt stated that a gym member, later…identified…as Michael Floyd, was sexually harassing women and physically touching them." *Id.* The police responded to Mr. Pratt's report and arrived at the gym. *Id.*

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[1] *See Fonseca,* 374 F.3d at 846 (holding that evidence is "admissible for summary judgment purposes because [it] could be presented in an admissible form at trial.") (internal citation omitted).

[2] In the context of summary judgment, the Hayward Police Department's case report and supplemental report on Mr. Pratt's witness statement may be considered pursuant to Rule 54(c)(2) because they fall within Federal Rule of Evidence 803(8)'s exception to hearsay for public records, and Mr. Floyd does not show that the source of information indicates a lack of trustworthiness. *See* Fed. R. Evid. 803(8).

Hayward Police Department's supplemental report regarding Mr. Pratt's witness statement recounts that the officer on scene "spoke with a...witness, Andrew Pratt," who told him that Mr. Floyd "would touch females in inappropriate ways and make them feel uncomfortable while working out." *Id.* at 20.

The parties submitted body-camera footage transcripts wherein Mr. Walter Kane, a 24H employee, told Mr. Floyd in front of the police that female members had complained that Mr. Floyd had touched them inappropriately. Dkts. 92-6 at 1-3 (Mr. Floyd's excerpt of the transcript) and 127-2, Ex. D (24H's full transcript). Mr. Kane also asked Mr. Floyd to leave. Dkt. 127-2 at 37. The transcripts reflect that when Mr. Floyd asked Mr. Kane why Mr. Kane was asking him "to leave," Mr. Kane responded: "Because you're here assaulting women...Physically touching them inappropriately." *Id.* at 38. A police officer intervened and stated: "You are assaulting women that are feeling uncomfortable...They don't want you here. They're refusing service to you." *Id.* at 40. Mr. Floyd responded: "It'd be against the law [to] refuse service for no reason," to which Mr. Kane responded that he "got reports from my staff...You come up blatantly admitted to this...that you're going up and grabbing them in the ass and other parts of their body." *Id.* at 41. Mr. Floyd then asked for the identity of the members who complained, to which a police officer responded that they "cannot give names out." *Id.* at 42. When Mr. Floyd refused to leave, Mr. Kane stated: "Now I'm asking you to leave peacefully." *Id.* Mr. Floyd continued to refuse and inquired if "[t]his happened today." *Id.* Mr. Kane responded: "This has happened multiple times. Most recently tonight as of five minutes ago when I was coming in." *Id.* Mr. Floyd responded: "This did not happen today. This did not happen multiple times." *Id.* at 43. Then, Mr. Floyd disputed that he has "grabbed some woman on the ass" and that it has "happened multiple times." *Id.* Mr. Floyd stated that before leaving he was going to "take a shower," which Mr. Kane refused to allow. *Id.* at 44. A police officer intervened and stated: "They want you off right now." *Id.* at 45. Another officer asked Mr. Kane: "Right now you're willing to put him under arrest for trespassing?" *Id.* Mr. Kane confirmed: "Yes. Yes." *Id.* Mr. Floyd continued to refuse and stated: "I need to take a shower. I need to get my stuff." *Id.* Thereafter, the police escorted him off the premises.

B. Procedural Background

Mr. Floyd filed his first complaint on February 27, 2023. Dkt. 1. On January 14, 2025, the Court granted in part and denied in part 24H's motion to dismiss Mr. Floyd's First Amended Complaint. Dkt. 85. As is relevant here, the Court dismissed Mr. Floyd's claim for Intentional Infliction of Emotional Distress ("IIED") with prejudice because Mr. Floyd "had not sufficiently alleged" that it was "extreme and outrageous" for 24H to eject him from the gym and for the police to remove him from the gym in July and October 2022 when 24H "had received complaints about Mr. Floyd's harassment of other members whose rights and interests could be jeopardized by Mr. Floyd's continued presence." Dkt. 85 at 9. There, the Court also dismissed Mr. Floyd's defamation/slander claim with prejudice because Mr. Floyd failed to allege that Mr. Kane "knew or should have known that the complaints against Mr. Floyd were not substantiated in any way," such that his statements before the police officers on October 1, 2022 were made with knowledge of its falsity or with reckless disregard for the truth. *Id.* at 15.

On March 3, 2025, the Court permitted Mr. Floyd to amend his complaint to reassert these two claims "**solely** on the basis that Mr. Kane lied to the police" and "to assert claims for **defamation/slander** and **IIED** based on the alleged lie to the police." Dkt. 106 at 2 (emphasis in original). The Court permitted amendment because Mr. Floyd submitted an excerpt of the body-camera footage transcript referenced above where Mr. Kane stated that Mr. Floyd "had touched a gym member on" October 1, 2022. *Id.* at 1. Because this conflicted with another 24H employee's deposition testimony that Mr. Floyd had made "sexual comments" that day (and did not mention touching in that testimony), the Court held that "a reasonable inference [could] be made that Mr. Kane lied to the police." *Id.* at 1-2; Pratt Dep. at 11:19-22 (Dkt. 92-3). The Court specified that it was "not making any ruling as to whether or not Mr. Kane did lie." Dkt. 106 at 2.

On April 18, 2025, the Court set the briefing schedule for 24H's second motion for summary judgment on Mr. Floyd's defamation and IIED claims. Dkt. 122.

On May 23, 2025, the Court granted summary judgment for 24H on Mr. Floyd's other five state law claims: negligent infliction of emotional distress (NIED), breach of contract, breach of the implied duty to perform with reasonable care, breach of the implied covenant of good faith and

fair dealing, and a violation of California Business and Professions Code § 17200. Dkt. 130. The Court granted summary judgment on the NIED claim because, in part, "[n]o reasonable jury could find that 24H breached its duty of reasonable care under the circumstances because the undisputed evidence demonstrates that 24H took reasonable steps to respond promptly to the multiple complaints it received from female patrons about Mr. Floyd." *Id.* at 13. Summary judgment was granted on Mr. Floyd's breach of contract claim because "no reasonable jury could find that 24H breached the Agreement by asking Mr. Floyd to leave after he engaged in conduct that bothered or harassed other members," as "24H's performance of the Agreement was excused by Mr. Floyd's prior breach" and "Mr. Floyd fails to establish that 24H breached any term of the membership agreement." *Id.* at 18. Regarding Plaintiffs' breach, the Court held that "[w]ith regards to the incidents on July 9, 2022 and September 9, 2022, there is no dispute that Mr. Floyd engaged in conduct that harassed…members, in violation of the Agreement" and Mr. Floyd failed to offer evidence disputing that he engaged in such conduct on these dates. *Id.* at 16 (citation to Agreement omitted). Accordingly, there is undisputed evidence of touching and harassment. Summary judgment was granted for Mr. Floyd's contract-related claims because "24H did not breach any implied duty of reasonable care under the circumstances" (breach of implied duty of reasonable care), because "24H took reasonable steps to respond to the complaints and provide Mr. Floyd with adequate opportunities to be heard" with no evidence of bad faith (breach of implied covenant of good faith and fair dealing), and because the utility of the 24H's conduct in removing Mr. Floyd after the allegations of harassment outweighed any harm to Mr. Floyd related to due process or not being able to access 24H (violation of § 17200). *Id.* at 18-22.

In the order on the parties' cross-motions for summary judgment, the Court held that 24H's membership profile for Mr. Floyd fell under Federal Rule of Evidence 803(6)'s exception to hearsay for business records. *Id.* at 2 (holding that 24H had properly authenticated Mr. Floyd's membership record as a business record because 24H testified that membership profiles are records kept in the regular course of 24H's business and made contemporaneously or close to contemporaneously with reported statements and that these records, in the context of summary judgment, may be considered pursuant to Rule 54(c)(2)").

Before the Court is 24H's second motion for summary judgment on Mr. Floyd's defamation and IIED claims.[3] Dkt. 127.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) allows a party to move for summary judgment on all or part of a claim. The Court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a genuine dispute of material fact. The Court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049-50 (9th Cir. 2014). Summary judgment is appropriate "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.*

When the defendant moves for summary judgment on a claim for which the plaintiff bears the ultimate burden of proof, the defendant may prevail by showing the plaintiff's failure "to make a showing sufficient to establish the existence of an element essential to [the plaintiff's] case." *Celotex Corp v. Catrett*, 477 U.S. 317, 322 (1986). Conversely, when a plaintiff moves for summary judgment on its own claim, it "must offer evidence sufficient to support a finding upon every element of [its] claim . . ., except those elements admitted . . . by the adversary." *Watts v. United States*, 703 F.2d 346, 347 (9th Cir. 1983). Finally, parties may object "that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Evidence may be presented in a form that is not admissible at trial so long as it could ultimately be capable of being put in admissible form. See Fed. R. Civ. P. 56(c)(2) ("A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence"); *Fonseca v. Sysco Food Servs. of Ariz.*,

[3] The Court grants 24H's request for judicial notice, including the Hayward Police Department's case report from October 4, 2022 regarding the incident at issue and the written transcript of the body-camera footage from October 1, 2022. *See* Dkt. 127-2; *see* Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it…can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.").

Inc., 374 F.3d 840, 846 (9th Cir. 2004) ("Even the declarations that do contain hearsay are admissible for summary judgment purposes because they 'could be presented in an admissible form at trial.'") (quotation omitted).

IV. DISCUSSION

A. Defamation (Count 6)

Summary judgment is **GRANTED** for 24H on Mr. Floyd's defamation claim because Mr. Kane's statement to the police is privileged under California Civil Code § 47(b) and the exception to the privilege set forth in § 47(b)(5) does not apply because the evidence does not show malicious prosecution. That is, the evidence does not show that Mr. Kane intentionally lied to the police officers or that his statement that Mr. Floyd had inappropriately touched a member that day was made with reckless disregard of the truth.

Defamation concerns a person's reputational interest. *Smith v. Maldonado*, 72 Cal. App. 4th 637, 645 (1999), as modified (June 23, 1999). The elements of defamation are (1) intentional publication of (2) a statement of fact that is (3) false, (4) unprivileged, and (5) has a natural tendency to injure or which causes special damage. *Id.* Mr. Kane's statement can well be defamatory given the accusation of despicable conduct. The question here concerns whether that statement is privileged.

California Civil Code § 47(b) provides that "[a] privileged publication or broadcast is one made ... [i]n any (1) legislative proceeding, (2) judicial proceeding, [or] (3) in any other official proceeding authorized by law." Cal. Civ. Code § 47(b). That covers the instant situation. However, under § 47(b)(5), the privilege does not apply to:

> [A]ny communication between a person and a law enforcement agency in which the person makes a false report that another person has committed, or is in the act of committing, a criminal act or is engaged in an activity requiring law enforcement intervention, **knowing that the report is false, or with reckless disregard for the truth or falsity of the report.**

Id. (emphasis added). In other words, privilege under § 47(b) does not extend to statements made with knowledge of the statement's falsity or those made with reckless disregard for its truth.

"[S]tatements made when a citizen contacts law enforcement personnel to report suspected

criminal activity on the part of another person…are privileged pursuant to Civil Code section 47, subdivision (b)." *Hagberg v. California Fed. Bank*, 32 Cal. 4th 350, 355 (2004). Specifically, "under section 47(b)," "statement[s] urging law enforcement personnel to investigate another person's suspected violation of criminal law, to apprehend a suspected lawbreaker, or to report a crime to prosecutorial authorities [are] shielded from tort liability." *Id.* at 364. As detailed under § 47(b)(5), such statements "can be the basis for tort liability **only if** the plaintiff can establish the elements of the tort of malicious prosecution." *Id.* (emphasis added).

Mr. Kane's statement to the police is privileged under § 47(b)(2) because it was made "to report suspected criminal activity on the part of" Mr. Floyd. *Id.* at 355. In particular, the "transcript of [a] video taken by a police officer's body camera during the October 2022 incident…reflects that…Mr. Kane…t[old] the police that Plaintiff had touched a gym member on that date." *Floyd v. 24 Hour Fitness USA, LLC*, No. 23-CV-00871-EMC, 2025 WL 673639, at *1 (N.D. Cal. Mar. 3, 2025). Mr. Floyd concedes that Mr. Kane made this statement to the police to report his suspected criminal activity. *See* SAC at 10 (24H "manager Walter Kane informed police and the Plaintiff that the woman complained about the Plaintiff touching her buttocks."). Mr. Floyd opposes the requisite mental state and argues that Mr. Kane made the statement with "malicious intent." Opp'n at 3.

The malice exception under § 47(b)(5) does not apply because no reasonable jury could find that in stating to or in the presence of the police that Mr. Floyd inappropriately touched members either previously or on that day, Mr. Kane intentionally lied or acted with reckless disregard for the truth for at least two reasons. *See* Opp'n at 4[4] ("No one reported unwanted touching yet [Mr. Kane] made this false accusation in front of police.").

First, 24H received at least two member complaints that Mr. Floyd had inappropriately touched members. On July 9, 2022, a member complained that Mr. Floyd had touched her "touched her mid workout." *See* Dkt. 96-4 at 18 (Ex. C – Mr. Floyd's Member Profile showing other members' complaints regarding Mr. Floyd's conduct ("Profile")) (When she told him,

[4] Mr. Floyd then states that "[a]ll evidence provided to this Court shows malicious intent when Kane lied to the police." Opp'n at 4.

"please don't touch me," he responded, "when was the last time a man touched you like that."). Further, according to the Profile, on October 1, 2022, "police escorted [Mr. Floyd] out of the gym for trespassing after reports of inappropriate touching from multiple female[s]." *Id.* at 21. Regarding the October 1, 2022 incident, 24H's revocation request form from October 3, 2022 specifically reflects that Mr. Floyd inappropriately touched a woman member that day. The general manager Alyese Bryant reported that, on October 1, 2022, "Michael Floyd approached a female member and grabbed [her] while she was working out, when the member to[ld] Michael to not touch her[,] he responded "I don't care if you don't like it report it." *Id.* at 24 (Ex. D – "Member Threaten to Revoke or Revoke Request Form"). Thus, there is undisputed evidence that multiple members had reported that Mr. Floyd had touched them.

Second, to the extent Mr. Floyd contends Mr. Kane lied to the police when he said Mr. Floyd had touched a member the day of the arrest on October 1, the Court previously allowed Mr. Floyd to reassert this defamation claim based solely on the alleged discrepancy between Mr. Kane's statement and Mr. Pratt's deposition testimony which permitted an inference that Mr. Kane lied to the police.[5] Dkt. 106 at 2. The record now shows that no such discrepancy exists because the police report and report on Mr. Pratt's witness statement reflect that Mr. Pratt also reported that Mr. Floyd had inappropriately touched women members. In particular, the Hayward Police Department's case report on the incident (drafted on October 1, 2022 and reviewed on October 4, 2022) specifically states that Mr. Pratt reported that Mr. Floyd *had* touched members. It states that the October 1, 2022 police "dispatch relayed that the reporting party Andrew Pratt stated that a gym member, later…identified…as Michael Floyd, was sexually harassing women and *physically touching* them." Dkt. 127-2 at 12 (emphasis added). Further, the Hayward Police Department's supplemental report regarding Mr. Pratt's witness statement recounts that the officer on scene "spoke with a…witness, Andrew Pratt," who told him that Mr. Floyd "would touch females in inappropriate ways and make them feel uncomfortable while working out." *Id.* at 20. *See Sidibe*

[5] While the Court abstained from "making any ruling as to whether or not Mr. Kane did lie," the Court held that "a reasonable inference [could] be made that Mr. Kane lied to the police" because Mr. Pratt had testified that Mr. Floyd had made "sexual comments" that day (and did not mention touching in that testimony). *Id.* at 1-2; Pratt Dep. at 11:19-22 (Dkt. 92-3).

v. Sutter Health, 103 F.4th 675, 701 (9th Cir. 2024) ("Contemporaneous evidence, particularly written evidence, is commonly understood to be more reliable than later recollections because it reduces the risks of defective recollection or conscious fabrication — hence why the hearsay rules make an exception for present-sense impressions. Accordingly, courts have often emphasized the importance of contemporaneous evidence that...contradicts later evidence.") (internal citation omitted). Further, as noted above, 24H's October 3, 2022 revocation request form reports that Mr. Floyd inappropriately touched a woman member on October 1, 2022. Dkt. 96-4 at 24 (Ex. D – "Member Threaten to Revoke or Revoke Request Form"). Mr. Pratt's subsequent deposition on October 22, 2024 two years after the incident -- and the omission of any testimony therein about touching -- does not squarely contradict that record. Mr. Pratt was not asked whether Mr. Floyd touched a member that day, nor did he so testify.

Because there is no discrepancy between what Mr. Pratt and Mr. Kane reported, there is no longer a factual basis for a jury to find that Mr. Kane deliberately lied to the police. In other words, the factual predicate upon which this Court previously found an inference of untruth by Mr. Kane no longer exists.

Therefore, summary judgment is **GRANTED** for 24H on Mr. Floyd's defamation claim because Mr. Kane's statement is privileged under § 47(b)(2) and the exception in § 47(b)(5) for malicious prosecution does not apply.

B. Intentional Infliction of Emotional Distress (Count 7)

Summary judgment is **GRANTED** for 24H on Mr. Floyd's claim of Intentional Infliction of Emotional Distress because there is no evidence that Mr. Kane's statement to the police or his removal from the gym that day was extreme and outrageous. "The elements of the tort of intentional infliction of emotional distress ["IIED"] are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.... Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Christensen v. Superior Ct.*, 54 Cal. 3d 868, 903 (1991) (internal

quotations and citations omitted).

Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. Prosser, Law of Torts, supra, at pp. 57-58; Rest.2d Torts, s 46 (e), (f). "[M]ere profanity, obscenity, or abuse, without circumstances of aggravation" does not constitute outrageous conduct. *Yurick v. Superior Court*, 209 Cal. App. 3d 1116, 1128 (1989).

Under the circumstances, no reasonable jury could find that reporting sexual misconduct to the police, when corroborated by a history of repeated member complaints, some of which were not disputed by Mr. Floyd, constitutes extreme and outrageous conduct. As the Court stated in its order granting 24H's first motion for summary judgment, as to Mr. Floyd's negligent infliction of emotional distress claim, "the undisputed evidence demonstrates that 24H took reasonable steps to respond promptly to the multiple complaints it received from female patrons about Mr. Floyd." Dkt. 130 at 14 (holding that 24H did not breach its limited duty of reasonable care when it removed Mr. Floyd from the gym without an extensive pre-removal investigation of the complaints). *Cf. Hughes v. Pair,* 46 Cal. 4th 1035, 104 (2009) (affirming Court of Appeals holding that defendant's statements 'I'll get you on your knees eventually. I'm going to fuck you one way or another.' made to plaintiff in front of her son **[fell] far short** of conduct that is so outrageous that it exceeds all bounds of that usually tolerated in a civilized community") (internal citation omitted) (emphasis added). No reasonable jury could find that Mr. Kane's statement before the police that Mr. Floyd had inappropriately touched women gym members rises to the level of extreme and outrageous conduct. This is especially so in light of 24H's interest in protecting the rights of other members as this Court noted previously. No reasonable jury could find 24H's actions were "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Christensen*, 54 Cal. 3d at 903. Mr. Floyd presents no caselaw to the contrary.

In support of his claim, Mr. Floyd only conclusory states: "The preceding sections of this document, the moving papers of both parties' summary judgment motions, and the operative

Complaint provide enough detail on the Defendant's extreme and outrageous conduct, the reckless disregard that caused emotional distress, and Floyd's injuries from emotional distress." Opp'n at 6. However, to survive summary judgment, Mr. Floyd must offer specific evidence that Mr. Kane's statement to the police was extreme and outrageous. Fed. R. Civ. P. 56(a). Mr. Floyd offers no evidence supporting such a finding.

Thus, summary judgment is **GRANTED** for 24H on Mr. Floyd's IIED claim.

V. CONCLUSION

For the reasons above, summary judgment is **GRANTED** for 24H on Mr. Floyd's remaining claims of Intentional Infliction of Emotional Distress and Defamation/Slander.

Accordingly, this case is terminated. The Clerk shall close the case.

IT IS SO ORDERED.

Dated: July 10, 2025

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA, LLC,

Defendant.

Case No. 23-cv-00871-EMC

ORDER ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT

Docket No. 95, 96

United States District Court
Northern District of California

I. INTRODUCTION

Plaintiff Michael Devin Floyd, proceeding pro se, has filed suit against Defendant 24 Hour Fitness USA, LLC ("24H"). Mr. Floyd alleges that 24H violated his rights by, *inter alia*, having him removed from a gym on two different occasions and then terminating his gym membership. Before the Court are both parties' motions for summary judgment. *See* Dkts. 95, 96. For the reasons below, the Court **GRANTS** 24H's motion and **DENIES** Mr. Floyd's motion.

II. BACKGROUND

A. Factual Background

The undisputed facts and any facts subject to dispute but viewed in Mr. Floyd's favor establish the following.

1. General Background

On January 5, 2022, Mr. Floyd signed up for a gym membership with 24H and entered into the relevant membership agreement ("Agreement"). Dkt. 96-4, Ex. A – Agreement. The Agreement requires that members "not engage in any conduct in any 24 Hour facility that includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any conduct that harasses or is bothersome to members, guests or

employees." *Id.* Ex. B – 24H Membership Policies and Club Rules. Section 6 of the Agreement on Termination for Cause states that 24H may, at its option, terminate an individual's gym membership if the individual fails to follow any of the Club Rules or any part of the Agreement, or the individual's "conduct is improper or harmful to the best interest of 24 Hour or its members." *Id.*

The relevant incidents occurred at the 24H gym located at 2480 Whipple Road in Hayward, California. Dkt. 96-4 at 2 (Martinez Decl. ¶ 2).

2. Complaints Against Mr. Floyd

24H filed entries regarding five member complaints about Mr. Floyd's conduct. *See* Dkt. 96-4 at 18 (Ex. C – Mr. Floyd's Member Profile showing other members' complaints regarding Mr. Floyd's conduct).[1]

a. July 9, 2022

On July 9, 2022, multiple "female members…complain[ed] that [Mr. Floyd] ha[d] been harassing [them] during [their] workouts." *Id.* One such member complained that he had "touched her mid workout." *Id.* When she told him, "please don't touch me," he responded, "when was the last time a man touched you like that." *Id.*

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Escalated Issue We have had a handful of female members come and complain that he has been harassing during there workouts. On one occasion 7/9/2022 he went up to a female guest and touched her mid workout. She responded with please don't touch me, but we went to say 'when was the last time a man touched you like that'. Less

Id.

b. July 18, 2022

On July 18, 2022, 24H made an entry in Mr. Floyd's member profile regarding the

[1] In the hearing on the motions, 24H authenticated the membership profile. They appear to be records kept in the regular course of 24H's business and made contemporaneously or close to contemporaneously with reported statements. 24H proffered these records as business records and are therefore excepted from the exclusion of hearsay. Mr. Floyd offered no contrary evidence and presented no meritorious objection. Furthermore, these records, in the context of summary judgment, may be considered pursuant to Rule 54(c)(2). Where Mr. Floyd disputes the facts reported, those disputes are noted below.

following events. *Id.*[2] A member, identified as V.H., stated that Mr. Floyd "tried to speak to [her] when H.S. [(her friend)] stepped out to the bathroom." Dkt. 96-6 at 2 (V.H. Decl. ¶ 3). While she worked out, he "stood unnecessarily close to [her]," which she felt was an "inva[sion] [of her] personal space." *Id.* When she and her friend finished working out, they tried to "walk[] away quickly to try to get away from Mr. Floyd, but he followed [them], and kept trying to talk to [her]." *Id.* (¶ 4). On V.H's behalf, her friend told him that V.H. "did not want to speak with him (which was true)." *Id.* In response, "Mr. Floyd raised his voice stating that [she] could speak for [herself,] and then grabbed [her] arm to prevent [her] from walking away." *Id.* She filed a "complaint about Mr. Floyd to 24 Hour fitness manager Michael ('Mickey') Martinez, communicating that she "was scared of Mr. Floyd, he made [her] feel very uncomfortable, and [she] wanted him to leave [her] alone." *Id.* (¶ 5). She states that "[o]n other occasions, Mr. Floyd would work out around [them] and stare at [them]," making her feel that he was "following" and "watching" them. *Id.* (¶ 6). V.H. declared that this made her "feel very comfortable." *Id.* Ultimately, she stated: "I have never experienced such uncomfortable interactions with a gym member before Mr. Floyd." *Id.*[3]

Similarly, H.S. stated in her declaration that Mr. Floyd repeatedly "made…attempts to []introduce himself to [her] and try to talk to [her]." Dkt. 96-5 (H.S. Decl. ¶ 4). One such attempt was the July 18, 2022 incident when H.S. tried to defend her friend V.H. from Mr. Floyd's advances and Mr. Floyd "grabbed" V.H.'s "arm to stop her from leaving." *Id.* (¶ 6). His conduct left her "very upset and crying." *Id.* H.S. recounts that "[b]oth of [them] were really upset by this incident, which [they] reported to a 24 Hour Fitness employee." *Id.*

c. <u>September 9, 2022</u>

H.S. describes a second incident, which occurred on September 9, 2022, when H.S. attempted to use "20 pound dumbbells from the rack." Dkt. 96-5 at 2 (¶ 7). She states that "Mr. Floyd followed [her] and yelled at [her] to not take the dumbbells because he was using them." *Id.*

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[2] While the incident described in V.H. and H.S.'s declarations may not have occurred on the date of July 18, 2022, the Court refers to the event as the July 18, 2022 incident based on the date of entry in Mr. Floyd's 24H member profile.

[3] H.S.'s declaration corroborates V.H.'s statements. *See* Dkt. 96-5 (H.S. Decl.).

She reports that she "never saw Mr. Floyd use the dumbbells" and she "felt like he was just trying to intimidate [her]." *Id.*

H.S. continues, "Mr. Floyd did not observe boundaries and made [her] feel really comfortable." *Id.* (¶ 5). H.S. testifies that his conduct made her feel "intimidated, harassed, and really uncomfortable." *Id.* She concludes: "My interactions with Mr. Floyd were so uncomfortable that I never felt safe to walk to my car unless a friend came with me or he had already left the gym." *Id.* (¶ 8). "[B]ecause of Mr. Floyd," H.S. states that she has "started carrying mace and a taser." *Id.*

d. September 30, 2022

On September 30, 2022, a member complained that Mr. Floyd waited for her to leave the gym and followed her to her car while she "walk[ed] away from him talking to her." Dkt. 96-4 at 22 (complaint in Mr. Floyd's member profile pictured below).

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Escalated Issue Member was waiting for a female to leave the gym and proceeded to follow her to car while she walking away from him talking to her. Less

Id.

When asked about this incident in his deposition, Mr. Floyd testified: "Yes, th[ere] is a possibility that this happened." Dkt. 96-3 at 72 (Floyd Dep. 125:2-3). He notes that the complaint "doesn't say that she said for me not to talk to her." *Id.* (125:9-10).

e. October 1, 2022

On October 1, 2022, "police escorted" Mr. Floyd "out of the gym for trespassing after reports of inappropriate touching from multiple female[s]." Dkt. 96-4 at 21 (pictured below).

10:40 PM PDT	149765Andrew Pratt	00488	N/A	chrome_reader_mode

Denied Access: Other police escorted the member out of the gym for trespassing after reports of inappropriate touching from multiple female. case # 2022-56473 Less

Id.

3. 24H's Process for Revoking a Membership

To revoke an individual's membership, the local 24H gym submits a revocation request to the District Manager for review. Dkt. 96-4 at 4 (Martinez Decl. ¶ 16). In his declaration, Michael Martinez, a current 24H employee who worked as the Sales and Service Manager between July 16, 2022 and January 4, 2023, explains:

> If the District Manager approves the request, it is then sent to the Regional Vice President for review. 24 Hour Fitness utilizes a form entitled Member Threaten to Revoke or Revoke Request Form ("Revoke Request"), for managers to insert information about a member[']s inappropriate conduct. After final approval, the request is then transferred to membership services for processing and notification to the member.

Id. at 4-5 (¶ 16).

4. 24H's Investigation of Allegations, Mr. Floyd's Opportunities to be Heard, and Subsequent Termination of Mr. Floyd's Membership

As demonstrated above, 24H received complaints regarding Mr. Floyd's conduct across five instances from July 9, 2022 to October 1, 2022. Dkt. 96-4 at 18 (Ex. C – Mr. Floyd's Member Profile showing other members' complaints regarding Mr. Floyd's conduct). On July 18, 2022, a 24H employee named Michael Martinez asked Mr. Floyd "to leave and return to speak with [his] General Manager ("GM") Alyese Bryant ("Bryant") the next day." Dkt. 96-4 at 4 (Martinez Decl. ¶ 12). After he began to argue with Martinez and refused to leave, Martinez "ultimately had to call the police" to remove Mr. Floyd. *Id.*

The next day, on July 19, 2022, Mr. Floyd "returned to the gym to speak with GM Bryant about these complaints." *Id.* In his deposition, Mr. Floyd confirmed that he "did have an opportunity to speak with managers and provide [his] side of the story." Dkt. 96-3 at 77 (Floyd Dep. 151:2-5).

Thereafter, nearly two months after the incident, other members filed three more complaints regarding Mr. Floyd's conduct on September 9, 2022, September 30, 2022, and October 1, 2022. *See* Dkt. 96-4 at 18. On October 1, 2022, Mr. Floyd "was removed from the gym by police for trespassing due to another allegation of harassment and his membership was suspended." Dkt. 96-4 at 4 (Martinez Decl. ¶ 15). On October 3, 2022, Ms. Bryant completed a

revocation request form ("Form") detailing the October 1, 2022 incident and the four preceding incidents. *Id.* at 24 (Ex. D – "Member Threaten to Revoke or Revoke Request Form"). Regarding the October 1, 2022 incident, the Form states, "Michael Floyd approached a female member and grabbed [her] while she was working out, when the member to[ld] Michael to not touch her[,] he responded "I don't care if you don't like it report it." *Id.*

Pursuant to 24H's policies, Mr. Martinez and Ms. Bryant filed requests to revoke Mr. Floyd's membership "due to his history of inappropriate conduct" on September 12, 2022 and October 7, 2022. Dkt. 96-4 at 4 (Martinez Decl. ¶ 17); *see* Ex. D (revocation request and email chain to District Manager regarding revocation requests). On September 19, 2022, 24H's District Manager Kesan Pillai approved the first request. *Id.* at 26 (email from District Manager replying "Approved. Please Process, thank you.").

Through a letter dated October 11, 2022, 24H informed Mr. Floyd "of the termination of his membership." *Id.* (¶ 18); *see* Ex. E (Letter from Membership Services). The letter states:

> It has been brought to our attention that you have displayed behavior that is unwanted and adverse to the interest and wellbeing of 24 Hour Fitness, its employees, its members and its guests. Specifically, you engaged in inappropriate conduct by acting confrontational and displaying improper [and] harassing behavior towards other members while using the facility.

Id. Mr. Floyd confirms that he received a physical copy of this letter and notes that the envelope was dated October 17, 2022. Dkt. 120-1 at 1 (Letter Envelope). Further, according to 24H's membership profile for Mr. Floyd, 24H stated: "[I]f member wishes to dispute, [member] may submit in writing and send to corporate off[i]ce address, attn Member [S]ervices." Dkt. 96-4 at 19.

Mr. Floyd confirms that, on October 13, 2022, District Manager Kesan Pillai called him, informed him of the membership termination, and "ask[ed] for [his] side of the story." Dkt. 107-1 at 3 (Mr. Floyd's Statement on the October 1, 2022 Incident). Mr. Floyd states: "After being told the final decision, I told Kesan my side of the story." *Id*; *see* Dkt. 96-3 at 13 (Floyd Dep. 26:21-24).

B. Procedural Background

Based on, *inter alia*, the above allegations, Mr. Floyd has asserted twelve causes of action,

all based on state law.[4] The relevant claims at issue in the parties' instant motions for summary judgment are described below.

(1) **Negligent infliction of emotional distress.** Mr. Floyd alleges that 24H negligently caused him physical and emotional harm because he "relied on 24 Hour Fitness to have fair policies in place when there's a dispute between two patrons" and 24H did not give him information about the claims made against him, demanded that he leave the gym without showering, asked the police to arrest him for trespassing, and refused to allow him to collect his belongings. SAC at 6–7.

(2) **Breach of contract.** Mr. Floyd maintains that 24H breached the Parties' contract by failing to properly investigate the allegations made against him and by terminating his membership even though he did not violate any rules. *See* SAC at 8.

(3) **Breach of the implied duty to perform with reasonable care.** Mr. Floyd asserts that the Parties' contract required that 24H "properly investigate claims of harassment and any other member-member dispute." SAC at 8.

(4) **Breach of the implied covenant of good faith and fair dealing.** Mr. Floyd contends that 24H breached the implied covenant by terminating his membership and not properly investigating allegations against him. *See* SAC at 9.

(5) **Violation of § 17200.** Mr. Floyd argues that he was not given fair accommodation as a gym member and further asserts that he was denied a fair harassment policy. *See* SAC at 5; *see also* SAC at 5, 6 (maintaining that 24H violated their contract and that 24H failed to have a "proper harassment policy").

[4] In his original complaint, Mr. Floyd had alleged some federal causes of action but he dropped those claims in his FAC and SAC. In the FAC, Mr. Floyd explains that, even though he is no longer asserting federal claims, the Court still has subject matter jurisdiction because of diversity jurisdiction. According to Mr. Floyd, at the time he filed the original complaint, he was a resident of Louisiana while 24H is headquartered in California, and thus there was complete diversity. *See* FAC at 1-2; *see also Rosado v. Wyman*, 397 U.S. 397, 405 n.6 (1970) (stating that it is a "well-settled rule that a federal court does not lose jurisdiction over a diversity action which was well founded at the outset even though one of the parties may later change domicile or the amount recovered falls short of [the minimum amount in controversy]").

Before the Court are both parties' motions for summary judgment. 24H moves on all claims five claims above. Mr. Floyd only moves on the breach of contract, breach of the implied duty to perform with reasonable care, breach of the implied covenant of good faith and fair dealing, and violation of § 17200 claims.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) allows a party to move for summary judgment on all or part of a claim. The Court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a genuine dispute of material fact. The Court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049-50 (9th Cir. 2014). Summary judgment is appropriate "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.*

When the defendant moves for summary judgment on a claim for which the plaintiff bears the ultimate burden of proof, the defendant may prevail by showing the plaintiff's failure "to make a showing sufficient to establish the existence of an element essential to [the plaintiff's] case." *Celotex Corp v. Catrett*, 477 U.S. 317, 322 (1986). Conversely, when a plaintiff moves for summary judgment on its own claim, it "must offer evidence sufficient to support a finding upon every element of [its] claim . . ., except those elements admitted . . . by the adversary." *Watts v. United States*, 703 F.2d 346, 347 (9th Cir. 1983). Finally, parties may object "that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2).

IV. DISCUSSION

A. Negligent Infliction of Emotional Distress

Mr. Floyd brings a claim of negligent infliction of emotional distress against 24H because he alleges 24H "order[ed] the police to place the Plaintiff under citizens arrest for trespassing," "[w]ithout any warning" or "questioning about any dispute." Dkt. 107 at 7 (SAC). Mr. Floyd

continues, "Management never informed the Plaintiff about the harassment accusation, then demanded the Plaintiff leave without showering, requested the [police] officers to arrest the Plaintiff for trespassing, and refused to allow the Plaintiff to collect his belongings." *Id.*

California law does not recognize a separate tort of Negligent Infliction of Emotional Distress ("NIED"). Rather, NIED is simply a form of negligence, and NIED claims must satisfy the traditional elements of duty, breach of duty, causation, and damages. *Burgess v. Superior Court*, 2 Cal.4th 1064, 1073, 9 Cal.Rptr.2d 615, 831 P.2d 1197 (1992); *Lawson v. Management Activities, Inc.*, 69 Cal.App.4th 652, 656, 81 Cal.Rptr.2d 745 (1999); Witkin, 6 Summary of Cal. Law § 838 (2003 Supplement).

1. Duty

a. Legal Standard

Duty is a question of law for a court to decide, *see Kesner v. Superior Court*, 1 Cal. 5th 1132, 1142 (2016), but a court's decision can turn on the underlying facts of the case. *See Bararsani v. HDI Global Ins. Co.*, No. CV 21-3679 PA (SHKx), 2021 U.S. Dist. LEXIS 215951, at *3 (C.D. Cal. Nov. 5, 2021) (indicating that a negligence claim fails if a plaintiff does not allege facts establishing a legal duty). "Whether a particular defendant owes a particular plaintiff a legal duty of care (actionable in a claim for negligence) is, at bottom, a 'question of public policy' – namely, should that plaintiff's interests be entitled to legal protection against the defendant's conduct?" *Shalghoun v. North Los Angeles County Regional Center, Inc.*, 99 Cal. App. 5th 929, 943 (2024).

> [A]nswering that question obligates [a court] to ask two further questions: (1) Does the defendant owe the plaintiff a legal duty of care under traditional principles of tort law, and if so, (2) do the relevant public policy considerations set forth in *Rowland v. Christian* (1968) 69 Cal. 2d 108 nevertheless favor "limiting that duty"?

Id. at 944.

With respect to (1), "a person has a legal duty to act reasonably and with due care under the circumstances with respect to their own actions" – *i.e.*, their own affirmative conduct. *Id.* (emphasis omitted). This duty arises from at least California Civil Code § 1714(a), *see id.*, which

provides in relevant part that "[e]veryone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." Cal. Civ. Code § 1714(a).

As for (2), "[e]ven if California law provides that a legal duty of care runs between a plaintiff and a defendant, courts have the power and obligation to examine whether considerations of public policy warrant *limiting* that duty." *Id.* at 946 (emphasis added). The existence of a duty may be informed by public policy considerations that warrant limiting that legal duty. *See id.* at 946. Those considerations are known as the *Rowland* factors and fall into two categories.

> The first category examines the foreseeability of the plaintiff's injury. *Rowland* identifies three foreseeability considerations:
>
> (1) [W]hether "the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed";
> (2) [T]he degree of certainty that the plaintiff suffered injury; and
> (3) [T]he closeness of the connection "between the defendant's conduct and the injury suffered."

Id.

> The second category:
>
> ask[s] whether "'the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability.'" In other words, they ask whether recognizing the duty "would deter socially beneficial behavior." [These] countervailing policy considerations are:
>
> (1) [T]he moral blame attaching to the defendant's conduct, which is "typically found when the defendant reaps a financial benefit from the risks it has created";
> (2) [W]hether liability will "'prevent[] future harm,'" which looks to "both the positive and the negative societal consequences of recognizing a tort duty" in terms of how the imposition of liability is likely to play out;
> (3) [T]he "'extent of the burden to the defendant and consequences to the community of imposing a duty...with resulting liability for breach,'" including whether recognizing tort liability "would impose enormous and unprecedented financial burdens" on likely defendants; and
> (4) [T]he availability of insurance.

Id. at 947 (spacing added).

"Although" the "foreseeability factors" in the first category are the "most important, foreseeability is not dispositive of the policy analysis and may be outweighed by the second category of *Rowland* factors." *Id.* (internal citations omitted).

b. Discussion

A general presumption exists that 24H owed Mr. Floyd a duty of reasonable care. *See* Cal. Civ. Code § 1714(a). Here, Mr. Floyd alleges that he was harmed by 24H's own misconduct in removing him from the gym "without any warning" or "questioning about any dispute." Dkt. 107 at 7. "These allegations raise a claim that [24H] violated its obligation 'to exercise due care in [its] own actions so as not to create an unreasonable risk of injury to others.'" *Kuciemba v. Victory Woodworks, Inc.*, 14 Cal. 5th 993, 1018 (2023) (quoting *Lugtu v. California Highway Patrol*, 26 Cal. 4th 703, 716 (2001)) (holding that Civil Code § 1714(a) applies where a plaintiff alleges that they were harmed by a defendant's "*own* misconduct" (emphasis in original)). The risk of harm was foreseeable.

However, in the circumstances here, public policy factors warrant limiting this duty. Specifically, the strong countervailing interest in protecting the safety of other members (*i.e.* preventing future harm) particularly where members are in close physical quarters warrants limiting the presumptive duty of reasonable care in removing an individual repeatedly accused of harassment from the premises. The urgency of preventing potential harassment of others limits the scope of investigation the gym must undertake before removing the accused harasser. The situation is akin to an employer's duty of reasonable care to take prompt action to prevent harassment in the workplace under Title VII. *See* Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*). That is, to assert a defense to vicarious liability in the Title VII context, an employer must demonstrate "(1) that it *exercised reasonable care to prevent and promptly correct any harassing behavior* and (2) that the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities that were provided." *Vance v. Ball State Univ.*, 570 U.S. 421, 430 (2013) (emphasis added). Accordingly, "[e]vidence that an employer "did not monitor the workplace" or "failed to respond to complaints" is "relevant" to a Title VII plaintiff's claim. *Id.* at 448-49. Indeed, the U.S. Equal Employment Opportunity Commission's 2024

Enforcement Guidance on Harassment in the Workplace instructs that an "employer must take corrective action that is 'reasonably calculated to prevent further harassment' under the particular circumstances at the time." Enforcement Guidance on Harassment in the Workplace, U.S. Equal Emp. Opportunity Comm'n (Apr. 29, 2024) (citing *Wyninger v. New Venture Gear, Inc.*, 361 F.3d 965, 976 (7th Cir. 2004)).[5] *See Dawson v. Entek Int'l*, 630 F.3d 928, 940 (9th Cir. 2011); *see Campbell v. Haw. Dep't of Educ.*, 892 F.3d 1005, 1018 (9th Cir. 2018); *Fuller v. City of Oakland*, 47 F.3d 1522, 1529 (9th Cir. 1995). Prompt corrective action may require immediate or swift action that is sufficient to stop and deter further harassment. *See Brooks v. City of San Mateo*, 229 F.3d 917 (9th Cir. 2000) (holding that employer took prompt remedial action by placing the harassing employee on administrative leave pending an investigation one day after the employer was apprised of the incident); *see Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1052 (9th Cir. 2007) (finding that an employer took "prompt actions" by "immediate[ly]" telling the harassing employee "to stay away from" the victim, hiring "outside counsel to investigate and make recommendations," having the victim "report to another individual other than the harassing employee" and "conduct[ing] sexual harassment training" after the victim filed a complaint about the harassing employee); *see also Ellison v. Brady*, 924 F.2d 872, 882 (9th Cir. 1991) ("Title VII requires more than a mere request to refrain from discriminatory conduct."). Like an employer's duty of reasonable care to prevent harassment in the workplace under Title VII, public policy factors warrant affording proprietors of establishments where patrons have close physical contact with one another (such as a gym) the ability to take prompt corrective action to prevent patron-on-patron harassment. *Cf. Parratt v. Taylor*, 451 U.S. 527, 540–41 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (rejecting "the proposition that [requiring a hearing] 'at a meaningful time and in a meaningful manner' always requires the State to provide a hearing prior to the initial deprivation of property"). The ability to take prompt corrective action is especially compelling where there are multiple and repeated claims of harassment directed against the alleged offender.

[5] *See* https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace.

Thus, under the *Rowland* factors, even if it were assumed the foreseeability prong favors imposition of a duty of care towards one in Mr. Floyd's position, *see Kesner v. Superior Ct.*, 1 Cal. 5th 1132, 1145 (2016); *Bigbee v. Pac. Tel. & Tel. Co.*, 34 Cal. 3d 49, 57 (1983), the public policy factors limit the duty to investigate before taking corrective action and permits a prompt investigation *after* immediate corrective action is taken. This conclusion is consistent with various decisions limiting the scope of the duty of care under California tort law, even when harm is foreseeable, where considerations of moral blame, preventing future harm, the burden on the defendant and the broader community, and the availability of insurance warrant doing so. *See e.g. Regents of the University of California v. Superior Court*, 4 Cal.5th 607, 634 (2018) (while a university owes a duty to protect students from foreseeable violence in a classroom environment, public policy considerations warrant limiting the scope of that duty to settings where the university has significant control (such as during curricular activities)).

Here, under the kind of circumstances where a business establishment in which members or patrons come in close physical contact, for the reasons described above, there is little moral blame placed on the establishment for taking prompt corrective action in the face of repeated claims of harassment, the interest in prevent future harm is paramount, and the burden on the business which faces potential liability for failing to take prompt corrective action to protect putative victims of harassment are factors that counsel in favor of limiting 24H's duty to conduct an investigation before removing Mr. Floyd, permitting instead a prompt post-facto investigation. Mr. Floyd presents no caselaw to the contrary.

2. Breach

Next, the issue is whether 24H breached its limited "duty to act with reasonable care under the circumstances" regarding its own actions. *Regents*, 4 Cal.5th at 619; *see* Cal. Civ. Code, § 1714, subd. (a). It did not.

No reasonable jury could find that 24H breached its duty of reasonable care under the circumstances because the undisputed evidence demonstrates that 24H took reasonable steps to respond promptly to the multiple complaints it received from female patrons about Mr. Floyd. Importantly, 24H provided Mr. Floyd with adequate opportunities to respond to members'

allegations shortly after being removed.

As noted above, 24H received complaints regarding Mr. Floyd's conduct across five instances from July 9, 2022 to October 1, 2022. Dkt. 96-4 at 18 (Ex. C – Mr. Floyd's Member Profile showing other members' complaints regarding Mr. Floyd's conduct). After the second incident noted in the July 18, 2022 entry in Mr. Floyd's 24H member profile, a 24H employee named Michael Martinez asked Mr. Floyd "to leave and return to speak with [his] General Manager ("GM") Alyese Bryant ("Bryant") the next day." Dkt. 96-4 at 4 (Martinez Decl. ¶ 12). After he began to argue with Martinez and refused to leave, Martinez "ultimately had to call the police" to remove Mr. Floyd. *Id.* The next day, on July 19, 2022, Mr. Floyd "returned to the gym to speak with GM Bryant about these complaints." When deposed, Mr. Floyd did not dispute these facts. Mr. Floyd testified that he "did have an opportunity to speak with managers and provide [his] side of the story." Dkt. 96-3 at 77 (Floyd Dep. 151:2-5).

Thereafter, less than two months later, additional members filed three more complaints regarding Mr. Floyd's conduct on September 9, 2022, September 30, 2022, and October 1, 2022. *See* Dkt. 96-4 at 18. As a result, on October 1, 2022, Mr. Floyd "was removed from the gym by police for trespassing due to another allegation of harassment and his membership was suspended." Dkt. 96-4 at 4 (Martinez Decl. ¶ 15). On October 3, 2022, Ms. Bryant completed a revocation request form ("Form") detailing the October 1, 2022 incident and the four preceding incidents. *Id.* at 24 (Ex. D – "Member Threaten to Revoke or Revoke Request Form"). Regarding the October 1, 2022 incident, the Form states, "Michael Floyd approached a female member and grabbed [her] while she was working out, when the member to[ld] Michael to not touch her[,] he responded "I don't care if you don't like it report it." *Id.* Pursuant to 24H's policies, Mr. Martinez and Ms. Bryant filed requests to revoke Mr. Floyd's membership "due to his history of inappropriate conduct" on September 12, 2022 and October 7, 2022. Dkt. 96-4 at 4 (Martinez Decl. ¶ 17); *see* Ex. D (revocation request and email chain to District Manager regarding revocation requests). On September 19, 2022, 24H's District Manager Kesan Pillai approved the first request. *Id.* at 26 (email from District Manager replying "Approved. Please Process, thank you."). On October 11, 2022, 24H informed Mr. Floyd "of the termination of his membership."

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Id. (¶ 18); *see* Ex. E (Letter from Membership Services). According to 24H's membership profile for Mr. Floyd, 24H stated: "[I]f member wishes to dispute, [member] may submit in writing and send to corporate off[i]ce address, attn Member [S]ervices." Dkt. 96-4 at 19. Mr. Floyd confirms that, on October 13, 2022, District Manager Kesan Pillai called him to notify him of the membership termination and asked for his side of the story, which Mr. Floyd states he provided. Dkt. 107-1 at 3 (Mr. Floyd's Statement on October 1, 2022 Incident).

As the undisputed evidence demonstrates, 24H took action to remove Mr. Floyd only after receiving multiple complaints. Both times following his removal, Mr. Floyd was given an opportunity to present his side of the story. In light of 24H's justification to take immediate corrective action and providing Mr. Floyd with a prompt opportunity to be heard shortly thereafter the actions taken by 24H, fulfilled its limited duty under *Rowland,* and was not, as a matter of law, unreasonable.

Thus, based on the undisputed evidence, no reasonable jury could find that 24H's breached its limited duty of reasonable care regarding its own actions in responding to members' complaints and providing Mr. Floyd with prompt opportunities to be heard. Accordingly, 24H did not, as a matter of law, breach its limited duty of reasonable care under the circumstances.

Therefore, summary judgment on Mr. Floyd's NIED claim is **GRANTED** for 24H.

B. Breach of Contract

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Oasis West Realty, LLC v. Goldman*, 51 Cal.4th 811, 821 (2011).

The parties do not dispute the existence of the contract – the parties' membership agreement ("Agreement"). Dkt. 66-3 (Agreement).

1. Plaintiff's Performance

To establish a breach of contract, a plaintiff must demonstrate their "performance or excuse for nonperformance." *Goldman*, 51 Cal.4th at 82. The Agreement clearly requires that members "not engage in any conduct in any 24 Hour facility that...harasses or is bothersome to

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A California Court of Appeal explains the implied duty of reasonable care as follows:

> 'Accompanying every contract is a common-law duty to perform with care, skill, reasonable expedience, and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract.' The rule which imposes this duty is of universal application as to all persons who by contract undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement.

Holguin v. Dish Network LLC, 229 Cal. App. 4th 1310, 1324 (2014) (citing *Roscoe Moss Co. v. Jenkins*, 55 Cal.App.2d 369, 376 (1942).

For the same reasons discussed in the analysis of Mr. Floyd's NIED claim, 24H did not breach any implied duty of reasonable care under the circumstances. Summary judgment on this claim is **GRANTED** for 24H and **DENIED** for Mr. Floyd.

2. Breach of Implied Covenant of Good Faith and Fair Dealing

Mr. Floyd argues that 24H "did not act fairly and in good faith" by "terminat[ing] [his] membership" and "not properly investigat[ing]" the "[a]llegations of harassment." Dkt. 107 at 9 (SAC).

"The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made*." *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 349 (2000) (emphasis in original). Accordingly, the covenant "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Id. See Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 683 (1988) ("The covenant of good faith and fair dealing was developed in the contract arena and is aimed at making effective the agreement's promises").

As the *Careau* court explained:

> [A]llegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a **failure or refusal to discharge contractual responsibilities, prompted** not by an honest mistake, bad judgment or negligence but rather **by a conscious and deliberate act,** which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet this criteria must be determined on a

> case by case basis and will **depend on the contractual purposes and reasonably justified expectations of the parties.**

Careau & Co. v. Security Pacific Business Credit, Inc., 222 Cal. App. 3d 1371, 1395 (1990) (emphasis added). Thus, Mr. Floyd must demonstrate that 24H consciously and deliberately took action to fail or refuse to discharge its contractual responsibilities, thereby depriving Mr. Floyd of the benefits of the agreement.

Because the Agreement specifically permits 24H to terminate Mr. Floyd's membership agreement if he violates the terms of the contract, and the undisputed evidence establishes that Mr. Floyd violated the contract by engaging in conduct that harassed or bothered other members, 24H had a good faith basis and the contract permitted it to terminate his membership.

To the extent there is a specific implied covenant to reasonably investigate before terminating a member for misconduct, 24H did so here. For the reasons stated above, 24H took reasonable steps to respond to the complaints and provide Mr. Floyd with adequate opportunities to be heard. Nor is there any evidence of bad faith by 24H under the undisputed circumstances of this case where 24H received multiple and repeated complaint s from female members against Mr. Floyd, many of which were not effectively denied by Mr. Floyd.

Therefore, summary judgment is **GRANTED** for 24H and **DENIED** for Mr. Floyd on this claim.

D. UCL: Violation of Business and Professions Code § 17200

Section 17200 prohibits unlawful, unfair, and/or fraudulent business acts or practices. Mr. Floyd asserts that 24H violated § 17200 because 24H did not entitle him to "a fair harassment policy." Dkt. 107 at 5 (SAC). Specifically, Mr. Floyd claims that 24H violated § 17200 because 24H did not properly investigate the harassment allegations and provide him with an opportunity to be heard. Dkt. 107 at 5-6 (SAC).

Under the unfairness prong of the UCL, "'a practice may be deemed unfair even if not specifically proscribed by some other law.'" *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1143 (2003) (quoting *Cel–Tech Commc'ns, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163, 180 (1999)). In *Drum v. San Fernando Valley Bar Ass'n*, 182 Cal.App.4th 247 (2010), the California Court of Appeal articulated three possible tests defining "unfair." First,

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the "tethering test" requires that the "'public policy which is a predicate to a consumer unfair competition action under the 'unfair' prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions.'" *Id.* at 257, 106 Cal.Rptr.3d 46 (quoting *Bardin v. Daimlerchrysler Corp.*, 136 Cal.App.4th 1255, 1260–61 (2006)). The second test, which has been referred to as the "balancing test", asks whether the alleged business practice is "'immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers and requires the court to weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim.'" *Id.* (quoting *Bardin*, 136 Cal.App.4th at 1260). Finally, the third test incorporates the definition of "unfair" from the Federal Trade Commission Act and requires: (1) that the consumer injury be substantial; (2) that the injury not be outweighed by any countervailing benefits to consumers or competition; and (3) the injury is one that consumers could not have reasonably avoided. *Id.*

Here, Mr. Floyd's motion relies on the second test because he argues that "Defendant's [had an] unscrupulous policy" in removing him without notifying him of the complaints, conducting a reasonable investigation, or "attempt[ing]...conflict resolution between both parties." Dkt. 95 at 9. In its opposition, 24H applies the third test. Both the second and the third tests require weighing the injury against any countervailing utility of the defendant's conduct.

Accordingly, the Court weighs the utility or countervailing benefit of 24H's conduct against the gravity of the alleged harm to Mr. Floyd. Here, the utility of 24H's conduct is significant – 24H has a vested interest in reasonably promptly removing a member repeatedly accused of harassing other members. The Agreement is clear that 24H can terminate an individual's membership if the individual engaged in conduct that harasses or bothers other members. Such is the case here. Further, any harm related to due process to Mr. Floyd is limited because the undisputed evidence shows that 24H did not immediately remove him from the gym or terminate his membership after receiving the first complaint against him. Instead, the evidence demonstrates that 24H only called the police in July and October 2022 to request assistance in removing Mr. Floyd from the gym after Mr. Floyd refused to leave after notifying him of complaints, giving him an opportunity to be heard shortly after the first removal and after 24H

terminated his membership following the October 2022 incident.

Moreover, any harm to Mr. Floyd in not being able to access 24H is afforded little weight. The undisputed evidence establishes that denial of access to 24H is based on his conduct. In asserting the magnitude of harm from being banned from 24H, Mr. Floyd disclosed: "[I]ncidents similar to this have happened at Planet Fitness as well before I was banned from their gyms in the Bay Area." Dkt. 96-3 at 115. That Mr. Floyd has been removed from other gyms for similar incidents, such as Planet Fitness, does not support finding greater harm caused by 24H's termination of Mr. Floyd's membership. If anything, this fact underscores the justifiability of 24H's conduct in responding to multiple members' complaints regarding Mr. Floyd's conduct. Thus, the utility of 24H's conduct outweighs the gravity of the alleged harm to Mr. Floyd.

Thus, under either the second or third prong of Mr. Floyd's UCL § 17200 claim, summary judgment is **GRANTED** for 24H and **DENIED** for Mr. Floyd.

V. CONCLUSION

For the aforementioned reasons, summary judgment is **GRANTED** for 24H and **DENIED** for Mr. Floyd. Mr. Floyd's remaining claims include Intentional Infliction of Emotional Distress and Defamation/Slander. The Court set the briefing schedule for Defendant's motion for summary judgment on these remaining claims at Dkt. 122.

IT IS SO ORDERED.

Dated: May 23, 2025

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA, LLC,

Defendant.

Case No. 23-cv-00871-EMC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS

Docket No. 66

United States District Court
Northern District of California

Plaintiff Michael Devin Floyd, proceeding pro se, has filed suit against Defendant 24 Hour Fitness USA, LLC ("24HF"). Mr. Floyd alleges that 24HF violated his rights by, *inter alia*, having him removed from a gym on two different occasions and then terminating his gym membership. Now pending before the Court is 24HF's motion to dismiss the operative pleading which is the first amended complaint ("FAC"). Having considered the parties' briefs as well as their oral argument at the hearing held on January 9, 2025, the Court hereby **GRANTS** in part and **DENIES** in part the motion to dismiss.

I. FACTUAL & PROCEDURAL BACKGROUND

In the FAC, Mr. Floyd alleges as follows.

Mr. Floyd has been a member of 24HF since January 2022. *See* FAC, Ex. 1 (page 1). In July 2022 and then in October 2022, there were two incidents in which Mr. Floyd was asked to leave while he was working out at a 24HF gym in Hayward, California.

July 2022. According to Mr. Floyd, in July 2022, he was working out in the gym when two men approached him. Mr. Floyd had never seen the men before even though he had been using the gym frequently. The men claimed to be 24HF employees. One had a manager tag on.

The men informed Mr. Floyd that he had previously been banned from the gym based on multiple complaints. When Mr. Floyd asked who complained and what the complaints were about, the men refused to give him any information. *See* FAC, Ex. 2 (page 1).

Mr. Floyd told the men that he would not leave because they had not given him an "explanation about why [he] was being kicked out of the gym. They informed [Mr. Floyd] that they would call the police." FAC, Ex. 2 (page 1). The men left, and Mr. Floyd continued to work out. The police arrived about 10 minutes later. The police took Mr. Floyd to the front desk. Mr. Floyd continued to ask the two men for information. *See* FAC, Ex. 2 (page 1). "After more attempts at answers and [Mr. Floyd] accusing [the men] of not working at the [24HR] location, the police requested that [Mr. Floyd] leave the premises." FAC, Ex. 2 (page 1). Mr. Floyd showered, got dressed, and left the locker room. Mr. Floyd asked why he was "being kicked out of the gym" and was told that "multiple people over time have accused me of harassing them." FAC, Ex. 2 (page 1). Mr. Floyd was not given any more specifics, including about what he had purportedly done. *See* FAC, Ex. 2 (page 1).

October 2022. As alleged in the FAC, on October 1, 2022, Mr. Floyd went to the 24HF gym in Hayward. After he finished working out, four people approached him in the locker room: two police officers and two 24HF employees. One of the employees claimed that Mr. Floyd had assaulted a woman (grabbing her bottom). The employee also claimed that there were prior incidents in which other persons had complained about Mr. Floyd. The employee refused to give Mr. Floyd any more details about either the current incident or the prior incidents and asked him to leave. Mr. Floyd said he needed to shower first. The police officers then told Mr. Floyd that he was trespassing and that he was under arrest. Mr. Floyd said he had to get dressed and gather his belongings but the officers did not allow him to do so. The officers used force to handcuff Mr. Floyd and escorted him, half naked, out of the gym. *See* FAC (Ex. 1, at 1-2).

Subsequently, Mr. Floyd tried to get information from 24HF about the complaints that had been lodged against him. 24HF refused to give him more information. Eventually, on October 13, 2022, 24HF called Mr. Floyd and told him that he was no longer a member. *See* FAC (Ex. 1, at 2-3).

Based on, *inter alia*, the above allegations, Mr. Floyd has asserted twelve causes of action, all based on state law.[1]

(1) Violation of § 17200. Mr. Floyd argues that he was not given fair accommodation as a gym member and further asserts that he was denied a fair harassment policy. *See* FAC at 6; *see also* FAC at 7 (maintaining that 24HF violated their contract and that 24HF failed to have a "proper harassment policy").

(2) Intentional infliction of emotional distress ("IIED"). Mr. Floyd contends that 24HF intentionally inflicted emotional harm on him by not giving him information about the claims being made against him, by not allowing him a chance to refute the claims against him, by having the police remove him from the gym in July 2022 in front of gym patrons "during the busiest hours of the evening," and by forcing him out of the locker room "half-naked" in October 2022. FAC at 9.

(3) Negligent infliction of emotional distress. Mr. Floyd alleges that 24HF negligently caused him emotional harm because, *e.g.*, it did not give him information about the claims being made against him, demanded that he leave the gym without showering, asked the police to arrest him for trespassing, and refused to allow him to collect his belongings. *See* FAC at 10-11.

(4) Violation of California Civil Code § 1714. Section 1714(a) provides: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. . .

[1] In his original complaint, Mr. Floyd asserted several federal causes of action but he dropped those claims in the FAC. In the FAC, Mr. Floyd maintains that, even though he is no longer asserting federal claims, the Court still has subject matter jurisdiction because of diversity jurisdiction. According to Mr. Floyd, at the time he filed the original complaint, he was a resident of Louisiana while 24HF is a citizen of California, and thus there was complete diversity. *See* FAC at 1-2; *see also Rosado v. Wyman*, 397 U.S. 397, 405 n.6 (1970) (stating that it is a "well-settled rule that a federal court does not lose jurisdiction over a diversity action which was well founded at the outset even though one of the parties may later change domicile or the amount recovered falls short of [the minimum amount in controversy]").

. The extent of liability in these cases is defined by the Title on Compensatory Relief."). Mr. Floyd suggests that 24HF violated § 1714 because it refused to give him information about the claims being made against him and terminated his membership.

(5) Failure to comply with the "Principal's Duty of Protection." FAC at 11. Mr. Floyd asserts that 24HF "had a contractual obligation to protect [him] within the gym" and failed to abide by this obligation because it conducted "[n]o type of investigation whatsoever before the police were called," did not give him any information about the claims being made against him, and ultimately terminated his gym membership. FAC at 11-12.

(6) Negligent training and supervision. Mr. Floyd suggests that 24HF is liable for negligent training and supervision because the employees from the July and October 2022 incidents "remained employees" after each incident. FAC at 13. Also, there was no retraining of the employees afterward. *See* FAC at 13.

(7) Liability of a principal based on acts of agent/employee. Mr. Floyd asserts that 24HF is liable for the acts of its employees.

(8) False imprisonment/false arrest. Mr. Floyd contends that 24HF caused him to be arrested for trespassing. *See* FAC at 15-16.

(9) Defamation/slander. Mr. Floyd claims that a 24HF employee defamed him by telling two police officers that Mr. Floyd had "assaulted a woman by grabbing her buttocks." FAC at 16.

(10) Breach of the implied covenant of good faith and fair dealing. Mr. Floyd contends that 24HF breached the implied covenant by failing to properly investigate the allegations he had harassed someone. *See* FAC at 17.

(11) Breach of the implied duty to perform with reasonable care. Mr. Floyd asserts that the parties' contract required that 24HF "properly investigate claims of harassment and any other member-member dispute." FAC at 17.

(12) Breach of contract. Mr. Floyd maintains that 24HF breached the parties' contract

by failing to properly investigate the allegations made against him and by terminating his membership even though he did not violate any rules. *See* FAC at 18-19.

II. DISCUSSION

A. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). See Fed. R. Civ. P. 12(b)(6). To overcome a Rule 12(b)(6) motion to dismiss after the Supreme Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), a plaintiff's "factual allegations [in the complaint] 'must . . . suggest that the claim has at least a plausible chance of success.'" *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted). In evaluating the viability of a claim, a court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But "allegations in a complaint . . . may not simply recite the elements of a cause of action [and] must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Levitt*, 765 F.3d at 1135 (internal quotation marks omitted).

B. Count 4: Violation of California Civil Code § 1714

In Count 4, Mr. Floyd asserts a claim based on a violation of California Civil Code § 1714. Section 1714 provides in relevant part as follows:

> Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or

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Northern District of California

> person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

Cal. Civ. Code § 1714(a). 24HF argues that the claim for violation of § 1714 should be dismissed because a private right of action does not exist under the statute. The Court agrees. Plaintiff has cited no authority indicating that the statute itself gives rise to a private cause of action. *Cf. Cabral v. Ralphs Groc. Co.*, 51 Cal. 4th 764, 768 (2011) (noting that § 1714(a) simply "establishes the general duty of each person to exercise, in his or her activities, reasonable care for the safety of others"). The statute may inform a tort cause of action for negligence, but Plaintiff fails to establish this section provides for a statutory cause of action. The claim under Section 1714 is therefore dismissed with prejudice. *See Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 10986 (9th Cir. 2014) (stating that a "[a] complaint should not be dismissed without leave to amend *unless* amendment would be futile") (emphasis added).

C. Count 5: Failure to Comply with the "Principal's Duty of Protection"

In Count 5, Mr. Floyd asserts a claim for failure to comply with the "Principal's Duty of Protection." FAC at 11. The claim seems to be based on the Restatement of Agency, which Mr. Floyd cites in his FAC. *See* FAC at 11 (citing Rest. 3d of Agency § 7.06[2]). Mr. Floyd alleges that 24HF "had a contractual obligation to protect [him] within the gym" and failed to abide by this obligation because it conducted "[n]o type of investigation whatsoever before the police were called," did not give him any information about the claims being made against him, and ultimately terminated his gym membership. FAC at 11-12.

24HF moves to dismiss the claim as it is not a cause of action. 24HF is correct; the Restatement does not establish any private right of action under California law. And while a principal may be liable for the acts of an agent under some circumstances, the agency itself does not create a legal claim. Therefore, the claim is dismissed with prejudice. To the extent Mr. Floyd is arguing that 24HF did not comply with the contract between the parties, that is a claim for breach of contract.

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[2] Section 7.06 states: "A principal required by contract or otherwise by law to protect another cannot avoid liability by delegating performance of the duty, whether or not the delegate is an agent." Rest. 3d of Agency § 7.06.

D. Count 7: Liability of Principal Based on Acts of Agent/Employee

In Count 7, Mr. Floyd brings a claim for liability of a principal based on acts of agent/employee. Essentially, Mr. Floyd asserts that 24HF is liable for the acts of its employees. *See* FAC at 14 (citing Restatement of Agency).[3] 24HF moves to dismiss this claim because it is not clear what kind of claim Mr. Floyd is trying to articulate here. The Court agrees with 24HF. Mr. Floyd is simply articulating theories by which 24HF could be held liable for a tort of its employees but he has failed to identify any underlying tort. Again, an agency principle does not in itself create an independent cause of action. The Court therefore grants the motion to dismiss this claim with prejudice.

E. Count 2: IIED

Count 2 is a claim for IIED. The elements for an IIED claim are as follows: "(1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress." *Berry v. Frazier*, 90 Cal. App. 5th 1258, 1273 (2023).

In the FAC, Mr. Floyd contends that 24HF intentionally inflicted emotional harm on him by not giving him information about the claims being made against him, by not allowing him a chance to refute the claims against him, by having the police remove him from the gym in July

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[3] Mr. Floyd cites to both the Restatement (Second) on Agency, and the Restatement (Third). *See* Rest. 2d of Agency § 219(1) (providing that "[a] master is subject to liability for the torts of his servants committed while acting in the scope of their employment"); Rest. 3d of Agency § 7.03 (addressing when a principal is subject to direct liability to a third party harmed by an agent's conduct and when a principal is subject to vicarious liability).

Mr. Floyd also cites to additional sections of the Restatement (Third), but they are clearly not on point as they address the liability of an agent, not the liability of a principal.

- Section 7.01 states: "An agent is subject to liability to a third party harmed by the agent's tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment." Rest. 3d of Agency § 7.01.
- Section 7.02 states: "An agent's breach of a duty owed to the principal is not an independent basis for the agent's tort liability to a third party. An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party." *Id.* § 7.02.

2022 in front of gym patrons "during the busiest hours of the evening," and by forcing him out of the locker room "half-naked" in October 2022. FAC at 9. According to Mr. Floyd, he was

> traumatized by both incidents. I've abruptly lost many friends I connected with at 24 Hour Fitness and those supporting relationships at the gym. Having already suffered through many other police brutality events, this event has added onto previous traumas, and I feel even more unsafe when near police officers. I constantly fear every conversation I participate in can possibly result in traumatic events like those at [24HF]. I am currently in and seeking professional counseling. So far, I have only found an online support group and a life coach.

FAC at 20.

24HF argues that the IIED claim should be dismissed because Mr. Floyd has failed to allege (1) extreme and outrageous conduct and (2) extreme or severe emotional distress. The Court agrees with the first contention and therefore does not address the second.

Specifically, the Court holds that 24HF's alleged failure to give Mr. Floyd more information about the complaints against him and failure to give him a chance to tell his side of the story does not constitute extreme or outrageous conduct. Here, Mr. Lloyd is essentially contending that 24HF failed to conduct a proper investigation before it took action against him. As a matter of law, this kind of failure is not conduct "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Bock v. Hansen*, 225 Cal. App. 4th 215, 233 (2014) (internal quotation marks omitted). Mr. Floyd is not asserting that 24HF completely made up the claims that other gym members had made complaints about him (although he asserts that the harassment claims made by the members were not true).[4] *See* Opp'n at 5. Nor is he asserting that 24HF did no investigation whatsoever. *Compare Bohnert v. Roman Cath. Archbishop of S.F.*, 67 F. Supp. 3d 1091, 1099 (N.D. Cal. 2014) (rejecting defendant's argument that plaintiff was "'merely unhappy about the promptness and effectiveness of the investigation'"; plaintiff alleged that "defendants deleted incriminating photographs from students' phones, refused to investigate

[4] At the hearing, Mr. Floyd suggested for the first time that no one had actually lodged a complaint about him in October 2022. The FAC, however, does not contain any allegation that 24HF fabricated the October 2022 complaint. Furthermore, even if Mr. Floyd is now claiming fabrication, that claim is speculative; it is not based on any concrete factual allegations. Mr. Floyd has simply suggested fabrication because, during this litigation, 24HF has not identified the alleged victim by name.

or take corrective action, and failed to address past incidents of graphic 'up-skirt' photographs which had been going on for at least three years," and "[a] reasonable observer or trier of fact could find these actions to be 'outrageous,' 'extreme,' and beyond 'that usually tolerated in a civilized society'"); *Prasad v. Santa Clara Cnty. Dep't of Soc. Servs.*, No. 15-cv-04933-BLF, 2016 U.S. Dist. LEXIS 150750, at *7-8 (N.D. Cal. Oct. 28, 2016) (stating that, "[i]f Plaintiff can prove that Defendants intentionally re-entered his name into the [Child Abuse Central Index] without a [California Child Abuse and Neglect Report Act] hearing or without conducting any investigation, he may be able to show that Defendants' conduct was outrageous"). To the extent Mr. Floyd complains he should not have been ejected from the gym before a fuller investigation was done, in view of the fact that 24HF had received complaints about Mr. Floyd's harassment of other members whose rights and interests could be jeopardized by Mr. Floyd's continued presence, the actions of 24HF, even if the investigation were not adequate, cannot be deemed extreme and outrageous. *Cf. Rincker v. Ill. Dep't of Corr.*, No. 08-cv-1160, 2010 U.S. Dist. LEXIS 75206, at *28 (C.D. Ill. July 26, 2010) (in case where employee sued employer for failure to respond to co-worker harassment, noting that an employer's "separation of the victim from the alleged harasser can be an appropriate response to a claim of harassment"); *see also Smith v. Rock-Tenn. Servs.*, 813 F.3d 298, 311 (6th Cir. 2016) (noting that an employee may sue their employer for failure to address harassment by a co-worker and that "[e]ven separating the harasser and victim immediately *may not be enough* without further action on the employer's part") (emphasis added).

The Court also agrees with 24HF that Mr. Floyd has not sufficiently alleged extreme and outrageous conduct simply because, as alleged, 24HF had the police remove him from the gym in July 2022 in front of gym patrons "during the busiest hours of the evening," and forced him out of the locker room "half-naked" in October 2022. Mr. Floyd refused to leave when directed to do so by staff. He arguably then trespassed and recruiting the police to remove him was not extreme or outrageous. There is nothing to indicate that 24HF deliberately timed the removal to humiliate Mr. Floyd. As for October 2022, the allegations in the FAC indicate that it was the police's actions that led to Mr. Floyd being removed half naked after he refused to leave immediately. Given the possible urgency of his removal, 24HF cannot be deemed to have engaged in extreme or

outrageous conduct as a result of the police not affording Mr. Floyd and opportunity to shower and dress in street clothes.

The Court therefore dismisses the claim for IIED. The dismissal is with prejudice as Mr. Floyd has failed to show that he could amend the claim so that it would be viable.

F. Count 6: Negligent Training and Supervision

Count 6 is a claim for negligent training and supervision. In the FAC, Mr. Floyd suggests that 24HF is liable for negligent training and supervision because the employees from the July and October 2022 incidents "remained employees" after each incident. FAC at 13. Also, there was no retraining of the employees afterward. *See* FAC at 13.

In its motion, 24HF argues that this negligence claim should be dismissed because Mr. Floyd has fundamentally misunderstood what such a negligence claim is about. There must be allegations that, because of a failure to train or supervise, the plaintiff was injured. Here, that would mean, because 24HF failed to train or supervise, its employees treated Mr. Floyd improperly in July and October 2022. 24HF notes that a claim for negligent training or supervision often involves "an employer retaining an employee with a past history of wrongdoing," Mot. at 13, but Mr. Floyd has made no allegation that the employees involved with the July and October 2022 incidents had a past history of wrongdoing.

In his opposition, Mr. Floyd implicitly recognizes there is some deficiency in his claim as pled. He has recharacterized the claim, arguing that "[f]ailing to retrain after the first incident *led to* the second incident. The actions after the second incident were acknowledged and approved by management, who then decided to cancel my membership." Opp'n at 7 (emphasis added). Even if the Court accepts this new theory, it is problematic. The employees involved in the July and October 2022 incidents were different. *See* Opp'n at 13 (stating that employees involved in the July 2022 incident were "manager Martinez and employee Sanchez" and that employees involved in the October 2022 incident were "manager Kane and employee Pratt"). Thus, this is not a case where 24HF employees allegedly acted improperly in July 2022 and should have been retrained but were not, which then led the same employees to engage in the same kind of misconduct again in October 2022. Furthermore, even if the employees in the July 2022 incident acted improperly,

there is nothing to suggest that their conduct was so problematic or part of a pattern or practice of improper conduct such that 24HF was put on notice that it should provide better training or supervision – *i.e.*, such that its failure to act was part of the reason why employees acted improperly in October 2022. Notably, Mr. Floyd contends what happened in October 2022 differed in some ways from the July 2022 incident where he was permitted to shower and then leave.

Therefore, the Court grants the motion to dismiss the claim for negligent training and supervision. The dismissal is with prejudice based on futility (*i.e.*, even Mr. Floyd's new theory as articulated in the opposition brief is problematic).

G. Count 8: False Imprisonment/False Arrest

Count 8 is a claim for false imprisonment/false arrest. Mr. Floyd contends that 24HF caused him to be arrested for trespassing. This is for the October 2022 incident only. *See* FAC at 15-16 (alleging that a 24HF manager "walked into the locker room and demanded the Plaintiff leave [the] gym, claiming harassment of its customer," and then "ordered the police to arrest the Plaintiff for trespassing to not allow the Plaintiff to finish clothing himself within the locker room"); FAC, Ex. 1 (page 1) (alleging that "[t]he unknown man [wearing a 24HF badge] asked me to leave," that "I told him that I need to take a shower first," that "[t]he unknown male refused this request," and that "the officers told me that I am trespassing and told me that I am under arrest").

A private citizen can be held liable for a false arrest. As Mr. Floyd points out, there is a CACI jury instruction reflecting such:

> [Name of plaintiff] claims that [he/she/nonbinary pronoun] was wrongfully arrested by [name of defendant]. To establish this claim, [name of plaintiff] must prove all of the following:
>
> 1. That [name of defendant] intentionally caused [name of plaintiff] to be arrested without a warrant; [and]
>
> 2. That [name of plaintiff] was [actually] harmed; and
>
> 3. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.
>
> [A private person does not need to physically restrain a suspect in order to make a citizen's arrest. A private person can make a citizen's arrest by calling for a peace officer, reporting the offense,

and pointing out the suspect.]

CACI 1403.

While CACI 1403 sets forth the elements of such a claim for false arrest, the next jury instruction – CACI 1404 – provides for an affirmative defense to such a claim.

> [Name of defendant] claims the citizen's arrest was not wrongful because [he/she/nonbinary pronoun] had the authority to cause [name of plaintiff] to be arrested without a warrant.
>
> [If [name of defendant] proves that [name of plaintiff] committed or attempted to commit a crime in [name of defendant]'s presence, then the arrest was lawful.]
>
> [or]
>
> [If [name of defendant] proves that a felony was committed and that [insert facts, that if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony], then the arrest was lawful.]

CACI 1404.

In its motion to dismiss, 24HF essentially argues that the claim for false arrest should be dismissed because the arrest was not false: Mr. Floyd engaged in trespassing by not leaving when asked (as alleged in the FAC). Although 24HF has tried to frame this argument as one of causation, *see* Mot. at 15 (asserting that 24HF's "employee did not cause Plaintiff's arrest [but] [r]ather, Plaintiff did"), 24HF is really arguing for dismissal based on an affirmative defense – *i.e.*, no wrongful arrest. *See Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902 (9th Cir. 2013) (noting that an affirmative defense that appears on the face of a pleading can be the basis for a dismissal under Rule 12(b)(6)).

As for the merits of 24HF's argument, the Court first takes stock of what exactly Mr. Floyd was arrested for. 24HF has provided a copy of the police case report. *See* RJN, Ex. G (case report). The report reflects that Mr. Floyd was arrested for two offenses: (1) trespass of real property, a violation of California Penal Code § 602, and (2) resisting, delaying, or obstructing a peace officer, a violation of California Penal Code § 148(a)(1). The Court disregards the second offense as there is no indication that Mr. Floyd seeks to hold 24HF liable for false arrest based on that offense.

Section 602 provides that "a person who willfully commits a trespass by any of the

following acts is guilty of a misdemeanor." Cal. Pen. Code § 602. The police case report indicates that the police arrested Mr. Floyd based on § 602(m) specifically:

> The employee advised Floyd to leave the premises because he violated gym policies; however, Floyd refused to leave and began approaching the employee as if he was going to assault him physically. Officer Sawyer and I intervened and advised Floyd to leave. Floyd refused to leave, and the reporting party stated he wanted to place Floyd under citizen's arrest for trespassing. Due to the reporting party being employed by 24-hours fitness [sic], asking Floyd to leave, and Floyd refusing, he violated 602(m).

RJN, Ex. G (Report at 4). Section 602(m) defines the following as trespassing: "Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession." Cal. Pen. Code § 602(m).

As noted above, CACI 1404 provides that an arrest was not unlawful if the defendant proves that that the plaintiff *committed* (or attempted to commit) a crime in the defendant's presence. *See* CACI 1404. Although that is a relatively high standard, 24HF has a meritorious argument that, based on the allegations in the FAC, Mr. Floyd did commit the offense of trespassing: as alleged, he was asked to leave private property and did not do so. (As alleged in the FAC, Mr. Floyd stated he wanted to take a shower first.) Mr. Floyd does not cite any authority suggesting that 24HF could revoke its consent to his presence in the gym (for purposes of trespass law) only if it had a valid basis to revoke. *Cf. See Cohodes v. MiMedx Grp., Inc.*, No. 22-cv-00368-RFL, 2024 U.S. Dist. LEXIS 181477, at *18 (N.D. Cal. Sept. 24, 2024) (noting that the interest that "the tort of trespass protects [is] the ownership or possession of land"). Moreover, even if there were such a requirement, here, the allegations of the FAC establish that 24HF had a basis to revoke that permission: a gym member had complained he had touched her inappropriately, and Mr. Floyd has not alleged that 24HF knew or should have known that the complaint was not real. Mr. Floyd cites no similar case where a court has held an owner cannot revoke permission.

Accordingly, the Court grants the motion to dismiss the claim for false imprisonment/arrest. The dismissal is with prejudice as the claim is futile based on the allegations in the FAC. Furthermore, Mr. Floyd cannot plead around the allegations in the FAC simply to

avoid dismissal.

H. Count 9: Defamation/Slander

In Count 9, Mr. Floyd claims that a 24HF employee defamed him by telling two police officers that Mr. Floyd had "assaulted a woman by grabbing her buttocks." FAC at 16. 24HF moves to dismiss the claim on the basis that the employee's statement was privileged under California Civil Code § 47. Section 47(b) states in relevant part that

> [a] privileged publication or broadcast is one made:
>
> . . .
>
> (b) In any (1) legislative, (2) judicial proceeding, (3) *in any other official proceeding authorized by law*, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure [addressing writs of mandate] .
> . . .

Cal. Civ. Code § 47(b) (emphasis added). *See, e.g.*, *Devis v. Bank of Am.*, 65 Cal. App. 4th 1002, 1007-08 (1998) (stating that "reports made by citizens to police regarding potential criminal activity are communications [that] fall within the section 47 privilege"; such a communication is part of an official proceeding just as much as a communication made after an official investigation has commenced).

The subsection, however, "does not make privileged any communication between a person and a law enforcement agency in which the person makes a false report that another person has committed, or is in the act of committing, a criminal act or is engaged in an activity requiring law enforcement intervention, *knowing* that the report is false, or *with reckless disregard* for the truth or falsity of the report." *Id.* (fifth exception to § 47(b)) (emphasis added); *cf. id.* § 47(c) (providing that a publication is privileged if made "[i]n a communication, without malice, to a person interested therein, (1) by one who is also interested").

In his opposition, Mr. Floyd argues that the 24HF employee spoke with reckless disregard for the truth or falsity of the gym member's complaint about him. "Accepting the accusation of the 'accuser' without any further questioning is a reckless disregard for the truth . . . ." Opp'n at 7. Though not entirely clear, he also suggests reckless disregard because "the accuser cannot [even]

be identified" by 24HF. Opp'n at 8.

Although Mr. Floyd's position is not entirely without merit, the Court still grants the motion to dismiss the claim. The Court cannot say that the 24HF employee acted with reckless disregard because, as alleged, the information he had before him was that (1) a woman had complained about Mr. Floyd grabbing her bottom and (2) there were prior incidents in which customers had complained about Mr. Floyd. *See* FAC, Ex. 1 (page 1) ("The unknown man wearing a 24 Hour Fitness badge stated that I assaulted someone. . . . [H]e said that I grabbed a woman's ass and she reported this. . . . [¶] The unknown man then stated there were multiple other incidents prior to this incident where people complained about me."). There are no allegations that the 24HF knew or should have known that the complaints against Mr. Floyd were not substantiated in any way. Mr. Floyd does not allege with specificity facts which establish such knowing falsity or reckless disregard for the truth. *See generally Iqbal*, 556 U.S. at 662 (2009); *Twombly*, 550 U.S. at 544. Mr. Floyd has had sufficient opportunities to make any such allegations in his prior complaints.

The Court therefore dismisses the claim with prejudice.

I. Count 3: Negligent Infliction of Emotional Distress

In his claim for negligent infliction of emotional distress ("NIED"), Mr. Floyd alleges that 24HF negligently caused him emotional harm because, *e.g.*, it did not give him information about the claims being made against him, demanded that he leave the gym without showering, asked the police to arrest him for trespassing, and refused to allow him to collect his belongings. *See* FAC at 10-11. 24HF argues that the NIED claim should be dismissed because it is simply a claim for negligence, *see Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984 (1993) (stating that "there is no independent tort of negligent infliction of emotional distress[;] [t]he tort is negligence"), and Mr. Floyd has failed to plead all of the elements of a negligence claim – in particular, the element of duty. *See* Mot. at 11. 24HF asserts:

> there are no facts alleged that 24 Hour Fitness owed Plaintiff a duty under the circumstances of this case where Plaintiff was repeatedly accused of harassing and touching gym members. In his opposition, Plaintiff asserts that the duty is a "special relationship" between him and 24 Hour Fitness derived from being a contracted gym customer

> of 24 Hour Fitness. Other than being a contracted gym member of 24 Hour Fitness, Plaintiff fails to include any facts to support what "special relationship" created a duty under these circumstances. Instead, Plaintiff states as a legal conclusion that a duty was owed, without any support, and the Court may not assume the truth of such conclusions.

Reply at 4.

Duty is a question of law for a court to decide, *see Kesner v. Superior Court*, 1 Cal. 5th 1132, 1142 (2016), but a court's decision can turn on the underlying facts of the case. *See Bararsani v. HDI Global Ins. Co.*, No. CV 21-3679 PA (SHKx), 2021 U.S. Dist. LEXIS 215951, at *3 (C.D. Cal. Nov. 5, 2021) (indicating that a negligence claim fails if a plaintiff does not allege facts establishing a legal duty). "Whether a particular defendant owes a particular plaintiff a legal duty of care (actionable in a claim for negligence) is, at bottom, a 'question of public policy' – namely, should that plaintiff's interests be entitled to legal protection against the defendant's conduct?" *Shalghoun v. North Los Angeles County Regional Center, Inc.*, 99 Cal. App. 5th 929, 943 (2024).

The Court holds that, in the case at bar, the issue of legal duty cannot be decided at the 12(b)(6) phase and is more appropriately analyzed through the lens of summary judgment which is predicated on a factual record. The existence of a legal duty is not implausible based on the allegations in the FAC. Section 1714(a) (discussed above) provides a potential basis for a legal duty. *See Shalghoun*, 99 Cal. App. 5th at 943 (noting that "a person has a legal duty to act reasonably and with due care under the circumstances with respect to their own actions," which arises from § 1714(a)). If the investigation were inadequate (in part because 24HF failed to give Mr. Floyd an adequate opportunity to answer the claims of harassment) and thus 24HF had no cause to eject him and to do so on an argent basis, the harm to Mr. Floyd would be foreseeable.

To be sure, the existence of a duty may be informed by public policy considerations that warrant limiting that legal duty. *See id.* at 946. Those considerations are known as the *Rowland* factors and fall into two categories.

> The first category examines the foreseeability of the plaintiff's injury. *Rowland* identifies three foreseeability considerations: (1) whether """the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed"""; (2) the degree of certainty that the

> plaintiff suffered injury; and (3) the closeness of the connection "'between the defendant's conduct and the injury suffered.'"

Id.

The second category

> ask[s] whether "'the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability.'" In other words, they ask whether recognizing the duty "would deter socially beneficial behavior." [These] countervailing policy considerations are: (1) the moral blame attaching to the defendant's conduct, which is "typically found when the defendant reaps a financial benefit from the risks it has created"; (2) whether liability will "'prevent[] future harm,'" which looks to "both the positive and the negative societal consequences of recognizing a tort duty" in terms of how the imposition of liability is likely to play out; (3) the "'extent of the burden to the defendant and consequences to the community of imposing a duty . . . . with resulting liability for breach,'" including whether recognizing tort liability "would impose enormous and unprecedented financial burdens" on likely defendants; and (4) the availability of insurance.

Id. at 947.

24HF's position does not address the legal analysis of duty as laid out above. Some of the public policy considerations in the first category arguably weigh in Mr. Floyd's favor. More important, however, the public policy considerations in the second category need to be evaluated – in this case at least – based on a factual record. If, for example, the 24HF employees were informed that Mr. Floyd had engaged in serious and/or repeated problematic conduct, then it is more likely that 24HF did not owe Mr. Floyd a legal duty to refrain from seeking his immediate removal from the premises. Alternatively, even if a duty were found, 24HF's conduct based on the circumstances might be found reasonable and not negligent. The fact that the Court finds the conduct could not have been deemed extreme and outrageous as required to state a claim for IIED does not preclude a claim for negligence.

Accordingly, the Court denies the motion to dismiss Mr. Floyd's NIED/negligence claim. The Court's ruling here does not preclude 24HF from arguing, in a summary judgment motion, that there are no facts to support a legal duty owed to Mr. Floyd or negligence.

J. Counts 12, 10, and 11: Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Breach of the Implied Duty to Perform with Reasonable Care

In Counts 10-12, Mr. Floyd essentially asserts contract-based claims. For these counts, Mr. Floyd's basic contention is that 24HF (1) failed to properly investigate and (2) improperly terminated his membership even though he did not violate any rules. 24HF moves to dismiss the claims on the basis that they are contrary to the terms of the parties' contract of which it asks the Court to take judicial notice.[5]

A copy of the parties' contract – *i.e.*, the membership agreement – can be found at Exhibit A attached to 24HF's request for judicial notice ("RJN"). The relevant terms of the contract are as follows:

- "[Y]ou agree that by signing this Agreement, you purchased a membership or services, agree to all the terms in this Agreement, and agree to follow 24 Hour's Membership Policies and any Rules." RJN, Ex. A (Agreement ¶ 1).
- "24 Hour may, at its option, terminate your member if . . . (5) you fail to follow any of 24 Hour's Membership Policies or club Rules or violate any part of this Agreement, or (6) your conduct is improper or harmful to the best interest of 24 Hour or its members." RJN, Ex. A (Agreement ¶ 6(f)).

As indicated above, the parties' contract refers to Membership Policies and Club Rules ("Policies"). Those are attached as Exhibit B to 24HF's RJN. The Policies state in relevant part that "[y]ou agree to follow the Policies and Rules" and that,

> [w]hile in 24 Hour facilities, 24 Hour does not permit and will not tolerate any inappropriate conduct. You may not engage in any conduct in any 24 Hour facility that includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any other conduct that harasses or is bothersome to members, guests or employees.
>
> **VIOLATION OF POLICIES OR RULES**: If any member or guest violates any of the Policies or Rules, 24 Hour will ask that

[5] 24HF has also asked the Court to take judicial notice of conflicts that Mr. Floyd has had with other gyms (*e.g.*, Planet Fitness, American Barbell). Those conflicts are not relevant to the case at bar; thus, the Court does not need to take judicial notice of any suits that Mr. Floyd has brought against other gyms after having his memberships in those gyms terminated.

> person to stop or leave. A member's violation of any of the Policies or Rules may also cause 24 Hour, in its sole discretion, to terminate that person's membership and/or other agreements.

RJN, Ex. B (Policies at 1).

Contrary to what 24HF argues, the membership agreement and policies on their face do not preclude the contract-based claims from moving forward. Although 24HF had the right to terminate his membership if, *e.g.*, he violated 24HF's Policies, it is a disputed fact as to whether Mr. Floyd violated the Policies (*i.e.*, engaged in harassing conduct). Although the Policies provide that 24HF has the "sole discretion" to terminate a membership, that sole discretion is implicated only if a member has violated the Policies. Neither the Policies nor the membership agreement states that 24HF has "sole discretion" *to decide* whether a violation of the Policies or agreement occurred in the first place. Thus, Mr. Floyd has alleged he did not violate the Policies, and that issue cannot be decided by a motion to dismiss. Moreover, even though the agreement does not set forth a procedural right with respect to an investigation into allegations of a Policy violation by a member, Mr. Floyd may legally assert that 24HF breached the implied covenant of good faith and fair dealing or implied duty to perform with reasonable care by not conducting a more fulsome investigation. *See, e.g.*, CACI 328 ("The parties' contract requires that [name of defendant] [specify performance alleged to have been done negligently, e.g., install cable television service]. It is implied in the contract that this performance will be done competently and with reasonable care. [Name of plaintiff] claims that [name of defendant] breached this implied condition.").

The Court therefore denies the motion to dismiss the claim for breach of contract and the claim for breach of the implied covenant and breach of the implied duty. Again, this does not foreclose examination upon a motion for summary judgment based on a factual record.

K. Count 1: Violation of § 17200

Section 17200 prohibits unlawful, unfair, and/or fraudulent business acts or practices. In the FAC, Mr. Floyd asserts that 24HF violated § 17200 because he was not given fair accommodation as a gym member and because he was denied a fair harassment policy. *See* FAC at 6; *see also* FAC at 7 (maintaining that 24HF violated their contract and that 24HF failed to have a "proper harassment policy"). Based on these allegations, Mr. Floyd is implicitly invoking the

unfair prong of § 17200.

In his opposition brief, Mr. Floyd adds more information about the claim of unfair business acts or practices: (1) for the July 2022 incident, he was not told of what his alleged misconduct was specifically, when it took place, and who reported it; and (2) for the October 2022 incident, 24HF did not tell him about the problem when it occurred but rather chose to confront him after it had called the police and demanded that he leave "over allegations unsupported by evidence." Opp'n at 5. Thus, the gist of Mr. Floyd's § 17200 claim is that 24HF did not properly investigate, including by giving him an opportunity to defend himself.

24HF's arguments for dismissal of the § 17200 claim are not persuasive. 24HF does not contend that §17,200 generally does not apply. Instead, it suggests that it did tell Mr. Floyd about what his misconduct was in July 2022, but Mr. Floyd's point is that 24HF simply said he had engaged in harassment without providing any more specifics. *See* FAC, Ex. 2 ("They informed me that multiple people over time have accused me of harassing them. I asked them what I did. They informed me that they could not tell me."). Ultimately, it is a question of fact as to whether 24HF treated him fairly – *i.e.*, did an adequate investigation before asking him to leave the gym, calling the police, and/or terminating his membership. Thus, the motion to dismiss the § 17200 claim is denied.

The Court notes that 24HF does not make any argument that Mr. Floyd's § 17200 claim is problematic to the extent he may be seeking damages as relief. The Court notes, however, that only restitution rather than damages is available under § 17,200. But even if 24HF had made that argument, that still would not dispose of the § 17200 claim in its entirety because Mr. Floyd also seeks injunctive relief: specifically, he is asking that his gym membership "be reinstated." FAC at 21.

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III. CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part the motion to dismiss. All claims are dismissed – with prejudice – except for (1) the NIED/negligence claim and (2) the claims for breach of contract and breach of the implied covenant and breach of the implied duty.

This order disposes of Docket No. 66.

IT IS SO ORDERED.

Dated: January 14, 2025

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 3:23-cv-00871-EMC

Honorable Edward M. Chen

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET FOUR

Action Filed: February 27, 2023

PROPOUNDING PARTY: PLAINTIFF, MICHAEL DEVIN FLOYD

RESPONDING PARTY: DEFENDANT, 24 HOUR FITNESS USA, LLC

SET NUMBER: FOUR

Defendant 24 HOUR FITNESS USA, LLC, ("Defendant" or "24 Hour Fitness") by and through its attorneys Seyfarth Shaw LLP, and pursuant to Rule 36 of the Federal Rules of Civil Procedure, hereby objects and responds to Michael Devin Floyd's ("Plaintiff") Request for Admissions, Set Four, as follows:

PRELIMINARY STATEMENT

This response is made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statements contained herein, if such statements were made by a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

The information contained in each response is based only upon the information currently available to Defendant. Defendant's investigation and discovery in preparation for trial is continuing and will continue to and throughout the trial of this action. Additional investigation may disclose further information relevant to these responses, as could information obtained by Defendant from Plaintiff or third parties through additional discovery procedures. Defendant's responses to these interrogatories are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action. Defendant responds to these interrogatories as it understands them and reserves the right to provide different responses if Plaintiff later provides a different interpretation. Defendant is not making any incidental or implied admissions. The fact that Defendant has answered part or all of any interrogatory is not intended and shall not be construed to be a waiver by Defendant of all or any part of any objection to any interrogatory.

Discovery in this matter is ongoing. Defendant reserves its right to alter, amend, supplement or otherwise revise these responses if, for any reason, such revisions or supplements become appropriate or warranted.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSIONS NO. 1:

The officers were dispatched on the scene at 9:47 PM. The Plaintiff checked in at 7:45 PM. But, within the depositions on October 22, 2024, Andrew Pratt stated the police arrived 1.5 hours after being called. Admit that less than 35 non-male persons (women, unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward, CA on October 1, 2022 from 5:45 PM - 8:15 PM?

RESPONSE TO NO. 1:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this Request is unintelligible, vague and ambiguous. Defendant further objects to this Request as assuming facts not in evidence.

Subject to and without waiving these objections, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 2:

The officers were dispatched on the scene at 9:47 PM. The Plaintiff checked in at 7:45 PM. But, within the depositions on October 22, 2024, Andrew Pratt stated the police arrived 1.5 hours after being called. Admit that less than 30 non-male persons (women, unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward, CA on October 1, 2022 from 5:45 PM - 8:15 PM?

RESPONSE TO NO. 2:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this Request is unintelligible, vague and ambiguous. Defendant further objects to this Request as assuming facts not in evidence.

Subject to and without waiving these objections, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 3:

The officers were dispatched on the scene at 9:47 PM. The Plaintiff checked in at 7:45 PM. But, within the depositions on October 22, 2024, Andrew Pratt stated the police arrived 1.5 hours after being called. Admit that less than 25 non-male persons (women, unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward, CA on October 1, 2022 from 5:45 PM - 8:15 PM?

RESPONSE TO NO. 3:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this Request is unintelligible, vague and ambiguous. Defendant further objects to this Request as assuming facts not in evidence.

Subject to and without waiving these objections, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 4:

The officers were dispatched on the scene at 9:47 PM. The Plaintiff checked in at 7:45 PM. But, within the depositions on October 22, 2024, Andrew Pratt stated the police arrived 1.5 hours after being called. Admit that less than 20 non-male persons (women, unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward, CA on October 1, 2022 from 5:45 PM - 8:15 PM?

RESPONSE TO NO. 4:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this Request is unintelligible, vague and ambiguous. Defendant further objects to this Request as assuming facts not in evidence.

Subject to and without waiving these objections, Defendant responds as follows: Deny. Twenty-two non-male persons (21 women and 1 unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward on the date and times identified.

REQUEST FOR ADMISSIONS NO. 5:

The officers were dispatched on the scene at 9:47 PM. The Plaintiff checked in at 7:45 PM. But, within the depositions on October 22, 2024, Andrew Pratt stated the police arrived 1.5 hours after being called. Admit that less than 15 non-male persons (women, unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward, CA on October 1, 2022 from 5:45 PM - 8:15 PM?

RESPONSE TO NO. 5:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this Request is unintelligible, vague and ambiguous. Defendant further objects to this Request as assuming facts not in evidence.

Subject to and without waiving these objections, Defendant responds as follows: Deny. Twenty-two non-male persons (21 women and 1 unknown) checked into 24 Hour Fitness on Whipple Dr. in Hayward on the date and times identified.

DATED: November 21, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC

VERIFICATION

I, Jen Garrett, declare as follows:

1. I am the Sr. Director of Member Support Services for 24 Hour Fitness USA, LLC , Defendant in the above-referenced action, and have read the foregoing **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET FOUR**, and know the contents thereof.

2. The same is true of my own knowledge, except as to the matters that are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this __20_ day of November, 2024, at Carlsbad, California.

Jen Garrett

Jen Garrett

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **November 21, 2024**, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET FOUR

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **November 21, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

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24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 4:23-cv-00871-EMC

Honorable Edward M. Chen

DECLARATION OF H.S., 24 HOUR FITNESS MEMBER NO. 03697104

Action Filed: February 27, 2023

I, H.S., declare:

1. I am a female member of 24 Hour Fitness USA, LLC ("24 Hour Fitness"), the defendant in this action. I first became a 24 Hour Fitness gym member on May 5, 2021, and my current gym member number is 03697104. I have personal knowledge of the following facts and I could and would competently testify if called to do so.

2. I worked out at the 24 Hour Fitness gym in Hayward, California in 2022. When working out during this time, I had many negative interactions with former gym member Michael Floyd, the plaintiff in this action.

3. The first time I met Mr. Floyd we were both working out at the Hayward gym. I recall Mr. Floyd introducing himself to me and trying to engage in a conversation with me. Because I thought Mr. Floyd was trying to flirt with me, I told him that I had a boyfriend. When I said this to Mr. Floyd, I noticed his demeaner changed and he seemed agitated. He eventually walked away.

4. I worked out at the gym in the evening after work, usually between 5:00 p.m. and 6:00 p.m. Mr. Floyd was also at the gym during this time and I would see him three to four times per week also working out. Mr. Floyd made additional attempts to reintroduce himself to me and try to talk to me. Mr. Floyd did not observe boundaries and made me feel really uncomfortable. I found myself constantly trying to avoid being near him, trying to avoid eye contact with him, and trying to ignore him.

5. Almost every time when I worked out and moved about the gym to different machines, I felt that Mr. Floyd was following my movements and would stare at me, and place things next to me. I felt intimidated, harassed, and really uncomfortable.

6. At some point, I started coming to the gym with my female friend V. H. and we would work out together a couple times per week. Mr. Floyd then started to try to speak with my friend V.H. I informed my friend that Mr. Floyd made me feel uncomfortable and that we should not interact with him. She agreed. On one occasion, on July 18, 2022, when I was coming back from the bathroom, I noticed Mr. Floyd

talking to my friend. I grabbed my friend's arm and pulled her away from Mr. Floyd. Mr. Floyd followed after us and started yelling at me, that he was in the middle of talking to her. I told Mr. Floyd that she did not want to speak with him. Mr. Floyd grabbed my friends other arm to stop her from leaving and stated that she could speak for herself. We eventually pulled ourselves away from Mr. Floyd. I was so upset that I yelled at Mr. Floyd to leave us alone. Both of us were really upset by this incident, which we reported to a 24 Hour Fitness employee at the front desk. I was very upset and crying.

7. On September 9, 2022, I was working out in the gym and wanted to lift some weights. I went to where the weights were and grabbed the 20 pound dumbbells from the rack. To my surprise, Mr. Floyd followed me and yelled at me to not take the dumbbells because he was using them. I was very startled by Mr. Floyd yelling at me and gave him the dumbbells. Mr. Floyd then put the dumbbells back on the rack. I never saw Mr. Floyd use the dumbbells and felt like he was just trying to intimidate me. I reported this incident to a 24 Hour Fitness employee at the front desk the same day.

8. My interactions with Mr. Floyd were so uncomfortable that I never felt safe to walk to my car unless a friend came with me or he had already left the gym. I also started carrying mace and a taser because of Mr. Floyd.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 24 2024, in Hayward, California.

H.S.

H.S. (MBR No. 03697104)

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24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 4:23-cv-00871-EMC

Honorable Edward M. Chen

DECLARATION OF V.H., 24 HOUR FITNESS MEMBER NO. 06883049

Action Filed: February 27, 2023

I, V.H., declare:

1. I am a female member of 24 Hour Fitness USA, LLC ("24 Hour Fitness"), the defendant in this action. I first became a 24 Hour Fitness gym member on April 12, 2022, and my current gym member number is 06883049. I have personal knowledge of the following facts and I could and would competently testify if called to do so.

2. I worked out at the 24 Hour Fitness gym in Hayward, California between April 2022 and October 2022. When working out during this time, I had some troubling interactions with former gym member Michael Floyd, the plaintiff in this action.

3. On July 18, 2022, when I was working out with my friend H.S. (female), Mr. Floyd tried to speak to me when H.S. stepped out to the bathroom. I spoke to him, trying to be nice. As I worked out on the Lat Pull Down machine, Mr. Floyd stood unnecessarily close to me. He may have been waiting to use the equipment, but he stood about one foot away from me, invading my personal space and was staring at me. This made me feel very uncomfortable.

4. Once we were done with our workout on the Lat Pull Down, my friend and I walked away as soon as we could so that Mr. Floyd wouldn't try to talk to us. We walked away quickly to try to get away from Mr. Floyd, but he followed us, and kept trying to talk to me. My friend got very upset, told him that I did not want to speak to him (which was true). At that point, Mr. Floyd raised his voice stating that I could speak for myself, and then grabbed my arm to prevent me from walking away. My friend had grabbed my other arm to pull me away from him, yelling at him to leave us alone. We finally were able to walk away but were both in shock and startled by this incident.

5. I ultimately made a complaint about Mr. Floyd to 24 Hour Fitness manager Michael ("Mickey") Martinez, informing him about the above incident. I reported that I was scared of Mr. Floyd, he made me feel very uncomfortable, and I wanted him to leave me alone.

6. On other occasions, when I was working out with the same female friend, Mr. Floyd would work out around us and stare at us. When we later moved around the gym to work out on other equipment, we felt that Mr. Floyd was following us and watching us. This made us both feel very uncomfortable. I have never experienced such uncomfortable interactions with a gym member before Mr. Floyd.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 20, 2024, in Hayward, California.

V.H. (MBR No. 06883049)

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Michael Devin Floyd, IN PRO PER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael Devin Floyd

Plaintiff - Appellant,

vs.

24 Hour Fitness USA, LLC

Defendant(s) - Appellee(s).

Motion for Entry of Summary Judgment, Along with Memorandum of Points and Authorities in Support Thereof

Date: March 27, 2025
Time: 1:30 PM
Dept: Courtroom 05, 17th Floor
Judge: Hon. Edward M. Chen
Trial Date: June 23, 2025
Action Filed: Feb 27, 2023

The Plaintiff requests entry of Summary Judgment for all claims within this lawsuit. According to the Clarification order, the claims remaining in this lawsuit are (1) negligence/negligent infliction of emotional distress; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; (4) breach of the implied duty to perform with reasonable care; and (5) violation of California Business & Professions Code § 17200. (ECF No. 90 at 4_17).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Legal Summary Judgment Recitations

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the initial burden of establishing the basis of its motion and of identifying the portions of the declarations, pleadings, and discovery that demonstrate absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party has "the burden of showing the absence of a genuine issue as to any material fact, and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party." Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). A fact is material if it could affect the outcome of the suit under applicable law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. Id. The party opposing summary judgment cannot " 'rest upon the mere allegations or denials of [its] pleading' but must instead produce evidence that 'set[s] forth specific facts showing that there is a genuine issue for trial.' " Estate of Tucker v. Interscope Records, Inc., 515 F.3d 1019, 1030 (9th Cir. 2008), cert. denied, 555 U.S. 827, 129 S.Ct. 174, 172 L.Ed.2d 44 (2008) (quoting Fed. R. Civ. P. 56(e)).

Holt v. Noble House Hotels & Resort, Ltd, 370 F. Supp. 3d 1158, 1162–63 (S.D. Cal. 2019).

II. Introduction of Facts

The Plaintiff Michael Devin Floyd purchased a gym membership at Defendant 24 Hour Fitness USA, LLC on January 5, 2022 in Milpitas, California. (Exhibit 01 at 3). Floyd purchased the

Platinum membership, given him access to all 24 Hour Fitness clubs. (Exhibit 01 at 1). While a member at 24 Hour Fitness, Floyd was involved in various incidents with other gym members. All of these incidents were at the 24 Hour Fitness off Whipple Rd in Hayward, CA.

The first incident occurred on June 15, 2022. (Exhibit 02 at 4). Floyd alerts staff that another gym member insulted Floyd by calling him a racial slur. Resolution of the problem was attempted, bringing Floyd and his abuser together. The perpetrator denied the accusation. Floyd wanted the perpetrator removed from the premises. But, since there were no witnesses, Floyd and his abuser were given only verbal warnings. (Exhibit 02 at 4).

The next incident occurred on July 18, 2022. (Exhibit 02 at 4). A list of Defendant employees on that day was obtained through discovery. (Exhibit 12). Defendant manager Martinez is not on that list. Martinez declares in his deposition that this day is his first day working at that gym. (Exhibit 03 at 22_12). Now, on his first day working at the gym, Martinez admits to confronting Floyd concerning a complaint while Floyd was on the leg machine. (Exhibit 03 at 16_24). Defendant employee Adam Sanchez accompanied Martinez. Martinez admits to demanding Floyd leave the premises. (Exhibit 03 at 18_14). Martinez proclaims he tried to talk to Floyd (Exhibit 03 at 17_24), but somehow also never told Floyd any details about the complaint (Exhibit 03 at 21_9). Martinez admits to telling Floyd to return and speak to a higher manager concerning the complaint he has not described at all to Floyd. (Exhibit 03 at 27_3). Floyd refuses to leave the premises. (Exhibit 03 at 22_19). Floyd had never seen these employees [Martinez and Sanchez] prior to this incident, claiming there was a complaint about him with absolutely no additional details provided. (Exhibit 03 at 22_19). Floyd declared he did not attempt to speak to anyone in the gym that day prior to the conversation with Martinez. Police were called and Floyd was escorted out of the gym by police. (Exhibit 03 at 22_19). Floyd returns to the gym in the following days and speaks to Defendant general manager Alyese Bryant and Michael Martinez together. (Exhibit 03 at 35_9). Floyd was

provided no further information nor details regarding the complaint. Floyd is informed he is allowed to re-continue his membership. Floyd provided the declaration in Exhibit 2 of the operative complaint to Bryant during this time and through email. (Exhibit 13).

The next incident occurs on September 9, 2022. (Exhibit 02 at 4). The notes in Defendant's computer, taken the day after, states Floyd yelled at a gym member from across the gym when she was attempting to use the dumbbells he was using. (Exhibit 02 at 4). Floyd was never informed of this incident. This is ordinary behavior in a gym. Floyd was using the dumbbells and someone attempted to use the dumbbells. Floyd was never informed of specific problematic behavior prior to 10/01/2022.

The final incident occurred on October 1, 2022. On Oct 1, 2022, Defendant manager Walter Kane demanded Floyd leave the gym in front of police. (ECF No. 87 at 2_17). When Floyd asked why he was being forced to leave, the Defendant manager Kane stated a woman complained that Floyd grabbed her ass. Floyd was informed that this accusation occurred that day. (Exhibit 4 at 3:00). Floyd was informed that there were also multiple other complaints throughout his membership. Floyd was only informed of one prior complaint: when he was removed on 07/18/2022. [Though the Plaintiff had to use the body worn camera video to show proof of the inappropriate touching accusation for the Oct 1, 2022 incident, the Plaintiff will attest this body worn camera evidence has been drastically altered.]

Through discovery, the Plaintiff has learned that there was only one complaint made on Oct 1, 2022 against the Plaintiff. (Exhibit 5, Int 1). That complainant only reported her complaint to Defendant employee Andrew Pratt. (Exhibit 5, Int 1). Pratt testified that the complainant never mentioned inappropriate touching; the complaint was about a sexual comment. (Exhibit 06 at 11_19). Pratt also testified he told Defendant manager Kane about a sexual comment complaint. (Exhibit 06 at 13_6). Thus, Kane was not informed by a gym member nor a gym employee that the

Plaintiff inappropriately touched a woman that night; any allegation of inappropriate touching was false. Yet, Kane walked into the locker room and demanded the Plaintiff leave, stating the false allegation as the reason. (Exhibit 4 at 3:00). Pratt also mentioned the complaint occurred an hour and a half prior to police arrival. (Exhibit 06 at 13_17). [Though the Plaintiff had to use the body worn camera video to show proof of the inappropriate touching accusation for the Oct 1, 2022 incident, the Plaintiff will attest this body worn camera evidence has been drastically altered.]

Floyd's membership to Defendant's gym was subsequently frozen, placed on hold. (Exhibit 02 at 3). Floyd visited the gym multiple times after the 10/01/2022 police removal, attempting to get his membership reinstated and obtain more information concerning the alleged assault. He wasn't provided any additional information, speaking with Defendant General Manager Bryant on most of these occasions. Floyd received a call from Defendant's District Manager Kesan Pillai on October 13, 2022. Pillai informed Floyd his membership to 24 Hour Fitness was revoked. (Exhibit 02 at 1).

Defendant cannot identify the 10/01/2022 complainant. (Exhibit 09 at Int 01). At the Plaintiff's demand prior to filing this lawsuit, Defendant retained video surveillance of its facility during that night. (See Complaint, Exhibit 1 at 4). Pratt stated the complaint convo occurred at the front desk an hour and a half prior to police arrival. (Exhibit 03 at 13_17, 17_3). This provides an exact location and approximate time of the complaint. Defendant has a timestamp of every member entering the facility. (Exhibit 10 at RFAs 1-4). Only members accessed the facility that night. (Exhibit 11 at Int 5). Defendant should be able to locate the woman who complained. It is out of 22 possible people. (RFA04). It is inexcusable that the complainant who caused Floyd's membership to be canceled was never identified.

III. California Business & Professions Code § 17200: California Unfair Competition Law ("UCL")

California's UCL permits civil recovery for "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising...." Cal. Bus. & Prof. Code § 17200. "An 'unfair' business practice is actionable under the [UCL] even if it is not 'deceptive' or 'unlawful.' " Buller v. Sutter Health, 160 Cal. App. 4th 981, 990, 74 Cal.Rptr.3d 47 (Ct. App. 2008). An "unfair" business practice occurs "when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Wilner v. Sunset Life Ins. Co., 78 Cal. App. 4th 952, 965, 93 Cal.Rptr.2d 413 (Ct. App. 2000) (internal quotation marks and citations omitted). "An act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided." Daugherty v. Am. Honda Motor Co., Inc., 144 Cal. App. 4th 824, 839, 51 Cal.Rptr.3d 118 (Ct. App. 2006).

There are major discrepancies when Defendant took action concerning complaints concerning Floyd. On 06/15/2022, when Floyd was the alleged victim, an investigation was conducted, conflict resolution was attempted by bringing both parties together, and notes were placed in both accounts concerning the matter. Floyd's status as the alleged victim did not override the fairness in adjudicating two contrasting stories: there was no witness and both parties were given warnings after the conflict resolution failed. Detailed notes were written in both accounts.

Floyd as the alleged perpetrator illustrates the Defendant's unscrupulous policy. When and if the 07/09/2022 incident occurred, Floyd was not notified. There weren't any notes placed in the system. There was no investigation conducted. No attempts at conflict resolution between both parties. Floyd wasn't notified of his behavior that caused the problem nor the alleged victim(s).

This would make it impossible to prevent it from happening in the future, if "it" ever happened in the first place. When and if the 07/18/2022 incident occurred, Floyd was informed he had to leave the premises. Floyd was informed he needed to return to speak with a higher manager. Undetailed, accusatory notes were placed in the system. No investigation was conducted. No attempts at conflict resolution between both parties. Floyd wasn't notified of his behavior that caused the problem nor the alleged victim(s). This would make it impossible to prevent it from happening in the future, if "it" ever happened in the first place. When and if the 09/09/2022 incident occurred, Floyd was not notified. There were accusatory notes placed in the system; those notes don't describe notifying Floyd or any attempts at conflict resolution. There was no investigation conducted: this one member is now responsible for all previously mentioned complaints, yet Floyd lacks knowledge of her identity. Floyd wasn't notified of his behavior that caused the problem nor the alleged victim(s). This would make it impossible to prevent it from happening in the future, if "it" ever happened in the first place.

And, when and if the 10/01/2022 incident occurred, Floyd was notified 1.5 hours after the complaint, with police present. Without any investigation, Floyd was informed he had to leave the premises first; Floyd was only later notified of the alleged assault after Floyd's continuous questioning. No attempts at conflict resolution between both parties. Floyd wasn't notified of the alleged victim(s).

On two occasions, Floyd has suffered embarrassing demands to leave the premises before any notice of a problem. Before any description of problematic conduct. On 07/18/2022, Defendant manager demands Floyd leave the premises immediately, months later alleging a female member reported Floyd touched her on her stomach nine days prior. That single action in no way constitutes a valid reason to remove someone from the premises of a gym. And again, on 10/01/2022, Defendant manager demands Floyd leave the premises prior to even notifying Floyd

of the alleged assault complaint occurring well over an hour ago. No investigation, notification, nor attempts at conflict resolution for an hour and a half. These complaints cannot be taken with greater scrutiny than the 06/15/2022 incident, where Floyd was the alleged victim. Floyd was called a racial slur that day. Detailed notes written in the account concerning notifying both parties, along with conflict resolution. No removal from the premises of the alleged perpetrator, even after Floyd's insisted requests.

On three occasions, Floyd wasn't notified of his behavior that caused the problem nor the alleged victim(s). This would make it impossible to prevent it from happening in the future, if "it" ever happened in the first place. All three of those occasions involve a single member. Proper notice and resolution of the problem on 07/09/2022 (if this even happened), would have prevented the incidents on 07/18/2022 and 09/09/2022.

IV. Breach of Contract (BOC)

To prevail on a breach of contract claim, a plaintiff must show: "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiffs." Williams & Cochrane, LLP v. Rosette, 631 F. Supp. 3d 884, 902 (S.D. Cal. 2022), aff'd, No. 23-55166, 2024 WL 1651666 (9th Cir. Apr. 17, 2024). (citing Orcilla v. Big Sur, Inc., 244 Cal. App. 4th 982, 1004, 198 Cal.Rptr.3d 715 (Ct. App. 2016)).

Floyd signed a contract with Defendant 24 Hour Fitness USA, LLC. This contract was for a Platinum access gym membership to all 24 Hour Fitness locations.

Floyd performed everything required by him within the contact: he paid his dues and properly conducted himself within the gym facilities. (Exhibit 07). Floyd did not engage in any inappropriate conduct. Floyd was never informed by members of Defendant's staff of a bothersome specified conduct or a bothered specified person prior to October 1, 2022.

Defendant breached the contract in many ways. The first breach occurred in the unfairness of its complaint policy, treating Floyd when he was the alleged victim differently than when he was the alleged perpetrator. This first breach is stated in the preceding section advocating for UCL violation. The second breach occurred on 10/01/2022; another instance of unfair treatment after a baseless allegation. A complaint alleging an unwanted sexual comment morphed into a malicious slandering of Floyd's reputation, then an arrest for trespassing. Defendant's manager Kane lied in front of police, proclaiming Floyd assaulted the alleged victim by grabbing her buttocks. Defendant's manager ordered the police to arrest Floyd for trespassing before he finished locker room tasks. The third breach of the contract occurred when Defendant cancelled Floyd's membership. Defendant had no grounds to cancel Floyd's membership, since it could not identify an alleged victim.

The injuries to the Plaintiff are noted in the operative complaint: bruises from handcuffs, purchasing other gym memberships at less convenient gyms, and emotional distress. The Plaintiff has also been battling gastrointestinal disorders possibly caused by the emotional distress.

V. Breach of the Implied Covenant of Good Faith and Fair Dealing

Under California law, establishing that there has been breach of contract is prerequisite to obtaining recovery under theory of breach of implied covenant of good faith and fair dealing. Centigram Argentina, S.A. v. Centigram Inc., 60 F. Supp. 2d 1003 (N.D. Cal. 1999).

The preceding summary judgment section establishes a breach of contract in multiple ways.

Under California law, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Foley v. Interactive Data Corp., 47 Cal. 3d 654, 683, 254 Cal.Rptr. 211, 765 P.2d 373 (1988). "The implied covenant protects the reasonable expectations of the contracting parties based on their mutual promises."

Digerati Holdings, LLC v. Young Money Entm't, LLC, 194 Cal. App. 4th 873, 885, 123 Cal.Rptr.3d 736 (2011). To maintain a claim for breach of the implied covenant, a plaintiff must show that "a contract exists between the parties, that the plaintiff performed his contractual duties or was excused from nonperformance, that the defendant deprived the plaintiff of a benefit conferred by the contract in violation of the parties' expectations at the time of contracting, and that the plaintiff's damages resulted from the defendant's actions." Singh v. Google Inc., 2017 WL 2404986, at *3 (N.D. Cal. June 2, 2017). (quoted from eOnline Glob., Inc. v. Google LLC, 387 F. Supp. 3d 980, 989 (N.D. Cal. 2019)).

For the same reasons as discussed in the previous two sections advocating summary judgment for UCL and BOC, the Defendant violated California's implied covenant of good faith and fair dealing.

VI. Breach of the Implied Duty to Perform with Reasonable Care

As a result, "[e]ven where there is a contractual relationship between the parties, a cause of action in tort may sometimes arise out of the negligent manner in which the contractual duty is performed." Eads v. Marks, 39 Cal.2d 807, 810, 249 P.2d 257 (1952). Thus, failure to use reasonable care in performing contractual duties may give rise to actions sounding in tort and in contract. Everett Assocs., Inc. v. Transcon. Ins. Co., 159 F. Supp. 2d 1196, 1201–02 (N.D. Cal. 2001), aff'd, 35 F. App'x 450 (9th Cir. 2002).

For the same reasons as discussed in the previous three sections advocating summary judgment for UCL and BOC and implied covenant of fair dealing, the Defendant violated California's implied duty to perform with reasonable care.

Along with those reasons, it can be observed through evidence that the Defendant didn't perform its implied duties while recklessly and negligently investigating "complaints" against Floyd. "Complaints" is placed in quotes because alleged victims were never identified to Floyd.

"Complaints" is placed in quotes because Floyd was never alerted to the conduct that caused any of the complaints, with the exception of the 10/01/2022 lie.

If a complaint against Floyd occurred on 07/09/2022, Floyd was not alerted that day. Floyd checked into the same facility 5 different times between 07/09 and 07/18: he should have been notified during any of these times. (Exhibit 08 at 7). Yet when Floyd was finally notified on 07/18, Floyd was demanded to leave the premises by the Defendant manager. Those were the first words spoken to Floyd by the manager. No description of when, what or who complained.

Similar to 07/09, if a complaint against Floyd occurred on 10/01/2022, Floyd was not alerted for the hour and a half delay until police arrived. And similar to 07/09, Floyd was demanded to leave the premises by the Defendant manager Kane. Those were the first words spoken to Floyd by the manager. No investigation, no conflict resolution. Floyd was not allowed to finish his locker room activities and was arrested for trespassing while half of his body lay naked. Kane did not use reasonable care.

> A contractual obligation may create a legal duty and the breach of that duty may support an action in tort; however, conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law. Erlich v. Menezes, 21 Cal. 4th 543, 981 P.2d 978 (1999).

VII. Facts in Dispute

The preceding sections used facts to motion for summary judgment. This section will cover the facts in dispute.

a. July 9, 2022 (Exhibit 02 at 4)

The Defense claims there was an incident on 07/09/2022 involving myself and two female members (hereinafter named Protective Liar Cousins). The Defense claims the Protective Liar Cousins reported this on that day. I was not made aware of the problem on 07/09-07/12: I

checked-in seven times in those 4 days to the same Hayward location. (Exhibit 8 at 7). I was initially made aware of the 07/09 complaint through discovery in the Alameda County Superior Court proceedings for trespassing on February 27, 2023.

b. July 18, 2022 (Exhibit 02 at 4)

On 07/18/2022, Defendant manager Martinez approached me and informed me I had to leave the facility. I questioned for further details and was provided only the general knowledge there was a complaint against me. The complaint occurred that day. The complaint was from one female member. I had not talked to anyone that day yet. He insisted on me leaving, informing me he would call the police.

Martinez's recollection of those events differ from mine. According to that Defendant's paid employee, Protective Liar Cousins reported to Martinez that Floyd made them feel uncomfortable. (Exhibit 03 at 11_5). According to Defendant's paid employee Martinez, those same Protective Liar Cousins also informed Martinez there was another incident between them and Floyd nine days prior: Protective Liar Cousins allege Floyd touched one of them on their stomach. (Exhibit 02 at 4, Exhibit 03 at 11_19). Protective Liar Cousins did not state the touch was after a request to discontinue association or conversation with Floyd, if this story is even real. Remarkably, this is Martinez's first day working at that gym. (Exhibit 03 at 22_12). Martinez does not remember his location within the gym when Protective Liar Cousins approached him. (Exhibit 03 at 16_21). Although one of these Protective Liar Cousins is claimed to have additional subsequent problems with Floyd, Martinez cannot provide any description of Protective Liar Cousins' appearance. (Exhibit 03 at 11_2-13, at 29_5). Martinez declares Floyd attempted to speak with Protective Liar Cousins on 07/18/2022. (Exhibit 03 at 13_17).

Martinez declares he approached Floyd after Protective Liar Cousins complained. (Exhibit 03 at 16_18). Martinez states he was unsuccessful in talking to Floyd. (Exhibit 03 at 17_12-20). But,

Martinez also confessed he did not provide Floyd with any details concerning any complaint. (Exhibit 03 at 21_9). Thus, it is unknown what he could have expressed to Floyd during his "attempt" at conversation with Floyd, other than a demand to leave the gym. It is clear he requested Floyd to leave the premises based on an unexplained complaint. (Exhibit 03 at 18_14). Martinez expressed that Protective Liar Cousins were scared of Floyd in his deposition. (Exhibit 03 at 22_8). Failed attempts at conversation and a touch on the stomach are not grounds to substantiate Protective Liar Cousins' fears. Martinez states Floyd was looking around the gym for Protective Liar Cousins. (Exhibit 3 at 30_10). Yet, Floyd was provided no indication of who, what or when the problem occurred.

c. <u>September 9, 2022 (Exhibit 02 at 4)</u>

Floyd was never informed of this incident. The member notes make an ordinary interaction seem like a dramatic event. A gym member attempted to use weights Floyd was previously using. Floyd took the weights from her. The notes mention Floyd did not use the weights after. (Exhibit 02 at 4). But, these notes are accusatory - very different from the notes on 06/15/2022. No conversation with Floyd about the incident. There was a reason Floyd didn't use the dumbbells after: Floyd may have been too tired, Floyd may have forgotten he finished, Floyd may have gone to the bathroom.

Martinez was not present during the 09/09/2022 incident. (Exhibit 03 at 28_21). His deposition testimony is hearsay based on the member notes. (Exhibit 03 at 38_10-25). Martinez never spoke to Floyd about specific details concerning this incident. (Exhibit 03 at 33_18). Martinez claims one of the Protective Liar Cousins was the complaining member in this report.

d. <u>September 30, 2022 (Exhibit 02 at 4)</u>

Floyd was never notified of this problem. Defendant cannot identify the woman in this incident. Another accusatory set of notes without any notice, investigation, nor conflict resolution.

VIII. Additional Words

I was not able to depose Protective Liar Cousins. I was only provided initials and declarations, in accordance with this Court's order. (ECF No. 44, Exhibit 09 at Int 03). Those third party declarations taken from cousins of the Defense should not be admitted as evidence.

I was not able to depose Defendant manager Walter Kane. Kane is the manager who lied with malicious intent in front of police on 10/01/2022. His whereabouts are unknown. It appears like he has deliberately evaded contact from both parties in this lawsuit.

I was deposed by the Defense on January 14, 2025. I have not received the final version of that transcript, but do intend to include it, hopefully in the later briefing of this motion.

DATED: February 20, 2025

Michael Devin Floyd

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Michael Devin Floyd, IN PRO PER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael Devin Floyd Plaintiff - Appellant, vs. 24 Hour Fitness USA, LLC Defendant(s) - Appellee(s).	**Affidavit in Support of Motion for Entry of Summary Judgment** Date: March 27, 2025 Time: 1:30 PM Dept: Courtroom 05, 17th Floor Judge: Hon. Edward M. Chen Trial Date: June 23, 2025 Action Filed: Feb 27, 2023

I, Michael Devin Floyd, hereby declare:

1. I am the Plaintiff in this lawsuit, representing myself. If called upon to testify, I could and would do so.

2. I request an entry of Summary Judgment for all claims within this lawsuit. According to the Clarification order, the claims remaining in this lawsuit are (1) negligence/negligent infliction of emotional distress; (2) breach of contract; (3) breach of the implied covenant

of good faith and fair dealing; (4) breach of the implied duty to perform with reasonable care; and (5) violation of California Business & Professions Code § 17200. (ECF No. 90 at 4_17).

3. The subsection titled "Introduction of Facts" in the accompanying motion has all the facts needed to understand the claims in this lawsuit. Those facts are backed by the evidence obtained in this lawsuit through discovery. Those facts should be treated as part of this affidavit.

4. Although I restate many of my declarations in this affidavit and the accompanying motion, the declarations attached to the operative Complaint should be observed with the highest regard. Those declarations were written directly after those emotional events and I am requesting them to be treated as part of this affidavit.

5. The Defense claims there was an incident on 07/09/2022 involving myself and two female members (hereinafter named Protective Liar Cousins). The Defense claims the Protective Liar Cousins reported this problem on that day. I was not made aware of the problem on 07/09-07/12: I checked-in seven times in those 4 days to the same Hayward location. (Exhibit 8 at 7). I was initially made aware of the 07/09 complaint through discovery in the Alameda County Superior Court proceedings for trespassing on February 27, 2023.

6. On 07/18/2022, Defendant manager Martinez approached me and informed me I had to leave the facility. I questioned for further details and was provided only the general knowledge there was a complaint against me. The complaint occurred that day. The complaint was from one female member. I had not talked to anyone that day yet. He insisted on me leaving, informing me he would call the police.

7. I was not able to depose Protective Liar Cousins. I was only provided initials and declarations, in accordance with this Court's order. (ECF No. 44, Exhibit 09 at Int 03).

Those third party declarations taken from cousins of the Defense should not be admitted as evidence.

8. I was not able to depose Defendant manager Walter Kane. Kane is the manager who lied with malicious intent in front of police on 10/01/2022. His whereabouts are unknown. It appears like he has deliberately evaded contact from both parties in this lawsuit.

9. I was deposed by the Defense on January 14, 2025. I have not received the final version of that transcript, but do intend to include it, hopefully in the later briefing of this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: February 20, 2025

Michael Devin Floyd

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California, County of Santa Clara. Subscribed and sworn to (or affirmed) before me on this 20 day of FEB, 2025 by MICHAEL DEVIN FLOYD proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Signature of Notary)

R. C. SINGH
Notary Public - California
Santa Clara County
Commission # 2464152
My Comm. Expires Oct 21, 2027

Michael Devin Floyd
1214 Mount Hermon Rd
Scotts Valley, CA 95066
mdf3039@gmail.com
(713)562-7229

Michael Devin Floyd, IN PRO PER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael Devin Floyd Plaintiff - Appellant, vs. 24 Hour Fitness USA, LLC Defendant(s) - Appellee(s).	**[PROPOSED] Order Granting Entry of Summary Judgment,** Date: --- Time: --- Dept: Courtroom 05, 17th Floor Judge: Hon. Edward M. Chen Trial Date: June 23, 2025 Action Filed: Feb 27, 2023

Having reviewed the briefing concerning this motion, the Court finds it suitable to grant Summary Judgment to the Plaintiff. Sufficient evidence has been provided to find the Defendant guilty of all remaining claims within this lawsuit. Those are (1) negligence/negligent infliction of emotional distress; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; (4) breach of the implied duty to perform with reasonable care; and (5) violation of California Business & Professions Code § 17200. Justice has been served.

IT IS SO ORDERED.

DATED:

_____

_____

_____

New Member Orientation

Member Name: Michael Floyd
Membership Type: Platinum Monthly

Welcome to 24 Hour Fitness!

Your Membership Packet Includes: Your Membership Agreement; the Membership Policies; and the Physical Activity Readiness Questionnaire
We want you to get the most out of your membership, and to inform you of some key points about your agreement and get you started!

Club Access: You have selected the club access and type of membership that's right for you. As a reminder, club access depends on type of membership purchased. There are three types of membership:

- Platinum (access to all 24 Hour Fitness® clubs)
- Gold (access to all 24 Hour Fitness® clubs within the selected Region)
- Silver (where available) (cardio equipment and weights only at Club of Enrollment)

For example, if you purchase a 'Platinum' membership, you have access to all 24 Hour Fitness® clubs, while purchasing a 'Silver' membership would only allow you access the cardio equipment and weights in the one club you have chosen. A 'Gold' membership provides you access to all 24 Hour Fitness® clubs within your selected region. See Membership Details Page for more details regarding access rights of your membership.

If you also purchased personal training sessions, please note the following:

- Please refer to page 1 of your personal training agreement for details about expiration of your personal training.
- Your trainer may change during the course of your training agreement
- If you need to re-schedule a personal training appointment, and your agreement allows rescheduling for that session, 24 hours' notice is required to avoid being charged for the full session

For each workout, all members must:
(1) Check in at the front desk. You can enroll in Touchless Check-In via the 24GO® app and scan your phone at the front desk using the QR code created. You can also enroll in the Cardless Check-in system to allow you to access the club with a finger scan and a check-in code instead of having to bring a Photo ID with you. If you do not wish to enroll in Touchless Check-In or Cardless Check-in systems, you will need to bring in a government-issued photo ID to check into the club each time you work out
(2) Bring a lock for the locker room. It is also recommended that you bring a workout towel.
(3) Please use cleaning supplies to wipe down equipment.

'Membership Freeze' Rules
You may be eligible to freeze your membership for a temporary or extended period upon proof of the following:

- Medical reasons
- Military service or extended volunteer assignment
- Temporary job transfer

Please see your Membership Policies for more information

Cancellation Information:

5 Day Cancellation Right: You are entitled to a 5 business day period to notify 24 Hour Fitness that you wish to cancel your agreement and receive a full refund. *Please see the Buyers Right to Cancel section on page 1 and Section 6 of your agreement for more details.*

After the 5 Business Day Period: You can cancel your membership by providing written notice to cancel@24hourfitness.com, or 24 Hour Fitness P.O. Box 787, Carlsbad, CA 92018 Attn: Cancel Dept.; or 24 Hour Fitness 1265 Laurel Tree Lane Suite 100 Carlsbad, CA 92011, or online by visiting www.24hourfitness.com/members/cancel. Upon receipt of your request to cancel your membership, 24 Hour Fitness will apply your last month's dues; your club access and membership will end after 30 days. See Section 6 of your Agreement for more details.

Dues Increase:

- Monthly dues may only be increased a maximum of 10%, once per calendar year
- No increase within the first 12 months of your membership

Please see Section 3 of your agreement for more details.

Annual Fee: Each year, you will be required to pay a non-refundable Annual Fee plus applicable taxes, if any, so long as the membership is in effect. *Please see page 1 and Section 3 of your agreement for more details.*

Arbitration Agreement and Waiver of Class Action and Jury Rights:

- All disputes between you and us, except personal injury claims or those filed in small claims court, will be resolved through binding arbitration.
- Any arbitration under this agreement will take place on an individual basis; class arbitrations and class actions are not permitted
- If you do not want to be bound by this arbitration provision you must notify us within 90 days of signing your Agreement by providing written notice as detailed in Section 9(a).
- Personal injury claims are not subject to arbitration; personal injury claims will be handled in the courts

Please see Section 9 of your agreement for more details.

Release of Liability and Assumption of Risk: This agreement includes a Release of Liability and Assumption of Risk Provision in Section 10.

Communications: See Sections 3(g) for information regarding marketing and account communications including information regarding our privacy policies.

MEMBERSHIP POLICIES & CLUB RULES – Member#: MBR05167181
24 Hour Fitness USA, LLC. ("24 Hour") Membership Policies ("Policies") and rules or signs posted in clubs or on our website ("Rules") ensure a safer and more enjoyable environment in which to exercise. You agree to follow the Policies and Rules. 24 Hour may, in its sole discretion, modify the Policies and Rules without notice at any time. It's your responsibility to know and follow the most current Policies and Rules. If there is any conflict between these Policies and the posted club Rules, these Policies and Rules apply. Policies are also available at 24hourfitness.com
EQUAL OPPORTUNITY POLICY STATEMENT: 24 Hour seeks, enrolls and maintains memberships without regard to race, gender, age, religion (including grooming), color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital or registered domestic partner status, sex, sexual orientation, gender identity and expression, genetic characteristics and information, military or veteran status, or any other legally protected category. It is further 24 Hour policy that no circumstance or conduct undertaken by club personnel shall have the effect of discrimination on the basis of any of the aforementioned classifications. All club members shall have full and equal access to the club facility. All members with disabilities shall be entitled to reasonable accommodations for their physical and mental impairments. Any member who believes they have been/are being treated unfairly on any of the aforementioned matters should first report to club management of 24 Hour at 1(800)432-6348.
RESTROOM AND LOCKER ROOM ACCESSIBILITY-TRANSGENDER EQUAL OPPORTUNITY POLICY: As set forth in 24 Hour's Equal Opportunity Policy, all members shall have full and equal access to the club facility. Consistent with this Policy, all members shall have access to the restroom and locker room facilities that correspond to the member's gender identity, regardless of the member's sex assigned at birth. For example, transgender women (who were born male but identify as female) are permitted to use the women's facilities, and vice versa for transgender men. Each member should determine the most appropriate option for her/him/themself. Any member who has a need or desire for increased privacy, regardless of the reason, will be provided access to a single-person facility, when available. No member, however, shall be required to use such a facility.
Any member who believes that they have been/are being treated unfairly on any of the Equal Opportunity policies above should report to club management or call us at 1 (800) 432-6348.
PERSONAL INFORMATION AND PRIVACY: Please consult our Privacy Policies for a description of our practices with respect to collection, sharing and privacy of your personal information. Both our Website Privacy Policy (covering information we collect through our website) and our general Privacy Policy (covering information we collect offline, such as when you sign up at one of our clubs) are located on our website at www.24hourfitness.com/
CHECK-IN: You must check in at the front desk on each club visit by enrolling in (1) the Touchless Check-In System using the 24GO® app, or (2) the Cardless Check-in system using your finger scan and a 10-digit check-in code (such as your phone number), or (3) bringing in an original government issued photo ID. You are not required to enroll in either the Touchless Check-in or Cardless Check-in systems. Please visit our website at www.24Hourfitness.com for more information.
MEMBERSHIP FREEZE POLICY: 24 Hour will only freeze your membership if you are in good standing, all initiation fees are paid, you are current on your monthly dues, and you provide at least ten days' notice. If you have a Commitment Agreement and freeze your membership within the initial Commitment period, your Commitment period and obligation will be extended for the amount of time your membership was on freeze. Four circumstances may qualify you for a freeze:
Medical Disability: You must provide 24 Hour with verification from your physician stating your medical disability will prevent you from using 24 Hour facilities. The minimum term for a medical freeze is three months and the maximum is six months.
Active Duty Military Transfer or Extended Volunteer Assignment: You must provide 24 Hour with a copy of your transfer, deployment or extended volunteer assignment orders. There is no minimum or maximum for assignment freeze. If you request a specific freeze term less than six months, your membership and monthly Electronic Funds Transfer ("EFT") or credit card charge will automatically resume at the end of the specified time.
Temporary Employment Transfer: You must provide 24 Hour with employer verification, on company letterhead, that you are being temporarily transferred. Transfer location must be more than 25 miles from the nearest 24 Hour location to which you have access. The minimum term for a temporary employment transfer freeze is 3 months and the maximum freeze is 6 months.
Extended Freeze: 24 Hour may approve or deny your request for an extended freeze for reasons other than those listed above. The maximum length of an extended freeze is 12 months. If 24 Hour does not receive notification to reactivate or further extend your freeze within 12 months, your membership agreement may be terminated.
Dues During Freeze: No further dues will be collected during your approved freeze and your right to access 24 Hour facilities during the freeze will be suspended. Notwithstanding the foregoing, you will still be required to pay an Annual Fee (plus applicable taxes), as provided in your membership agreement, during your approved freeze so long as your membership is in effect. In the event your membership is prepaid, the term of the prepaid membership shall be extended, without further dues, for the same period of the freeze. Except for military freezes greater than 6 months or unspecified, your membership will be reactivated and your monthly EFT or credit card charge will automatically resume at the end of your freeze period.
GUEST PRIVILEGES: We recommend that you make an appointment for your guest's visit and a club tour may be required. A guest must check in at the front desk, be at least 18, complete the guest registration process, and if applicable, pay a guest fee before using 24 Hour facilities (a parent or legal guardian may bring a minor aged 12 or up as a guest if the adult member agrees to sign the appropriate release forms). 24 Hour may restrict the number of guests and times you may bring guests. You must inform guests about these Policies.
LOCKERS: 24 Hour provides lockers for your use on a daily basis and suggests using a lock to protect your property. Do not leave valuable property in a locker at any time. 24 Hour is not responsible for any theft or damage to your property. If you leave a lock on a locker overnight, 24 Hour will consider your property abandoned and have the right to donate your property to charity.
USE OF 24 HOUR FACILITIES
Availability of Facilities: 24 Hour facilities or services, including but not limited to, classes, equipment, babysitting, basketball, saunas, whirlpools or pools may have limited hours, be discontinued altogether at any time, or be offered on a "first come first serve" basis. 24 Hour reserves the right to charge a separate participation or reservation fee for any or all of these facilities or services. Use of 24 Hour facilities or services are authorized and limited pursuant to your membership agreement.
Conflicts Regarding Use: Do not linger or monopolize the equipment, as other members may want to use it. In short, observe gym etiquette. If there is a usage conflict, let 24 Hour mgmt. resolve it.
Sports Courts & Specialty Classes: 24 Hour may charge you for use of sports courts and special classes.
Pool, Whirlpool, Sauna & Steam room: 24 Hour requires you to shower before using the pool, whirlpool, and sauna or steam room. There are only lifeguards on duty at a few 24 Hour facilities. Check clubs for further details. The use of the pool, whirlpool, sauna or steam room are at your risk. While using the pool, do not jump lanes, dive or engage in horseplay. Lap swimmers have priority over casual swimmers. You must also follow the specific Rules that any 24 Hour clubs post regarding the use of the pools, whirlpools, saunas, and/or steam rooms in 24 Hour facilities.
Weights & Other Equipment: There are specific Rules posted regarding the use of the weights and other equipment in 24 Hour facilities. As a courtesy, please replace the weights on the rack after you use them and wipe off any benches after your use.
No Solicitation: 24 Hour facilities are provided for the private use of club members only and are not open to the public. Any solicitation within any club is absolutely forbidden. This includes, for example: solicitation for profit, political purposes or any other reason; use of petitions; distributing or posting leaflets, notices or advertising anywhere in a club facility; or leaving multiple copies of leaflets or other papers in any club.
GENERAL POLICIES FOR MINORS: Please check with the front desk for specific Rules, policies and fees covering the Kids' Club (babysitting) and minors. You and your minor children must follow any such Rules or policies and pay any applicable fees. To join 24 Hour you must be at least 12 years of age and you will need, the financial guaranty of a parent or guardian and the parent or guardian must sign the membership agreement.
Minors Under 12: May not use 24 Hour facilities at any time and must be accompanied by a parent or guardian at all times when in the facilities, unless the minor is in Kids' Club or participating in a 24 Hour approved youth program. If your minor child does not behave, 24 Hour may ask you to make other arrangements. 24 Hour does not permit children over six years old of the opposite sex in the locker rooms.
Minors 12 - 17: May use 24 Hour facilities without being accompanied by a parent or guardian if the minor is a member or a guest and their parent or guardian signed the financial guaranty and the membership agreement. 24 Hour reserves the right, in its discretion, to require that a parent or guardian accompany a minor.
PROHIBITED ITEMS AND ACTIVITIES
No Alcohol, Drugs, or Smoking: You cannot engage in any activity at 24 Hour while under the influence of illegal drugs or alcohol. 24 Hour does not permit smoking, vaping, alcohol, or illegal drugs, including steroids, in any of its facilities.
No Weapons: No weapons of any kind are permitted in 24 Hour facilities.
Taking Photos or filming others is not permitted without prior knowledge and consent; and under no circumstances is any photography or filming permitted within the Kids' Club, locker room, steam room, or sauna areas.
Food & Beverages: 24 Hour reserves the right to limit the consumption of food or beverages in workout areas.
Personal Training: No member may train another member for compensation or engage in competitive activities in any 24 Hour facility. If 24 Hour determines that such training or activity occurs at a 24 Hour facility, the trainer and/or trainee may lose their membership.
Outside Equipment: 24 Hour reserves the right, in its sole discretion, to limit or restrict the use of outside equipment in the club.
DRESS POLICY: 24 Hour requires you to wear appropriate clothing and footwear while in its facilities such as gym shorts, T-shirts, undergarments or tights with all apparel, jogging, aerobic and sweat outfits. Street clothes/shoes and jeans are not appropriate. Shower shoes and swimming suits are all right in the pool area, but cutoffs are not. Racquetball/basketball shoes are required on the courts. No street or black-soled shoes permitted. Being barefoot in the general workout area is prohibited. 24 Hour Fitness recommends closed toed shoes be worn on the general workout floor at all times, and wearing opened toed shoes or socks alone is at your own risk.
TOWEL POLICY: Carrying a workout towel is recommended. Please use the cleaning station supplies to wipe down equipment after use.
CONDUCT: While in 24 Hour facilities, 24 Hour does not permit and will not tolerate any inappropriate conduct. You may not engage in any conduct in any 24 Hour facility that includes, without limitation, using loud, abusive, offensive, insulting, demeaning language, profanity, lewd conduct or any conduct that harasses or is bothersome to members, guests or employees.
VIOLATION OF POLICIES OR RULES: If any member or guest violates any of the Policies or Rules, 24 Hour will ask that person to stop or leave. A member's violation of any of the Policies or Rules may also cause 24 Hour, in its sole discretion, to terminate that person's membership and/or other agreements.
STEROID WARNING: Use of steroids to Increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damage liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. There are also civil and criminal penalties for the unauthorized sale, use, or exchange of anabolic steroids.

24 HOUR FITNESS

CLUB OF ENROLLMENT	00602	CLUB MEMBERSHIP AGREEMENT 24S03381897
Club Number: 00602	Address: 719 E. Calaveras Blvd.	Membership Type: Platinum Monthly
City: Milpitas	State: CA Zip: 95035	Primary Agreement # / Member # MBR05167181
Emp# Sold By: 9484R		

PERSONAL INFORMATION			
Last Name: Floyd	First Name: Michael	Birthdate: XX-XX-1989	Age: 32 Gender: M
Address: 1214 mount hermon rd		City: Santa Cruz	State: CA Zip: 95066
Phone: (713) 5627229		Email Address: mdf3039b@gmail.com	
Employer:	Corp. Id:		

ACCOUNTING				Annual Fee	
Initiation Fee:	$ 0.00	See page 2 of this agreement (if applicable) for details on payment plans and/or payment authorization.		Annual Fee Amount:	$ 49.99
First Month's Dues:	$ 54.99			EFT/RCC Begin Date:	03/01/2022
Last Month's Dues:	$ 54.99			(continuing annually on or about the same date, see Section 3 for details)	
Taxes/Fees/Surcharges:	$ 0.00	Amount Received:	$ 109.98		
Total Due Now: (non-refundable)	$ 109.98	Balance Due:	$ 0.00		

ACKNOWLEDGEMENT OF AGREEMENT TERMS – BUYER'S RIGHT TO CANCEL – E-SIGNATURE – AGREEMENT TERM – RELEASE OF LIABILITY

THIS AGREEMENT INCLUDES A RELEASE OF LIABILITY AND ASSUMPTION OF RISK PROVISION IN SECTION 10. By signing below,

1. You acknowledge and agree that you have read this agreement and you agree to all the terms on all pages of this agreement and acknowledge that you have received a copy of it and the membership policies; AND
2. You consent to the use of an electronic signature to record your commitment to the terms of this Agreement.

YOU, THE BUYER, MAY CHOOSE TO CANCEL THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY OF THE HEALTH STUDIO AFTER THE DATE OF THIS AGREEMENT, EXCLUDING SUNDAYS AND HOLIDAYS. TO CANCEL THIS AGREEMENT, MAIL, EMAIL OR DELIVER A SIGNED AND DATED NOTICE THAT STATES THAT YOU, THE BUYER, ARE CANCELLING THIS AGREEMENT, OR WORDS OF SIMILAR EFFECT. THE NOTICE SHALL BE SENT VIA FIRST-CLASS MAIL, VIA EMAIL FROM AN EMAIL ADDRESS ON FILE WITH THE HEALTH STUDIO, OR DELIVERED IN PERSON TO: CANCEL@24HOURFITNESS.COM OR TO 24 HOUR FITNESS P.O. BOX 787 CARLSBAD, CA 92009 OR TO 24 HOUR FITNESS 719 E. Calaveras Blvd. Milpitas, CA 95035.

Your Agreement is a MONTHLY PAYMENT - Membership ("MPM")

BEGINS: 01/05/2022 **MONTHLY DUES:** $54.99

Your MPM membership may be terminated as explained in Section 6. Initiation fees, dues for prorated days and last month's dues are nonrefundable, unless specifically stated otherwise in Section 6. You understand that your agreement is for a continuous service and the minimum term of your agreement is 37 days. You understand that your agreement begins on the day shown above after 'Begins: _ '. You understand that you shall make monthly payments for your agreement and that 24 Hour will charge you for those monthly payments on a monthly basis starting on the begin date shown on page 2 after 'EFT/RCC Begin Date:_ ' and again on or around the same date each month thereafter while your agreement is in effect. Your monthly dues rate is shown above and that same rate shall apply each month (subject to any dues increases pursuant to Section 3(c) of this agreement) regardless of the number of days in each month. In other words, the same rate will apply for February (a 28-day month) as March (a 31-day month). Prepaid last month's dues are based upon a 30-day month. Upon receipt of your request to cancel your membership, 24 Hour will apply your last month's dues; your club access and membership will end after 30 days after 24 Hour's receipt of your notice to cancel. See Section 6 for more details.

MEMBER SIGNATURE: Michael Floyd **DATE SIGNED: 01/05/2022 12:14 P.M.**

COSIGNER

Parent or Guardian: On behalf of my minor child and myself, I agree to all the provisions of this Agreement, including the Release of Liability and Assumption of Risk and Agreement to Arbitrate provisions and I agree to defend and indemnify 24 Hour to the fullest extent permitted by law for any claim brought by my minor child against 24 Hour. I also promise to pay any financial obligation that my minor child does not pay for any reason.

Financial Cosigner: I agree to the Agreement to Arbitrate provisions in this agreement, and I promise to pay any financial obligation that the member does not pay for any reason. I also agree to defend and indemnify 24 Hour to the fullest extent permitted by law for any claim brought against 24 Hour by the member.

Whether Parent or Cosigner, I understand my obligation can only end if the member/guardian properly terminates this agreement. If I signed the Payment and Transfer Authorization on page 2, I agree to directly pay according to the terms in this agreement.

:OSIGNER SIGNATURE:			DATE SIGNED:
Last Name:	First Name:		Home ph.: ()
Street Address:	City:	State:	Zip:

PAYMENT AND TRANSFER AUTHORIZATION

24 FITNESS

Member Name:	Michael Floyd
Member #:	MBR05167181
Agreement #:	24S03381897

PAYMENTS FOR TOTAL DUE NOW		**PAYMENT SCHEDULE FOR TOTAL DUE NOW**	
Total Due Now (non-refundable):	$109.98	**Payment Amount:** $N/A	**Payment Date:** N/A
Deposit Received:	$109.98	**Payment Amount:** $N/A	**Payment Date:** N/A
Balance Due:	$0.00	**Payment Amount:** $N/A	**Payment Date:** N/A

AUTHORIZATION FOR BALANCE DUE

Account Type: **Name of Depository Institution:**
Account Holder Name: **Account Number:**
Expiration Date: **Routing Number (if applicable):**

I want amounts I owe to 24 Hour Fitness USA, LLC, ("24 Hour") under this Agreement to be paid through one of the following (a) my debit card, (b) debits to my bank account through the ACH ((a) and (b) each an "EFT"), or (c) charges to my credit card account ("CC"), as indicated above, for the purpose of making the scheduled payments on the Balance Due (together with any related fees, taxes or charges). My signature below constitutes my authorization and agreement to the following terms for those EFT or CC charges:

1. **I authorize 24 Hour, on the scheduled payment dates, or within 2 business days after such dates, to charge my above listed credit card account, or to initiate an EFT from the account I designated above or any successor or replacement card or account, for the Balance Due indicated above.** If my card or account expires or is replaced, I agree to notify 24 Hour promptly of my new card or account.
2. **My authorization will remain in effect until cancelled by 24 Hour, or by me.** I may cancel by providing notice to 24 Hour in writing at P.O. Box 787, Carlsbad, CA, 92018, by visiting our website www.24hourfitness.com, as set forth in Section 6 of this Agreement. Even after my notice of cancellation, I authorize 24 Hour to charge or debit my account for any Balance Due amounts I owe under this Agreement up to the date this Agreement ends and I agree to be bound by the terms and conditions of this Agreement until my Agreement privileges end.
3. For EFT (a debit to my checking or savings account, or debit card) charges only, I understand that you will notify me at least 10 days in advance of any EFT debit that will be more than three times the normal monthly debit amount. Upon my written request, you will notify me if the amount of the EFT transfer will vary by any amount.
4. If my EFT or CC is rejected or returned unpaid for any reason, I authorize 24 Hour to resubmit it for payment one or more subsequent times in the future. If amounts I owe to 24 Hour are not paid because an EFT debit or CC does not go through, for any reason my failure to pay those amounts may result in the suspension or termination of my membership, as described in the Agreement.
5. I may stop any EFT (a debit to my checking or savings account by ACH or debit card) by notifying the financial institution named above at least 3 days before the scheduled date of the transfer.

Authorized Signature: **Date:**

National:Platinum Monthly

Monthly Dues Amount:	$ 54.99	**Annual Fee Amount:**	$ 49.99
EFT/RCC Begin Date:	02/05/2022	**EFT/RCC Begin Date:**	03/01/2022 (continuing annually on or about the same date)

AUTHORIZATION FOR DUES DIRECT AND ANNUAL FEE PAYMENTS

Account Type:	MasterCard	**Name of Depository Institution:**	
Account Holder Name:	Michael Floyd	**Account Number:**	**********8075
Expiration Date:		**Routing Number (if applicable):**	

I want amounts I owe to 24 Hour Fitness USA, LLC., ("24 Hour") under this Agreement (the "Agreement") to be paid through one of the following (a) recurring charges to my debit card, (b) recurring debits to my bank account through the ACH ((a) and (b) each an "EFT") or (c) recurring charges to my credit card account ("RCC"), as indicated above. My signature below constitutes my authorization and agreement to the following terms for those EFT or RCC charges:

1. **I authorize 24 Hour, (i) on a monthly basis, to charge my above listed credit card account, or to initiate an EFT from the account I designated above or any successor or replacement card or account, on or about the same day each month (or at month end, if the EFT/RCC date is on a day not contained in a given month, (ii) for the monthly dues rate indicated above, and any other amounts I owe to 24 Hour under this Agreement, including any fees, taxes, or annual increases in monthly dues (up to 10% pursuant to Section 3(c) of this Agreement); plus, (iii) on an annual basis, the Annual Fee indicated above and any annual increases (up to 10% pursuant to Section 3(c) of this Agreement).** If my card or account expires or is replaced, I agree to notify 24 Hour promptly of my new card or account.
2. **My authorization and the Agreement will remain in effect until this Agreement is cancelled by 24 Hour, or by me.** I may cancel by providing notice to 24 Hour in writing at P.O. Box 787, Carlsbad, CA, 92018, or online by visiting My24 online member services (on www.24hourfitness.com). **I understand that this Agreement is for a continuous service and 24 Hour will charge me on a monthly basis until I cancel this Agreement. I further understand that under 24 Hour's cancellation policy, which is in Section 6 of this Agreement, I may cancel this Agreement at any time prior to midnight of the fifth business day of the health studio after the date of this Agreement, excluding Sundays and holidays, and receive a refund of all money I paid. I further understand that if I do not cancel in the first five business days, then the minimum term of this Agreement is 37 days (so 37 days is my minimum purchase obligation) and if I cancel 24 Hour will apply my prepaid last month's dues to pay for my membership starting on and including the day it receives notice of my request to cancel my membership, so my membership will end 30 days from the date that 24 Hour receives my notice of cancellation, and 24 Hour will refund any unused prorated dues that I have already paid for the monthly billing cycle covering the date that 24 Hour receives my cancellation notice.** Even after my notice of cancellation, I authorize 24 Hour to charge or debit my account for any amounts I owe under this Agreement up to the date my membership ends and I agree to be bound by the terms and conditions of this Agreement until my membership ends. Notwithstanding any other language in this Agreement, I agree that all rights and obligations of both 24 Hour and me that are intended to survive cancellation of this Agreement will continue after cancellation and/or the end of my membership, to the extent permitted by law.
3. **The amounts charged or debited to my account may vary each month from the amount shown above due to a change in the monthly dues, past unpaid dues and fees, increases in applicable taxes, or other fees and charges that I may owe.** For EFT (a debit to my checking or savings account, or debit card) charges only, I understand that you will notify me at least 10 days in advance of any EFT debit that will be more than three times the normal monthly debit amount. Upon my written request, you will notify me if the amount of my EFT or RCC will vary by any amount.
4. If my EFT or RCC is rejected or returned unpaid for any reason, I authorize 24 Hour to resubmit it for payment one or more subsequent times in the future. If amounts I owe to 24 Hour are not paid because an EFT debit or RCC does not go through, for any reason my failure to pay those amounts may result in the suspension or termination of my membership, as described in the Agreement.
5. I may stop any EFT (debit to my checking or savings account by ACH or debit card) by notifying the financial institution named above at least 3 days before the scheduled transfer date.
6. If I have more than one agreement with 24 Hour (such as an Upgrade or Additional Services Agreement) and I have designated the same EFT or RCC account for charges under any other agreement as I have under this Agreement, I authorize 24 Hour to make one monthly RCC or EFT debit for all the amounts I owe under all my agreements that are paid through the same EFT or RCC account.

Authorized Signature: Michael Floyd **Date:** 01/05/2022 12:14 P.M.

1.PARTIES
Any use of the term "24 Hour" in this Agreement shall refer to 24 Hour Fitness USA, LLC. 24 Hour and you agree that by signing this Agreement, you purchased a membership or services, agree to all the terms in this Agreement, and agree to follow 24 Hour's Membership Policies and any Rules.

2.MEMBERSHIP
2(a). Nature of Membership: Your membership permits you to use 24 Hour's premises, facilities, equipment and services as shown and limited by the membership identified on page 1. Your membership is non-transferable by you and gives you no rights in 24 Hour, its management, property or operation. 24 Hour may close clubs. 24 Hour may assign or transfer your membership in its sole discretion. 24 Hour can sell memberships at different rates and terms than yours. Any special promotional membership or rate regarding privileges, usage, hours, or facilities is valid only at the Club of Enrollment, unless otherwise noted. It is your responsibility to notify 24 Hour of any change in your address or phone number.
2(b). Membership Type (see Page 1 Membership Type). Silver: If you have a Silver membership (where available), you acknowledge and agree that you are entitled to use only the cardio equipment and weights in that one club only. **Gold:** If you have a Gold membership, you acknowledge and agree that you are entitled to use only clubs covered by your membership. For example, if you purchased a Gold membership in the Northern California region, you will not have access to 24 Hour Fitness® clubs in New York. **Platinum**: If you have a Platinum membership, you acknowledge and agree that you are entitled to use the 24 Hour Fitness® clubs covered by your membership. Access to membership amenities is based on membership type, see the Membership Details Page of this Agreement for a complete listing of amenities for your membership type. You further acknowledge and agree that 24 Hour (1) reserves the right to charge an extra fee and/or extra dues for use of any club not included in your type of membership or for any club additional services and/or amenities that those offered at the time you enrolled, (2) the total number clubs at your membership type may either increase or decrease in the future and nothing in this Agreement shall be construed as a guarantee that your membership type will always provide you access to either a certain number clubs, or to specific clubs; (3) 24 Hour may open new clubs, close, change the designation of clubs, regions and/or create new designations of clubs and regions, and (4) no two 24 Hour clubs are exactly alike and to understand the size, amenities, services and features of a particular club, you will need to visit the club.
2(c). Corporate Memberships: You must be a current employee of a participating company and eligible under the company's guidelines to enroll under a Corporate membership program. By enrolling under a Corporate membership program, you grant 24 Hour the right to verify your eligibility under the company's guidelines (including the right to verify your employment with the company as necessary). In the event you are not currently employed or cease being a current employee of a participating company, 24 Hour reserves the right to immediately terminate your membership and/or require you to pay the full regular price of initiation fees, Annual Fee, and monthly dues.
2(d). Membership Freezes: 24 Hour will freeze your membership if you qualify under 24 Hour's Membership Freeze Policy set forth in the Membership Policies. To be eligible for a membership freeze you must be in good standing with all fees paid and you must be current on your monthly or prepaid dues.

3. FINANCIAL POLICY & NOTICES
3(a). Dues & Fees: You agree to pay the dues and fees on page 1 and 2. If you are under 18 years of age, 24 Hour requires an adult to promise payment. 24 Hour immediately earns the initiation fees and first and last month's dues when you buy your membership, including any and all paid amounts or unpaid portions which are to be paid according to a payment plan. Each year, Member will be required to pay a non-refundable Annual Fee plus applicable taxes, if any, so long as the membership is in effect (the Annual Fee is entirely earned by 24 Hour upon payment). These fees and any prepaid monthly dues are not refundable, except as stated in Section 6 of this Agreement. Whether or not you use the facilities, you must still pay your monthly dues and non-use of the facility or facilities is not a basis for refund of prepaid dues. You agree to pay 24 Hour a fee for any returned check, or other non-payments, such as for insufficient funds, closed account, frozen or declined credit or similar circumstances. The current fee is $15.00, but is subject to change at 24 Hour's discretion without prior notice.
3(b). Add On Memberships: When you add one or more "Add-On" membership(s) to a membership, one member is financially responsible for all Add-On members' dues. If the member responsible for paying the Add-On membership dues cancels his or her membership, then 24 Hour may, in its sole discretion, either cancel the Add-On membership(s) and/or require the Add-On member(s) to pay his or her own dues, which may be changed to the individual membership rate in effect at the time of the cancellation. If an Add-On member starts to pay his or her own dues at any time, then 24 Hour may, in its sole discretion, either cancel the Add-On membership(s) and/or require the Add-On member(s) to pay the applicable individual membership rate.
3(c).
(i).Right to Increase Dues: If you have a Monthly Payment Agreement--Membership, Upgrade, or Special Privilege--24 Hour may increase your monthly dues once per calendar year per agreement. The increase will be calculated at not more than ten percent (10%) of your then current monthly dues. Any such increase will not occur during the first twelve (12) months of your agreement. The increase described in this paragraph is in addition to any other increases authorized under this agreement.
(ii). Right to Increase Annual Fee: Each year, you will be charged an Annual Fee in addition to your monthly dues, so long as the membership is in effect. 24 Hour may increase your Annual Fee at not more than ten percent (10%) of your then current Annual Fee.
3(d). Charges & Taxes: If you or your guests incur any 24 Hour charges for goods or services that include, without limitation, babysitting, fitness services, or similar services, you agree to pay for them according to 24 Hour's rates and practices then in effect. 24 Hour has the right to add to your prepaid dues, your monthly dues, or any Additional Sessions any tax or charge required by the government.
3(e). Automatic Deductions: At any time, you can change the method of payment you have designated via My24 online member services (on www.24hourfitness.com), or by updating your information in person at a Club. Please allow up to 5 days from the day 24 Hour receives your request for the change to take effect. If there is an error in an amount billed under this Agreement, you must notify us within 30 days after the date the EFT debit or credit card charge was made, or we will not be obligated to re-credit your account.
3(f). Automatic Monthly Payment Failure: If we are unable to process a EFT/RCC monthly charge for any reason, 24 Hour may suspend or terminate your membership, privileges or Fitness Services Agreement. You will have 30 days from the date we are unable to process the EFT/RCC monthly charge to reinstate your membership, privileges, or Fitness Services Agreement by providing a valid EFT/RCC authorization. Upon reinstatement, all your past due amounts, including a $15 fee (as described in Section 3(a) will be electronically deducted using the newly authorized EFT/RCC. If you do not provide a valid EFT/RCC authorization within the 30 days, your membership may be terminated "for cause" by 24 Hour and the terms of the "Termination for Cause by 24 Hour" paragraph in Section 6 will apply; you will not receive a refund of any initiation fees, Annual Fees, or of first and last month's dues.
3(g). Delivery of Notices and Communications Related to This Agreement and Your Membership. You agree to electronic delivery of notices and records relating to this Agreement and to your 24 Hour membership ("Notices") by electronic delivery instead of in paper form through postal delivery (you will still receive postal delivery of notices or records required by regulation or policy to be sent by postal delivery). Notices eligible for electronic delivery include notices regarding dues and fee increases, annual dues, electronic payment amounts, payment processing refusal, service changes, renewal, and similar notices relating to the Agreement and/or your membership. We will deliver Notices electronically to you by emailing them to the email address you have provided to us in this Agreement and you agree to keep that email address active and/or to update it as necessary. With respect to communications regarding your membership, service changes, club information, and any amounts you owe 24 Hour, you also agree that 24 Hour may contact you on your home phone and on any cell phone number that you provide to 24 Hour and that such contact may be by telephone (including autodialed calls), pre-recorded or artificial message, text message or other means. You may change your primary e-mail address, phone number or other contact information, or withdraw your consent to receive Notices electronically via My24 online member services (www.24hourfitness.com). There is no fee if you withdraw your consent to receive Notices electronically.
3(h). Marketing Communications. You agree that from time to time 24 Hour may offer you special offers by direct mail, email, telephone and other methods as permitted by law. You may change your communication preferences at any time via My24 online member services (www.24hourfitness.com).
3(i). By executing this Agreement you agree to be bound by the Privacy Policies referred to in the Membership Policies.

4. FACILITIES AND SERVICES
4(a). Description of Services and Hours of Access: For specific hours of access, please visit www.24hourfitness.com. Not all facilities or services are open or available 24 hours a day and 24 Hour may alter the hours of operation. Your membership with 24 Hour shall include access to the facility or facilities as shown and limited by the Membership Type identified on page 1 and designated amenities as identified on the Membership Details Page, including the cardiovascular, strength and conditioning equipment at those facilities, as may be applicable. Your membership agreement does not include personal training, which is an optional service subject to a separate agreement with 24 Hour. 24 Hour also provides a number of group exercise classes some of which are optional services and may require payment of a fee. Other optional services that may require additional fees include, but are not limited to, basketball

eagues, class fees, class reservation fees, guest privileges, or executive lockers. 24 Hour reserves the right to charge a separate participation or reservation fee for such optional services. If you do not provide an alternative payment method, any fee or charges due to 24 Hour as a result of your purchase of optional services will be charged to your designated payment method.

4(b). Changes in Equipment or Classes: 24 Hour reserves the right at any time to make reasonable changes to the type or quantity of group exercise classes and equipment offered, to alter the times of group exercise classes, and to amend the cost of, add, modify and/or eliminate any program, equipment, facility, activity, class or service in 24 Hour's reasonable discretion. Classes and equipment are available subject to demand. Any of the facilities or services, including but not limited to classes, equipment, babysitting, basketball, saunas, and whirlpools may have limited hours or may be discontinued altogether at any time and may be offered on a "first come first serve basis."

4(c). Temporary Closures: 24 Hour regularly closes its facilities, or portions of its facilities, on a temporary basis for maintenance, selected holidays, and other hours based on municipal requirements or other business reasons and such temporary closures will have no effect on this Agreement so long as such temporary closures are reasonable. If your Club of Enrollment is forced to close for 30 days or less by events or occurrences beyond 24 Hour's control, such as, by way of example, natural disasters, riots or unrest, or action by any lawful authority (Unforeseen Events), you will not be entitled to a refund, dues credit or to terminate your membership. However, if Unforeseen Events force your Club of Enrollment to close for more than 30 consecutive days, then 24 Hour will extend your membership, without dues, for the same period your Club of Enrollment was closed or completely unavailable, but only if there is not another club to which you have access within 10 miles of your Club of Enrollment. If 24 Hour closes your Club of Enrollment for more than 10 consecutive days for any reason not caused by Unforeseen Events, 24 Hour will extend the term of your membership, without dues, for any days beyond 10, but only if there is not another club to which you have access within 10 miles of your Club of Enrollment. Your obligations if 24 Hour permanently closes or moves your Club of Enrollment are explained in Section 6. If your Club of Enrollment closes because it is sold, 24 Hour may assign your membership to the new owner.

4(d). Services to Begin within Six Months: Performance of the agreed upon services (access to the work-out facility) under this Agreement shall begin within six months after the date of this agreement. If 24 Hour does not provide the services within six months, you may cancel the agreement until up to 10 days after the first day when the services are provided, unless 24 Hour provides you with access to other 24 Hour facilities within 10 miles of the work-out facility within six months of the date of the Agreement and then continues to provide that access up until the time when the access to the work-out facility is granted.

5. REPRESENTATIONS

5(a). Physical Condition & No Medical Advice: You represent that you are in good physical condition and have no medical reason or impairment that might prevent you from your intended use of 24 Hour's facilities. As such, you acknowledge that 24 Hour did not give you medical advice before you joined, and cannot give you any after you join, relating to your physical condition and ability to use the facilities. If you have any health or medical concerns now or after you join, discuss them with your doctor before using the facilities. You acknowledge that you have been informed that 24 Hour has available a questionnaire designed for you to determine whether you should consult a physician before participating in an exercise program and that you understand 24 Hour assumes no liability for any physical activity you undertake, including without limitation if you undertake physical activity without consulting your doctor or against the advice of your doctor.

5(b). Limited Use: If you know or should know you have any problem that might prevent you from using all of 24 Hour's facilities and you sign this agreement, you agree that your membership is limited accordingly. However, because it's your choice, you still must pay your dues as if you could use all the facilities.

5(c). Liability for Property: 24 Hour is not liable to you or your guest for any personal property that is damaged, lost, or stolen while on or around 24 Hour's premises including, but not limited to, a vehicle or its contents or any property left in a locker. If you or your guest cause any damage to 24 Hour's facilities, you are liable to 24 Hour for its cost of repair or replacement.

5(d). Entire Agreement & Enforcement: You acknowledge that neither 24 Hour, nor anyone else, made any representations or promises upon which you relied that are not stated in this agreement. Handwritten changes to this agreement are not valid. This Agreement contains the entire agreement between you and 24 Hour, and replaces any prior agreements, representations or promises by or between you and 24 Hour, whether written or oral, with respect to the subject matter of this Agreement.

6. CANCELLATION - TERMINATION – REFUNDS

6(a). Your 5-Day Cancellation Right: YOU, THE BUYER, MAY CHOOSE TO CANCEL THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY OF THE HEALTH STUDIO AFTER THE DATE OF THIS AGREEMENT, EXCLUDING SUNDAYS AND HOLIDAYS. TO CANCEL THIS AGREEMENT, MAIL, EMAIL OR DELIVER A SIGNED AND DATED NOTICE THAT STATES THAT YOU, THE BUYER, ARE CANCELLING THIS AGREEMENT, OR WORDS OF SIMILAR EFFECT. THE NOTICE SHALL BE SENT VIA FIRST-CLASS MAIL, VIA EMAIL FROM AN EMAIL ADDRESS ON FILE WITH THE HEALTH STUDIO, OR DELIVERED IN PERSON TO: CANCEL@24HOURFITNESS.COM OR 24 HOUR FITNESS P.O. BOX 787 CARLSBAD, CA 92009 OR 24 HOUR FITNESS 719 E. Calaveras Blvd. Milpitas, CA 95035.

6(b). Cancellation Rights & Refund: Initiation fees, Annual Fee, and first and last month's dues are nonrefundable, except for 5-day cancels above or unless specifically stated otherwise in this Agreement. You may cancel this Agreement and receive a refund of unused prepaid dues if you qualify as follows:

6(b)(1). You Are Disabled or You Die: Your disability must physically prevent you from using the club's facilities and a licensed physician must verify this fact in writing. In case of death, your estate must provide written evidence. For temporary partial disabilities, you may qualify for a membership freeze at the discretion of 24 Hour under 24 Hour's Membership Freeze Policy.

6(b)(2). You Move: Your new residence must be more than 25 miles from your Club of Enrollment and 24 Hour must be unable to transfer your membership to a comparable facility within 25 miles of your new residence. You must provide written evidence of your move. If there is a comparable club within 25 miles of your new residence, your membership will be transferred to that club and you are not entitled to a refund. If 24 Hour is unable to transfer your membership, 24 Hour will refund your unused prepaid dues. If you have a Gold (Regional) membership and move outside your designated region, your membership is not transferrable. You may cancel your current Gold (Regional) membership and re-enroll in the new region to where you move by contacting a club manager.

6(b)(3). Military Deployment: If you are a member of the United States military, including a member of the National Guard, military reserves, or regular United States armed forces, who is serving on active duty and deployed or otherwise serving outside of this state during the term of this Agreement. You must provide written evidence of your deployment within 90 days after you receive notice of such deployment or service outside the state. If you prefer, instead of cancelling you may freeze your membership at no additional cost and your membership rate will not change while your membership is on freeze (see the Membership Policies for more details on how to freeze a membership).

6(b)(4). Notice & Effective Date: You or your estate must send written notice and proof of the event within 30 days after it happens, unless specifically stated otherwise in this Agreement. Cancellation is effective as of the date of the event. If your notice is late or lacks proof, 24 Hour may set the effective date when 24 Hour receives the notice. Such notice shall be sent to: 24 Hour Fitness, P.O. Box 787, Carlsbad, CA 92018.

6(b)(5). 24 Hour eliminates or substantially reduces the scope of the facilities described in this agreement.

6(c) Cancellation Rights for Agreements $1,500.00 and Over:

6(c)(1). Nothing in this section shall apply to an Agreement for $1,499.99 or less.

6(c)(2). If your Agreement requires payment of one thousand five hundred dollars ($1,500) to two thousand dollars ($2,000), inclusive, including initiation fees or initial membership fees, you have the right to cancel the Agreement within 20 days after the Agreement is executed.

6(c)(3). If your Agreement requires payment of two thousand one dollars ($2,001) to two thousand five hundred dollars ($2,500), inclusive, including initiation fees or initial membership fees, you have the right to cancel the Agreement within 30 days after the agreement is executed.

6(c)(4). If your Agreement requires payment of two thousand five hundred and one dollars ($2,501) or more, including initiation fees or initial membership fees, you have the right to cancel the Agreement within 45 days after the Agreement is executed.
6(c)(5). If you are entitled to cancel under this Section 6(c), you shall be liable only for that portion of the amounts due under this Agreement, including initiation fees and other charges however denominated, that has been available for your use, based upon a pro rata calculation over the term of the Agreement. The remaining portion of the Agreement payment shall be returned to you by 24 Hour.
6(d). Termination of Monthly Payment Agreements-Membership, Upgrade, and Special Privilege: You may terminate your Monthly Payment Agreement (Membership, and/or Special Privilege) by providing written notice to cancel@24hourfitness.com, or 24 Hour Fitness P.O. Box 787 Carlsbad, CA 92018 Attn: Cancel Dept.; or 24 Hour Fitness 1265 Laurel Tree Lane Suite 100 Carlsbad, CA 92011, or online by visiting www.24hourfitness.com/members/cancel/. 24 Hour will apply your pre-paid last month's (if applicable) dues to pay for your agreement starting on and including the day it receives notice of your request to terminate your agreement, so your agreement will end 30 days from the date that 24 Hour receives your notice of termination. 24 Hour will refund any unused pro-rated dues that you have already paid for the monthly billing cycle covering the date that 24 Hour receives your termination notice. It may take up to 30 days to receive your refund in order to allow 24 Hour to confirm receipt of your payment for the monthly billing cycle covering the date that 24 Hour receives your termination notice. Your refund for unused pro-rated dues will include the pro-rated dues for the day 24 Hour receives your termination notice. For example, if you paid your monthly dues on July 1 and 24 Hour received notice of your request to terminate your agreement on July 15, then you would get a refund for 17 unused days because you only used 14 days (July 1-14) of the 31 days that your July 1 payment covered. (Each payment covers a calendar month, so, for example, your June 1 payment would have covered 30 days.) That total of 17 unused days includes the day 24 Hour received your termination notice. Your refund for the 17 unused days would be calculated by taking the amount of your monthly dues divided by 31 and multiplying that amount by 17. Your pre-paid last month's dues would cover your Agreement from July 15 through August 13 (30 days beginning with and including July 15), and your Agreement privileges would end on August 13.
6(e). Termination of Prepaid (Limited) Membership: If you have a prepaid membership, you may not terminate it during the Prepaid Period (or get a refund), unless specifically stated otherwise in Sections 6(a), 6(b), or 6(c) above.
6(f). Termination for Cause by 24 Hour: 24 Hour may, at its option, terminate your membership if (1) you fail to complete all signature lines and required initial blocks, (2) you fail to make timely payments under any payment plan, (3) any monthly payments or dues are late, (4) the monthly EFT/RCC payments or dues are interrupted or discontinued for any reason and you or your cosigner do not provide an acceptable alternative, (5) you fail to follow any of 24 Hour's Membership Policies or club Rules or violate any part of this Agreement, or (6) your conduct is improper or harmful to the best interest of 24 Hour or its members. Termination is effective on the date 24 Hour mails a written notice to your last known address. You are liable for all financial obligations until that date.
6(g). Termination Without Cause by 24 Hour: 24 Hour reserves the right to terminate your membership for any reason not stated above and not prohibited by law. If 24 Hour does so, it will mail a written termination notice to your last known address and refund any unused prepaid dues.
6(h). Termination on Club Closure or Move: If 24 Hour permanently closes or moves your Club of Enrollment, 24 Hour, at its option, will either (1) transfer your membership to a comparable club location within 10 miles of your Club of Enrollment, or (2) terminate this agreement on the date of closing. If your membership is not transferred, then as of the date of closing you will not have to pay further monthly dues and 24 Hour will refund any unused prepaid dues. You are not entitled to a refund if 24 Hour can transfer your membership to a comparable club within 10 miles of your Club of Enrollment.
6(i). Effect of Termination & Financial Obligation: Upon the effective date of cancellation or termination, your right to use 24 Hour's facilities ends and 24 Hour can deny you access to any or all 24 Hour clubs. If you owe 24 Hour money when your membership ends, you still owe the money, and 24 Hour will deduct it from any refund you might have coming. If there is not enough money to cover the debt in the refund, you must pay the balance. If you terminate your Monthly Payment Membership or your prepaid membership expires and you want to rejoin, you must buy a new membership at the then current rate.

7. APPLICABLE LAW
This Agreement and/or any legal action related to your 24 Hour membership shall be governed by, construed and enforced in accordance with the laws of the State where you live at the time this Agreement is executed as indicated in the Personal Information section on the first page of this Agreement, without reference to choice of law principles. Exclusive venue for any legal action related to this Agreement or your 24 Hour membership shall be brought in any Federal or State court in the jurisdiction in which the Agreement was executed ('Applicable Courts'). The parties waive any objection that they have or may have to venue in the Applicable Courts including, but not limited to, any objection that the Applicable Courts are an inconvenient forum. In addition, the parties waive, to the fullest extent they may effectively do so, any objection that they have or may have to the transfer of any legal action to the Applicable Courts.

8. LIMITATION OF LIABILITY
Unless controlling legal authority requires otherwise, any award by an arbitrator or a court is limited to actual compensatory damages. Specifically, neither an arbitrator nor a court can award either party any indirect, special, incidental or consequential damages, even if one party told the other party that they might suffer these damages.

9. AGREEMENT TO ARBITRATE--INCLUDING WAIVER OF CLASS ACTION AND JURY RIGHTS
9(a). Agreement to Arbitrate All Disputes Except Personal Injury and Small Claims Disputes
IN THE EVENT OF ANY DISPUTE (OTHER THAN (1) ONE THAT INVOLVES PERSONAL INJURY OR (2) ONE FILED IN A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS) BETWEEN YOU AND 24 HOUR, (24 HOUR, AS USED IN THIS PROVISION, INCLUDES ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS), YOU AND 24 HOUR WAIVE YOUR RIGHT TO A JURY TRIAL AND CONSENT TO ARBITRATE THAT DISPUTE BEFORE A SINGLE ARBITRATOR UNDER THE THEN CURRENT COMMERCIAL DISPUTE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN A LOCATION NEAR YOUR CLUB OF ENROLLMENT, RATHER THAN LITIGATE THE DISPUTE IN COURT. YOU AND 24 HOUR ALSO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. IN ADDITION, YOU ALSO AGREE NOT TO PARTICIPATE IN CLAIMS BROUGHT IN A PRIVATE ATTORNEY GENERAL OR REPRESENTATIVE CAPACITY, OR CONSOLIDATED CLAIMS INVOLVING ANOTHER PERSON'S ACCOUNT, IF 24 HOUR IS A PARTY TO THE PROCEEDING. IF YOU DO NOT WANT TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MAY OPT OUT. IN ORDER TO OPT OUT OF THIS ARBITRATION PROVISION, YOU MUST NOTIFY 24 HOUR IN WRITING THAT YOU DO NOT WANT TO RESOLVE DISPUTES WITH 24 HOUR BY ARBITRATION, SUCH NOTICE SHOULD BE DELIVERED BY MAIL TO 24 HOUR FITNESS, P.O. BOX 787, CARLSBAD, CA 92018, WITHIN 90 DAYS OF THE DATE YOU SIGN THIS AGREEMENT.
9(b). Fees and costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement. If the value of the relief sought is $10,000 or less, at your request, 24 Hour will pay all filing, administration, and arbitrator fees associated with the arbitration. If the value of the relief sought is more than $10,000 and you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, 24 Hour will pay as much of the filing, administration, and arbitrator fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse 24 Hour for all fees associated with arbitration paid by 24 Hour on your behalf, which you otherwise would be obligated to pay under AAA's rules.

9(c). Arbitrator will resolve any issues over application or enforcement of this clause.
The arbitrator, and not any Federal, State, or local court or agency shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.
9(d). Severability and Survival. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this arbitration Section 9 will be null and void. This arbitration agreement will survive the termination of your relationship with 24 Hour.

10. RELEASE OF LIABILITY AND ASSUMPTION OF RISK
Using the 24 Hour Fitness USA, LLC. (24 Hour) facilities, services, or activities involves the risk of injury to you or your guest, whether you or someone else causes it. Specific risks vary from one activity to another and the risks range from minor injuries to major injuries, such as catastrophic injuries including death. **In consideration of your acceptance of the benefits under this agreement, you understand and voluntarily accept this risk and agree that 24 Hour, its officers, directors, employees, volunteers, agents and independent contractors will not be liable for any injury, including, without limitation, personal, bodily, or mental injury, economic loss or any damage to you, your spouse, guests, unborn child, or relatives resulting from the negligence of 24 Hour or anyone on 24 Hour's behalf or anyone else whether related to exercise or not.** You agree to indemnify, defend and hold 24 Hour harmless against any liability, damages, defense costs, including attorneys' fees, or from any other costs incurred in connection with claims for bodily injury, wrongful death or property damage caused by your negligence or other wrongful acts or omissions. You further agree to hold harmless, defend and indemnify 24 Hour from all liability, damages, defense costs, including attorneys' fees, or from any other costs incurred in connection with claims for bodily injury, wrongful death or property damage brought by you, your guests, or minors, even if 24 Hour Fitness was negligent. Further, you understand and acknowledge that 24 Hour does not manufacture fitness or other equipment at its facilities, but purchases and/or leases equipment. You understand and acknowledge that 24 Hour is providing recreational services and may not be held liable for defective products.

11. STEROID WARNING
Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damage liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. There are also civil and criminal penalties for the unauthorized sale, use, or exchange of anabolic steroids.

Membership Details

Member Name: Michael Floyd
Member Number: MBR05167181
Agreement Number: 24S03381897
Membership Type: Platinum

	PLATINUM
Free Weights	√
Cardio Equipment	√
Functional Training & Turf Zone	√
TRX Suspension Training	√
Strength Training Machines	√
Olympic Training Rigs	√
Locker Rooms	√
Free WiFi	√
24GO® Fitness App	√
GX24® Studio Classes	√
GX24® Cycle Classes	√
Basketball Court	√
Racquetball Court	√
Lap Pool	√
Sauna	√
Steam Room	√
Whirlpool	√
24GO® Premium Digital	√
GX24® Virtual Classes	√
2 FREE Buddy Passes	√

Facilities, classes and amenities vary by location.

Physical Activity Readiness Questionnaire (PAR-Q)

PAR-Q & YOU – A Questionnaire for People Aged 15 – 69

Regular physical activity is fun and healthy, and increasingly more people are starting to become more active every day. Being more active is very safe for most people. However, some people should check with their doctor before they start becoming much more physically active.

If you are planning to become much more physically active than you are now, start by answering the seven questions in the box below. If you are between the ages of 15 and 69, the PAR-Q will tell you if you should check with your doctor before you start. If you are over 69 years of age, and you are not used to being very active, check with your doctor.

Common sense is your best guide when you answer these questions. Please read the questions carefully and answer each one honestly.

1. Has your doctor ever said that you have a heart condition and that you should only do physical activity recommended by a doctor?
2. Do you feel pain in your chest when you do physical activity?
3. In the past month, have you had chest pain when you were not doing physical activity?
4. Do you lose your balance because of dizziness or do you ever lose consciousness?
5. Do you have a bone or joint problem (for example, back, knee or hip) that could be made worse by a change in your physical activity?
6. Is your doctor currently prescribing drugs (for example, water pills) for your blood pressure or heart condition?
7. Do you know of **any other reason** why you should not do physical activity?

If you answered YES to one or more questions, talk with your doctor by phone or in person BEFORE you start becoming much more physically active or BEFORE you have a fitness appraisal. Tell your doctor about the PAR-Q and which questions you answered YES.

- You may be able to do any activity you want – as long as you start slowly and build up gradually. Or, you may need to restrict your activities to those which are safe for you. Talk with your doctor about the kinds of activities you wish to participate in and follow his/her advice.
- Find our which community programs are safe and helpful to you.

If you answered NO honestly to all PAR-Q questions, you can be reasonably sure that you can:

- Start becoming much more physically active – begin slowly and build up gradually. This is the safest and easiest way to go.
- Take part in a fitness appraisal – speak to our personal training department.

DELAY BECOMING MUCH MORE ACTIVE IF:

- If you are not feeling well because of a temporary illness such as a cold or a fever – wait until you feel better; or
- If you are or may become pregnant – talk with your doctor before you start becoming more active.

PLEASE NOTE:
If your health changes so that you then answer YES to any of the above questions, tell your fitness or health professional. Ask whether you should change your physical activity plan.



Sales Receipt

00602 - Milpitas Super Sport
719 E. Calaveras Blvd.
Milpitas, CA 95035

Employee: 9484R

Member Name	Member #	Agreement	Agreement Type	Amount paid at Sales Desk	Amount to be paid at Front Desk	Total
Michael Floyd	MBR05167181	24S03381897	Membership	$ 0.00	$ 0.00	$ 109.98

MEMBER SIGNATURE: Michael Floyd **DATE SIGNED: 01/05/2022**

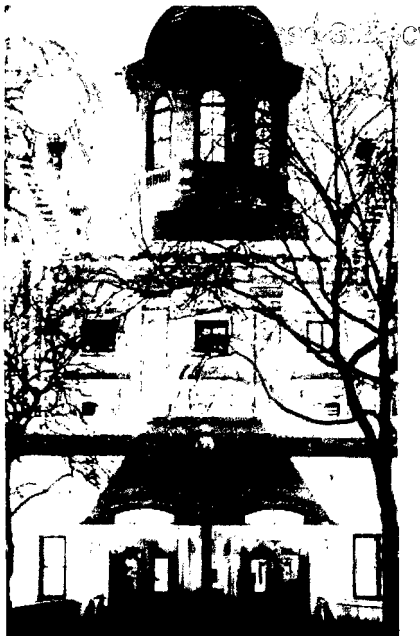
Michael FloydMBR05167181
Status: Revoked

Date/Time	Team Member	Source	Status	Summary	View/Send
11/08/2022 03:54 PM PST	7601URoderic Jackson	BACK OFFICE	N/A	chrome_reader_mode	
Revoke Issue-Dispute usps - revoke dispute letter received. Forwarded to the revoke team. Less					
10/13/2022 12:14 PM PDT	N/A	N/A	N/A	chrome_reader_mode	
Refund Authorization attempt was successful for $54.99 to original payment method: MasterCard, Reference Number R-01752001 on 10-11-22 Less					
10/13/2022 12:14 PM PDT	N/A	N/A	N/A	chrome_reader_mode	
Refund Authorization attempt was successful for $49.99 to original payment method: MasterCard, Reference Number R-01752000 on 10-11-22 Less					
10/11/2022 03:30 PM PDT	4398ELilia LaPena	BACK OFFICE	N/A	chrome_reader_mode	
Do Not Contact NO ACCESS ALLOWED , MEMBERSHIP REVOKED, if member wishes to dispute, mbr may submit in writting and send to corporate offce address, attn Member services. Less					
10/11/2022 03:29 PM PDT	4398ELilia LaPena	BACK OFFICE	N/A	chrome_reader_mode	
Revoke Processed Conduct - Club 488: Mbr acts confrontational, displays inappropriate behavior, towards other mbrs while using the facility. Approved by RVP/Stefanie C. Revoke letter mailed to mbrs address on file. Refunded $104.98($54.99 9/05cc + $49.99 03/01cc - refunded prepaid dues and the AF)Refund to card on file within the next 3-5 business days Less					
10/11/2022 03:22 PM PDT	4398ELilia LaPena	BACK OFFICE	Success	assignment Refund	picture_as_pdf emailSend Email Emailmdf3039b@gmail.com Send
Refund Reason:Revoked Payment number: P-46955833, Invoice number: INV94805852, Refund authorization attempt was successful CC type: [MasterCard], Last 4 Digits: [8075], Refund Amount: [$54.99], Reference: [TT257FC7HXKVMM42] Less					
10/11/2022 03:22 PM PDT	4398ELilia LaPena	BACK OFFICE	Success	assignment Refund	picture_as_pdf emailSend Email Emailmdf3039b@gmail.com Send

Date/Time	Team Member	Source	Status	Summary	View/Send
Refund Reason:Revoked Payment number: P-37536493, Invoice number: INV81180158, Refund authorization attempt was successful CC type: [MasterCard], Last 4 Digits: [8075], Refund Amount: [$49.99], Reference: [D3XF7WDTSNQVMM42] Less					
10/11/2022 03:20 PM PDT	4398ELilia LaPena	BACK OFFICE	Success	assignment Update Member Information	
Member Number: MBR05167181 Application: Member Inquiry (MI) First Name: Michael Last Name: Floyd Gender: Male Birthdate: 09/08/1989 Address1: 1214 mount hermon rd Address2: City: Santa Cruz State: CA Zip: 95066 Valid Address: true Email: mdf3039b@gmail.com Primary Phone: (713) 562-7229 Primary Phone Type: Home Secondary Phone: Contact Via Email: false Contact Via Sms: false Contact Via Phone: false Send Email: false Vaccination Record: Less					
10/10/2022 02:24 PM PDT	8957NAlyese Bryant	CRM	Closed	chrome_reader_mode **CAS-6630976-M0R9W4** Agreement Change	
ESCALATION RESOLVED Less					
10/09/2022 02:01 PM PDT	6472KKesan Pillai	CRM	Closed	chrome_reader_mode **CAS-6630976-M0R9W4** Agreement Change	
Re-Assigning back to Club to Solve and Close the Case Less					
10/07/2022 12:40 PM PDT	4398ELilia LaPena	BACK OFFICE	N/A	chrome_reader_mode UNDER REVIEW - No access allowed during this time **More**	
UNDER REVIEW - No access allowed during this time Less					
10/04/2022 10:51 AM PDT	Z5208Ava-Gay Mullings	SERVICE-CONTACT CENTER	N/A	chrome_reader_mode	
Freeze/LP Investigation Michael Floyd 7135627229 called in and said he was accused of assaulting a woman at the gym and he was in the shower half naked and two police escort him out of the gym inform mbr that his account is currently on freeze and his account is been reviewed and a manager will reach out to him. Less					
10/03/2022 07:03 PM PDT	146096Adriana Saucedo	00493	N/A	chrome_reader_mode Denied Access: Other	
Denied Access: Other Less					
10/03/2022 12:06 PM PDT	134068Michael Martinez	BACK OFFICE	Freeze Submitted	assignment 24S03382030 - Freeze	picture_as_pdf emailSend Email **Email**mdf3039b@gmail.com Send

Date/Time	Team Member	Source	Status	Summary	View/Send
Account Number: MBR05167181 Subscription Number: 24S03382030 Freeze Type: Extended Freeze Start Date: 2022-10-03 End Date: 2023-10-02 24HF Status: Frozen Submitted Date: 2022-10-03 Freeze Reason: LP_INVESTIGATION Less					
10/03/2022 12:06 PM PDT	N/A	N/A	N/A	rotate_90_degrees_ccw 24S03382030 -	
24HF Status From: Active To Frozen Less					
10/03/2022 12:06 PM PDT	134068Michael Martinez	BACK OFFICE	Freeze Submitted	assignment 24S03382167 - Freeze	picture_as_pdf emailSend Email **Email**mdf3039b@gmail.com Send
Account Number: MBR05167181 Subscription Number: 24S03382167 Freeze Type: Extended Freeze Start Date: 2022-10-03 End Date: 2023-10-02 24HF Status: Frozen Submitted Date: 2022-10-03 Freeze Reason: LP_INVESTIGATION Less					
10/03/2022 12:06 PM PDT	N/A	N/A	N/A	rotate_90_degrees_ccw 24S03382167 -	
24HF Status From: Active To Frozen Less					
10/03/2022 12:06 PM PDT	134068Michael Martinez	BACK OFFICE	Freeze Submitted	assignment 24S03381897 - Freeze	picture_as_pdf emailSend Email **Email**mdf3039b@gmail.com Send
Account Number: MBR05167181 Subscription Number: 24S03381897 Freeze Type: Extended Freeze Start Date: 2022-10-03 End Date: 2023-10-02 24HF Status: Frozen Submitted Date: 2022-10-03 Freeze Reason: LP_INVESTIGATION Less					
10/03/2022 12:06 PM PDT	N/A	N/A	N/A	rotate_90_degrees_ccw 24S03381897 -	
24HF Status From: Active To Frozen Less					
10/02/2022 07:42 AM PDT	149669Brian Kane	00488	Closed	assignment **CAS-6629007-N6N8J9** Freeze SR	
Comments: Was escorted out by police on 10/01/22 has multiple issues with female members Less					
10/01/2022 10:40 PM PDT	149765Andrew Pratt	00488	N/A	chrome_reader_mode	
Denied Access: Other police escorted the member out of the gym for trespassing after reports of inappropriate touching from multiple female. case # 2022-56473 Less					

Date/Time	Team Member	Source	Status	Summary	View/Send
09/30/2022 08:59 PM PDT	146643Eric Tapia-Barron	00488	N/A	chrome_reader_mode	
Escalated Issue Member was waiting for a female to leave the gym and proceeded to follow her to car while she walking away from him talking to her. Less					
09/10/2022 04:07 PM PDT	146643Eric Tapia-Barron	00488	N/A	chrome_reader_mode	
Escalated Issue On 09/09/2022 michael yelled at female member from across the gym floor when she was getting dumbbells for the dumbbell rack. He starts to follow her and states that he was using the dumbbells. She gives them back to him, but michael never used the dumbbells he just reracked them. They have issues in the past, where she reported him. She feels like he is intimidating her and making her very uncomfortable. Less					
07/18/2022 08:37 PM PDT	146643Eric Tapia-Barron	BACK OFFICE	N/A	chrome_reader_mode	
Escalated Issue We have had a handful of female members come and complain that he has been harassing during there workouts. On one occasion 7/9/2022 he went up to a female guest and touched her mid workout. She responded with please don't touch me, but we went to say 'when was the last time a man touched you like that'. Less					
06/15/2022 03:40 PM PDT	3372BCory Nolen	00602	N/A	chrome_reader_mode	
member stated another member called him the N word in the restroom while he was talking to someone.. When i spoke to Michael and other member with team member David who was translating, other member stated on god he has never used that word and would never disrespect anyone in that way. Michael wanted member kicked out of club, i let him know unfortunately i cannot kick him out as it is his word against the other members word. I asked if he had a witness, and Michael said no, he said it under his breathe so that only Michael could here. i apologized and said i will notate accounts, give warnings to both about any verbal/physical misconduct not being allowed					



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD

Plaintiff(s),

vs. Case No.: 3:23-cv-00871-EMC

24 HOUR FITNESS USA, LLC

Defendant(s).

REMOTE STREAMING DEPOSITION OF

MICHAEL MARTINEZ

TAKEN VIA ZOOM ON

TUESDAY, OCTOBER 22, 2024

10:08 A.M.

CALIFORNIA, U.S.A.

REMOTE APPEARANCES

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Also Present:
Amie Park, In-house Counsel, 24 Hour Fitness USA, LLC
Tom Hazelhurst, Naegeli Technician

EXAMINATION INDEX

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MICHAEL MARTINEZ

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EXHIBIT NO.		PAGE
1	NOTES ON GYM MEMBER	9
2	PLAINTIFF STATEMENT 7-18-22	17

REMOTE STREAMING DEPOSITION OF

MICHAEL MARTINEZ

TAKEN VIA ZOOM ON

TUESDAY, OCTOBER 22, 2024

10:08 A.M.

THE REPORTER: We are now on the record at 10:08 a.m.

Mr. Martinez, will you please raise your right hand, sir?

Thank you.

Do you affirm under penalty of perjury that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yeah.

THE REPORTER: All right. Thanks so much.

Will each attorney present for today please state their name and whom they represent?

MS. SCALERO: Yes. Jeanne Scalero, here on behalf of defendant, 24 Hour Fitness.

MR. FLOYD: Michael Floyd, the plaintiff representing himself.

THE REPORTER: All right. Thanks so much.

You may proceed.

MICHAEL MARTINEZ, having been first duly affirmed to

tell the truth, was examined, and testified as follows:

EXAMINATION

BY MR. FLOYD:

Q. All right. Mr. Martinez, if you have resided in California, can you state the years in which California was your residence?

A. My whole life.

Q. Your whole life. Awesome.

And if you have been employed by 24 Hour Fitness, can you state the timespan of your employment with respect to the positions held at 24 Hour Fitness?

A. 2018 to current.

Q. To current?

A. Yep.

Q. And did you have the same position the whole time since 2018 to now?

A. 2019.

Q. What was that?

A. 2019 was when I became a manager.

Q. Is when you -- you said you became a manager?

A. Yep.

Q. Okay. So you said 2019 is when you became

a manager. What is your current position?

A. Manager at 24 Hour Fitness.

Q. And which 24 Hour Fitness are you a manager at?

A. In San Jose.

Q. All I heard was San Jose. Is that correct?

A. Yeah. Yeah.

Q. Is that the location you were always employed at?

A. No. I just got here about two years ago.

Q. Oh. Did you have any other employment with 24 Hour Fitness at a different location?

A. I had a few of them. Yes.

Q. Did you ever work at the 24 Hour Fitness in Hayward on Whipple Road?

A. Yes.

Q. What time period did you work at 24 Hour Fitness at Hayward on Whipple Road?

A. Right before the -- or right after the pandemic, 2020.

Q. Is that just in 2020?

A. I don't remember. I don't know the exact timeframe.

Q. Were you working at the 24 Hour Fitness in

Hayward in 2022?

A. That sounds about right.

Q. Okay. And what was your position at that location?

A. Sales and service manager.

Q. So you were a manager at that location as well. Is that for the duration of 2022?

A. Yeah.

Q. Okay. Exhibit 1 contains notes within files from me at the place of business, 24 Hour Fitness. There was an incident on July 18th where in the exhibit notes it says that --

MS. SCALERO: Michael, can I interrupt?

THE WITNESS: That's fine.

MS. SCALERO: Are you going to -- you should mark -- I meant Mr. Floyd.

THE WITNESS: Oh.

MS. SCALERO: You're both named Michael.

You need to -- if you're going to refer to an exhibit you should mark it as an exhibit to the deposition transcript to make the record clear what you're referring to.

MR. FLOYD: Yeah. Yeah, okay. I was going to do that but I was just kind of giving background to what I was about to say.

MS. SCALERO: Okay.

MR. FLOYD: Yeah, but that is a good idea.

BY MR. FLOYD:

Q. And I was going to say, in Exhibit 1 we have a recording of an issue with me saying, "We had a handful of female members come and complain."

I provided the exhibits shortly before this -- shortly before this deposition. I'd like to show Exhibit 1.

(WHEREUPON, Exhibit 1 was marked for identification.)

BY MR. FLOYD:

Q. I'm going to share my screen.

Okay. Can you see the screen?

A. Barely, but not really.

MS. SCALERO: You can --

THE WITNESS: Oh, there we go. Yeah, I can zoom in.

MS. SCALERO: -- pinch it and open it. Yeah.

THE WITNESS: Yeah, there we go.

MS. SCALERO: Yes, I see it.

BY MR. FLOYD:

Q. Awesome. Awesome. You see the screen.

So Exhibit 1 contains -- have you seen

something similar to this before?

A. Oh, of course I have. Yeah. Yeah, I have.

Q. What is -- and what is this?

A. Documentation from member update. From member inquiry.

Q. Okay. So you document problems at 24 Hour Fitness when there is a problem with a member?

A. Yeah.

Q. Okay. I received this exhibit, you know, through discovery.

A. Okay.

Q. On July 18, 2022.

A. Hmm.

Q. There is an issue that is written by Eric Tapia-Barron saying that a handful of female members came and complained that I've been harassing them during their workouts. On one occasion, July 9th, I went up to a female guest and touched her mid-workout.

The July 18th incident, do you recall that incident?

A. Yeah.

Q. Were you working at 24 Hour Fitness during that time?

A. Yes.

Q. Did a member come up to you and express that they had problems with me?

A. Yes.

Q. How many members?

A. Two.

Q. Were they both females?

A. Yes.

Q. Do you remember their ethnicity?

A. No.

Q. Do you remember the approximate age they were?

A. No.

Q. Do you remember the complaints they had against me?

A. Yes.

Q. And what were those complaints?

A. That you made them feel uncomfortable.

Q. Did they say anything else?

A. That you touched them mid-workout before I got there.

Q. Did they tell you where I touched them?

A. Midsection.

Q. Midsection of their?

A. They just felt like their stomach.

Q. On their stomach. So I touched them in the midsection of their stomach. Would you say like the upper abdomen or lower abdomen?

A. I don't know.

Q. Did they point to where -- to where it was?

A. No. They just showed -- they just like touched their stomach.

Q. Okay. So like you just did a signal gesture just now touching the middle of your stomach. So similar to that. I just touched them on their stomach in the middle of their workout?

A. Yeah. And tried to talk to them.

Q. Both of them?

A. Yeah. No, just one of them you touched.

Q. I touched one of them on their stomach and the other one I did not approach?

A. Not till later.

Q. Till later. Were they both present when I touched one of them on their stomach?

A. Yeah.

Q. Did they say anything else?

A. Yeah.

Q. Did they say anything about problems with me nine days ago?

A. Yeah.

Q. So what was the problem nine days prior on July 9th?

A. What do you mean?

Q. Okay. So it says on -- in the member notes, if you read the member notes in Exhibit 1 it says on July 18th, it said I had a handful of members come and complain that I've been harassing them. And okay. It says on July 9th, I touched a female during, mid-workout.

A. Right.

Q. Is July 9th the incident where I touched a female?

A. Yeah.

Q. So did I touch her on July 18th?

A. No. You were just in the building.

Q. I was just in the building on July 18th? Did I talk to them on July 18th?

A. You tried to.

Q. And what did they say on July 18th?

A. They just walked up to me and said that you were in the building and that I needed to talk to you.

Q. Okay. When did you learn about the July 9th incident?

A. July 18th, the first day I got there.

Q. Okay. So on July 18th, was this the first time anybody -- concerning the July 9th incident, was this the first time on July 18th that anybody at 24 Hour Fitness knew about that incident?

A. No. Team members knew about it on the 9th.

Q. Team members knew about it on the 9th but there's no notes about it on the 9th?

A. I don't recall what other previous managers did before I did. All I know is July 18th when I got there.

Q. That's when you were notified. But you say other team members. Do you know exactly which other team members knew about the July 9th incident?

A. The ones that are put in the notes in the system.

Q. Okay. Nobody put notes in the system until July 18th. So --

A. For the one right there on July 9th, he's the one that knew about the occurrence on July 9th. He was there.

Q. So Eric Tapia-Barron knew about the July incident -- July 9th incident on July 9th?

A. Yep.

Q. Okay. And on July 18th, they told you that I attempted to converse with them again?

A. Yep.

Q. And did I do any other behavior, questioning behavior on July 18th?

A. Yeah. You went and come and talk to my manager.

Q. I mean, concerning the two girls. I guess we're going to get to our disputes later but yeah, concerning the two women, what they're reporting, did they say anything else besides I tried to talk to them on July 18th?

A. I don't know.

Q. So did I do anything on July 18th or is July 9th the only incident that was the problem?

MS. SCALERO: Objection. Objection. Misstates his prior testimony. And asked and answered.

MR. FLOYD: Say that again.

MS. SCALERO: I'm just -- Mr. Floyd, I'm able to make objections for the record so I'm just objecting that your question has been asked and answered and also misstates his prior testimony. He can still answer your question but I get to lodge my objection.

MR. FLOYD: All right.

BY MR. FLOYD:

Q. Can you remind me of the problems that I caused with these two women on July 18th?

MS. SCALERO: Same objections.

BY MR. FLOYD:

Q. Are you there?

A. Me? Yeah, I'm here.

Q. Yeah. Can you remind me of the problems that were on July 18th, specifically on July 18th that happened?

A. Your conduct, you didn't come back and talk to your manager. You gave me a problem about having to talk to somebody.

Q. I'm referring about the two women.

A. Right. No, on July 18th, no.

Q. Okay. So there is nothing -- okay.

And I guess after the two women complained to you, what did you do?

A. I went to you and talked to you.

Q. Okay. Do you remember where you were when the two women made their complaint?

A. I don't.

Q. No. Do you remember what part of the gym you were in when you confronted me?

A. I do. You were on some leg machine.
Q. Yes. I was on -- I was on the leg machine.
A. I think you were on the hip abductors.
Q. Say it again?
A. I think you were on the hip abductors.
Q. Yeah. Yeah. Did you, yeah, it's also written in my notes as well.
Were you accompanied by another team member?
A. Yeah.
Q. Do you remember what you told me on the hip abductor machine?
A. Yeah, I tried to talk to you and you didn't want to talk to me.
Q. So you just -- so what you told me is you wanted to talk to me and I denied your request to talk to me?
A. Pretty much. Yeah. You weren't being friendly either.
Q. Exhibit 2. I would like to introduce Exhibit 2 into the deposition.
(WHEREUPON, Exhibit 2 was marked for identification.)
BY MR. FLOYD:

Q. Exhibit 2 contains notes that I wrote directly after the events that happened on July 18th. Mr. Martinez, did you read the notes on Exhibit 2?

A. Yeah. I'm zooming out. Give me one second.

Q. Yeah, sure.

A. Yeah, I read them.

Q. Okay. It starts right here. I guess it's the conversation between me and you and the other sales member. Was the other manager who was there named Adam Sanchez?

A. Yeah.

Q. I recorded what I remember from the conversation between the three of us. And do you remember telling me that I was previously banned from the gym?

A. I didn't say banned. I said that you weren't allowed over there until you talked to a manager.

Q. When did you hear the report that I was not allowed in the gym until I talked to a manager?

A. The day of the 18th --

THE REPORTER: Real quick.

THE WITNESS: The day of the 18th when the

girls came up to me.

THE REPORTER: Mr. Martinez, we've really got to be careful with the Zoom proceeding to make sure we don't talk over Mr. Floyd. He was still trying to get a question in.

MR. FLOYD: I think the court reporter is talking.

THE WITNESS: Can you guys hear me?

THE REPORTER: Sorry about that. I was on mute.

MS. SCALERO: I can hear you.

THE REPORTER: I was on mute.

I just wanted to remind you, Mr. Martinez, to just allow Mr. Floyd to get his full question out so we have a clear record. Thank you.

BY MR. FLOYD:

Q. Okay. So you do not remember telling me that I was previously banned from the gym?

A. No.

Q. But you remember telling me that I had to leave --

A. (Inaudible)

Q. Say that again.

THE REPORTER: Okay, Mr. Martinez, we've really got to be -- once again, just allow Mr. Floyd

a couple seconds after he asks the question because I'm not getting your response. It's actually interrupting the end of his question and the beginning of your response. Okay. So thank you so much.

BY MR. FLOYD:

Q. You said you remember telling me that I had to talk to a manager before coming back to the gym?

A. I can't hear you. There's like background noise.

Q. I hear background noise as well. I'm not sure --

MS. SCALERO: Do you know where that -- do you know where that noise is coming from?

THE WITNESS: I'm all by myself.

BY MR. FLOYD:

Q. Okay. I think it's off. Okay, good.

What did you tell me about being banned from the gym specifically?

A. That you had to come and talk to a manager.

Q. Did you ask me to leave at that time?

A. Yes. At first no, but yeah, I did eventually ask you to leave.

Q. You told me I had to talk to a manager; is that correct?

A. Yep.

Q. You are a manager; is that correct?

A. I am, but it had to go higher than me.

Q. So you told me to leave until I talked to a manager higher than you?

A. So we can converse.

Q. Do you remember telling me about what the problem was?

A. No, I couldn't because of the females in the gym that were scared of you.

Q. And when you told me that I was -- I had to leave the gym to talk to a manager, what did I say?

A. You just looked at me. You tried to intimidate me.

Q. By just looking at you?

A. Trying to stare at me. Like stare at me in my eyes and get up and pump your chest.

Q. So I got up off the machine and pumped my chest as well?

A. Yeah.

Q. Did I say anything?

A. You just kept asking like why and who did

it.

Q. Okay. So what you're saying is two women complained. You told me I have to leave the gym until I come back to talk to a higher ranking manager and --

A. -- to the gym so that we can figure out what's going on. Excuse me.

Q. And when I asked you why or who made the complaints you give me no further information?

A. No further -- to protect the identities of who was scared of you at that time.

Q. How long had you been working at that specific gym in Haywood on Whipple Road?

A. The 18th was my first day.

Q. What about Adam Sanchez? Was that his first day also?

A. I'm not sure. No, I don't know what his exact date, start date was.

Q. Did I tell you that I would not leave because you would not give me any explanation whatsoever about the problem I caused? And what did you do after that?

A. We had to call the police because you didn't want to leave. You were getting agitated, not unfriendly.

Q. You said you were friendly?

A. No. I said that you were not friendly.

Q. Oh, okay. When police arrived, did you provide any more details when the police arrived?

A. Yes.

Q. Did you tell me or did you tell the police the details?

A. The police.

Q. The police. I'm assuming you told the police the same details you just previously told me in this deposition?

A. Yeah.

Q. The only complaints -- excuse me. Were the only complaints made from those two women?

A. Yes.

Q. And that at the time was the only known complaints ever from me in that gym?

MS. SCALERO: Objection. Calls for speculation. That was his first day as he testified.

THE WITNESS: You are correct.

BY MR. FLOYD:

Q. Okay. Did anybody else working there know of any other complaints about me at the gym?

A. Just the occurrences that happened on the

9th.

Q. Okay. Let me scroll for a second.

You said you'd been working at 24 Hour -- where were you previously a manager?

A. Washington Sport. Yeah, previous to Hayward I was at Washington Sport in San Leandro.

Q. Washington Sport San Leandro. How long were you a manager at Washington Sport San Leandro.

A. About a year.

Q. About a year before you were moved to Hayward?

A. Mm-hmm.

Q. Okay. Now, have you had incidents like this?

A. I think about two years.

Q. Okay. So you had incidents like this happen at Washington 24 Hour Fitness?

A. Not to this extent. No, but yes.

Q. You've had other minor issues?

A. Yeah, minor issues. Yeah, minor issues, 100 percent. Yeah.

Q. You think this is not a minor issue?

A. No.

Q. The complaint was from two women, one claiming that I touched her on her stomach?

A. Right.

Q. During her workout?

MS. SCALERO: Objection. Asked and answered.

MR. FLOYD: Okay. All right.

BY MR. FLOYD:

Q. What would you do at the Washington 24 Hour Fitness if there was an incident like this that occurred?

MS. SCALERO: Objection. Calls for speculation. Improper hypothetical. You can answer.

THE WITNESS: I don't get the question.

BY MR. FLOYD:

Q. For a minor incident that happened at Washington 24 Hour Fitness, what would you do when something happens, a dispute between two gym members?

A. Regardless, all protocol is notes in the system and risk connect so that we can talk to the people.

Q. You said notes in the system and what was it?

A. Risk connect. It's like a report thing.

Q. Risk connect. Okay.

So under no circumstance -- well, do you ever bring the accused and accused to try to --

A. No.

Q. -- understand a dispute?

A. No. Wait. Wait, wait, wait, wait, wait. You were asking for a minor incident. Are we talking about your incident or just incidents period?

Q. Let's say for my incident. A similar incident like this.

A. No, I would not.

Q. Okay. Did you attempt to understand -- let me try to rephrase that.

There are no notes in the system saying what my testimony is concerning what happened on July 18th or July 9th. At any point in time did you try to get my side of the story from me?

A. Yeah. So you know how in the thing when you said you tried to keep it friendly conversation in the gym? That didn't happen from the start. So me trying to go over there and talk to you, it didn't even happen. You just struck me off, gave me an attitude, and pumped your chest at me and looked at me in my eyes.

Q. And this was while I was on the hip

abductor machine?

A. Yep.

Q. But I did ask questions to you regarding who and what happened to have you come and conversate with me.

A. Yeah.

Q. And you told me no further details?

A. Yeah. I told you you'd have to come back and talk to a manager if you wanted to get any more details. And you wanted me to give them to you right then and there.

Q. Have these two women complained about any other persons?

A. I don't know. That was my first day on the 18th.

Q. Let's say after.

A. Yeah.

Q. They complained about other people after?

A. No. They complained about you.

Q. Well, me after. Did they complain about any other people?

A. No, because they didn't have contact with any other people.

Q. I was the only person they had contact with at the gym?

A. As far as troubling conflict, yes.

Q. Yes. Okay.

There is another incident on Exhibit 1 that I would show -- let me share my screen.

MS. SCALERO: Michael, would you like to -- you might want to mark that as Exhibit 3 to this deposition since this is the third exhibit you're entering.

MR. FLOYD: This is the first one.

MS. SCALERO: Okay.

MR. FLOYD: We're still looking at the first one.

MS. SCALERO: Okay.

BY MR. FLOYD:

Q. Okay. There was another incident that was documented on September 10th by the same guy, Eric Tapia-Barron that says on September 9th, the day before, I had problems with a female member using the weights.

A. Okay.

Q. Were you there on September 9th?

A. I don't remember.

Q. So whoever this person is, they did not report that to you on September 9th?

A. I knew about it like the day it happened.

But like as far as like me being there to know about it, no, not that I remember.

Q. Okay. So --

A. I remember the occurrence though.

Q. Okay. So she did not report it to you?

A. Yeah, no, not that one. Well, she ended up reporting it to me but I mean, I was -- I don't remember being off or if I was there but it was reported to me.

Q. What I've been told is that this female member on September 9th is one of the members that were present on July 18th. You knew this?

A. Yes. Because you had the same occurrence with the same females. Excuse me.

Q. Were these the same females ever pointed out to me while I was a member at 24 Hour Fitness?

A. Because of the severity of the incident and the way you used to look at them and look at us, no, we didn't.

Q. So you saw me looking at them --

A. Looking for them.

Q. Looking for them after the July 18th incident?

A. Mm-hmm.

THE REPORTER: Sorry.

BY MR. FLOYD:

Q. And when you say --

THE REPORTER: Sorry. I need to interrupt, Mr. Floyd.

Mr. Martinez, the mm-hmms, unh-unhs don't show up on the record. So if you could say yes or no in response to Mr. Floyd's questions it will be a much clearer transcript. Thank you.

BY MR. FLOYD:

Q. How could you tell I was looking for them at the July 18th incident?

A. The way the front desk is, we can see the whole front -- we can see the whole gym. And when we would like pay attention to the gym and see who's inside there you could see you actively looking for them.

Q. Was I just looking around the gym or how was -- were they in the gym at the time?

A. They were in your vicinity. Yeah.

Q. And I was looking for them while they were in my vicinity?

A. Mm-hmm. Yes.

Q. Was I looking directly at them or --

A. You were trying to figure out who was complaining against you.

Q. There was just one complaint on July 18th that I was informed of. Is that correct?

A. Yeah.

Q. So when you say I was trying to figure out who was complaining against me you said I was looking direct at them but --

A. I didn't say directly at them. I said in the vicinity you were looking to see who was paying attention to you. Like who would have told on you.

Q. Is that on -- this is after this, while I'm -- I guess this is the --

A. (Inaudible) yeah.

Q. (Inaudible)

A. Yeah. Yeah. I don't know exactly but yes.

THE REPORTER: Sorry. I hate to interrupt again. I really need everybody to speak one at a time. We're on kind of a dicey Zoom feed right now and I'm not getting the full question and I'm not getting the full response. So once again, I do urge you to both give each other some time so I get a clear record. Thank you.

BY MR. FLOYD:

Q. Okay. Did you ever see me talking to these same two females after the July 18th incident?

A. No. Not that I remember.

Q. You also said something regarding to the way I was looking at the staff member as well, you as well. What do you mean by that?

A. It was just a certain look you had to you. It wasn't a friendly one, nor was it a friendly interaction.

Q. You said July 18th wasn't a friendly interaction, or which interactions were not friendly interactions?

A. All of them.

Q. All of them. So what you're saying is every interaction I had with staff was not friendly?

A. Yes.

Q. Okay. Okay. Did you ever speak to me about the September 9th incident?

A. Again, I tried to on the 18th but you didn't let me. And there was also multiple -- multiple tries of calling you and emailing you but you never picked up and you never answered any emails back.

Q. Do you have -- okay. Did you ever talk to me about the September 9th incident?

A. Again, we tried to and you didn't let us. You more along the lines tried to figure out who was

complaining about you, nothing about your behavior, nothing like that because you wouldn't let us. You more were interested in who was tattling, who was telling on you.

Q. This is September 9th. If you look at the exhibit right here, September 9th is the one where a woman was trying to use my weights and I told her I was using the weights.

A. Yeah. I remember the incident.

Q. So that one you said I was trying to do what?

A. Well, remember, I said I didn't remember if I was there or not but I remember the incident being told. But I remember also after that trying to talk to you and you just more along the lines tried to figure out who was telling on you and you were, yeah.

Q. Did you ever tell me specifically details about this incident, like you know, telling her that, hey, I'm using the weights and give me back the weights?

A. No. I don't remember that part. No.

Q. So you didn't tell me any details about the September 9th incident?

A. Not that I remember. I don't remember

that one.

Q. Did you just -- okay. Okay.

Did you ever talk to me about any other incidents after July 18th?

A. I remember trying to as far as like calling you, and you would never answer the phone. Emails as well.

Q. You called me and emailed me. Is that from a 24 Hour Fitness email?

A. It was. They were both from a 24 Hour Fitness number and an email.

Q. Okay. All right. Did you see me in the club?

A. I've seen you in the club.

Q. Did you ever try to talk to me in the club?

A. Yeah. I remember asking you. Yeah.

Q. Did you say any specific details about any of these events?

A. As far as what kind of details?

Q. Anything. Like what happened, you know --

A. Again, because this was -- to Noah --

Q. I --

A. -- you can meet with them after, and you just chose not to.

Q. That was on July 18th. But I did come back. Were you present on July 19th when I spoke to Ms. Bryant?

A. I'm sure I was.

Q. Okay.

A. The 19th.

Q. July 19, 2022; is that correct?

A. Yeah.

Q. So when the police removed me from the facility and you told me to come back the next day and speak to a manager, I did come back the next day and speak to a manager; is that correct?

A. I remember talking but I don't think it was the 19th.

Q. Okay. But you remember shortly after that period being present when I talked to Ms. Bryant?

A. Yeah. I remember a little bit of it. Yes.

Q. And during that conversation with Ms. Bryant was I provided with any other details?

A. I don't remember.

Q. Okay. Specifically for you, I see in Exhibit 1 that I apparently touched a girl during her mid-workout. Apparently, a girl was trying to use the weights I was using and I walked a woman to

her car.

Did you tell me specifically any details about any problems such as these within 24 Hour Fitness?

MS. SCALERO: Objection. Objection. Misstates the document. And also argumentative.

You can answer.

THE WITNESS: I don't get what you mean.

BY MR. FLOYD:

Q. The times where you've talked to me at 24 Hour Fitness about problems with other members, did you tell me any specific details about the incidents between me and those other members?

A. Yeah. You and the two girls, I just told you you were bothering them and that proper gym etiquette, they were on the -- the dumbbells were on the dumbbell rack is what she told me and then you went up to her and you said, "I was using those." You put them right back and you never even used them.

Q. Did you say anything else to me?

A. Not that I remember.

Q. What did I say in response to that?

A. You said what you said?

Q. Yeah.

A. Again, you were trying to figure out who was telling on you. You had no interest in what you were doing wrong. All it was was who is telling on me. It was not you didn't have no -- I don't want to say you didn't care but you just didn't have no interest in what else was going on but besides who was telling on you or what you were doing.

Q. This is for September 9th.

A. Yeah.

Q. How do you know I didn't use the dumbbells after I received the dumbbells from the woman?

A. Because you put them back on the dumbbell. Everybody was paying attention because we knew about the incidents that you had with the two ladies.

Q. I just put them back on the dumbbell rack and then what did I do?

A. You continued with another workout. As far as what workout it was, I don't remember.

Q. When you say "everybody," there was multiple people watching me?

A. The front desk.

Q. Do you know if I was using those dumbbells before? Do you know if I was actually using dumbbells when she was trying to get the dumbbells?

A. So usually proper gym etiquette is people

who put the dumbbell racks on the rack, those are free game. She grabbed the dumbbells from the rack and you said that you were using them.

Q. Were you watching me prior to her using -- attempting to use the dumbbells?

A. Again, like I said, I don't remember because I don't remember if I was there. All I remember is what was going on in the incident, what the staff members were telling me.

Q. So you do not recall being there?

A. Right. I said that before.

Q. So what you're saying is things that you believe other staff members did?

A. Yeah.

Q. So you believe other staff members were watching me?

A. They weren't just watching you. They watch the whole gym for the safety of the members. But because you were there, yes.

Q. So you have really no idea whether if I was actually using the dumbbells or not?

A. Right. Me, myself, no.

Q. And you don't -- you just believe from the notes that I did not use the dumbbells after?

A. Yeah. One hundred percent.

Q. Okay. That's just taken from the notes. Okay.

At this point I don't believe I have any -- hold on. Let me make sure.

Okay. Is there any other detail you'd like to provide, you think is important?

A. No.

MR. FLOYD: Okay. I'm supposed to pay you 40 bucks for this, and the easiest way is for electronic means of service through Venmo or PayPal. Do you have a Venmo or PayPal ID?

THE WITNESS: I don't.

MR. FLOYD: You don't. Anything electronic, cash app, anything?

THE WITNESS: I don't.

MS. SCALERO: Michael, we discussed that you would just mail checks to our office in LA, and we'll ensure they get to the witnesses.

MR. FLOYD: All right. Because you don't have any means of electronic service, I'm going to have to email you -- I'm going to have to mail the check, and then they'll have to mail the check back to wherever you are located.

At this time I have no further questions.

THE REPORTER: And Ms. Scalero, did you

have any questions for the witness?

MS. SCALERO: I do not.

THE REPORTER: Okay. Very good.

While we're still on the record, Mr. Floyd, would you like to order the original of the transcript, sir?

MR. FLOYD: Say that again.

THE REPORTER: Would you like to order the original of the transcript?

MR. FLOYD: Yes.

THE REPORTER: Okay. Very good.

Ms. Scalero, would you like to order a copy?

MS. SCALERO: Yes.

THE REPORTER: All right. Thanks so much.

With that we're off the record at 10:58 a.m.

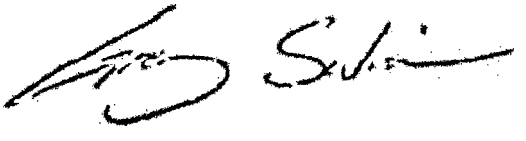
(WHEREUPON, the deposition of MICHAEL MARTINEZ concluded at 10:58 a.m.)

CERTIFICATE

I, Greg Salina, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 12th day of November, 2024.



Greg Salina

CORRECTION SHEET

Deposition of: Michael Martinez Date: 10/22/24

Regarding: Floyd vs 24 Hour Fitness USA LLC

Reporter: Salina / Morrison

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet and the line provided.

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Signature: _____

Michael Martinez

DECLARATION

Deposition of: Michael Martinez Date: 10/22/2024

Regarding: MICHAEL DEVIN FLOYD vs 24 HOUR FITNESS USA

Reporter: Greg Salina

I declare under penalty of perjury the following to be true:

I have read my deposition and the same is true and accurate save and except for any corrections as made by me on the Correction Sheet herein.

Signed at _____, _____

on the _____ day of _____, 20____.

Signature: _____

Michael Martinez

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Kane(manager):	00:30	[00:00:30] I am telling you, you have to go.
Floyd(Black mal...:	00:30	Your camera on?
Officer1:	00:30	Yes, it is.
Kane(manager):	00:30	They're here to help me make sure you leave.
Floyd(Black mal...:	00:30	[inaudible 00:00:38] before.
Kane(manager):	00:30	Bullshit.
Floyd(Black mal...:	00:30	[inaudible 00:00:46].
Kane(manager):	00:45	You can do it right in the trash can.
Floyd(Black mal...:	00:50	I've never seen you before. Who are you? Why are you telling me to leave?
Kane(manager):	00:52	Why am I telling you to leave?
Floyd(Black mal...:	00:54	Yeah.
Kane(manager):	00:55	Because you're here assaulting women.
Floyd(Black mal...:	00:57	You said insulting or assaulting?
Kane(manager):	00:59	Assaulting.
Floyd(Black mal...:	01:00	[00:01:00] Assaulting women?
Kane(manager):	01:02	Physically touching them inappropriately.
Floyd(Black mal...:	01:05	And how do you-
Kane(manager):	01:05	So here's what's going to happen.
Floyd(Black mal...:	01:07	No, no [inaudible 00:01:08]-
Kane(manager):	01:07	No, no, no, no, no. You're letting me talk. You're letting me talk.
Floyd(Black mal...:	01:21	Hold on one second. Let me make sure I get this camera out so you can talk to me, dog. Hold on, brother.
Officer1:	01:22	Hey, bud. Here's the deal, man.
Floyd(Black mal...:	01:22	Yeah, you can tell me the deal. Hold on one second. I want to make sure I'm recording this.

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Officer1:	01:23	I got my camera going so you-
Floyd(Black mal...:	01:24	So your camera don't really mean much to me, big guy.
Officer1:	01:26	Okay.
Floyd(Black mal...:	01:27	Let me just make sure I get my stuff going so we can go.
Officer1:	01:30	[00:01:30] So here's the thing. They as a business have the right to refuse-
Floyd(Black mal...:	01:33	Hold on one second. You keep saying something. Okay, okay. Hold on one second. Keep going, bro.
Officer1:	01:39	You keep telling me to hold on and then you tell me to go. Which one do you want? Do you want me to talk, or are you going to keep telling me hold on?
Floyd(Black mal...:	01:44	Talk.
Officer1:	01:45	So, the business here, he's a representative of this business. You are assaulting women that are feeling uncomfortable... Let me talk. You just told me to let me talk. They don't want you here. They're refusing service to you. They want you off of their property. [00:02:00] He's asking you nicely to go ahead and leave this property.
Floyd(Black mal...:	02:04	It'd be against the law to just refuse service for no reason. You're telling me I assault a woman. What exactly did I do to assault the women?
Kane(manager):	02:13	So I got reports from my staff. All right? You come up, blatantly admitted to this, that you're going up and grabbing them in the ass and other parts of their body.
Floyd(Black mal...:	02:25	There's not, it's not-
Kane(manager):	02:27	You asked me to explain.
Floyd(Black mal...:	02:29	Okay.
Kane(manager):	02:29	Let me explain. [00:02:30] Do not interrupt.
Floyd(Black mal...:	02:31	Okay.
Kane(manager):	02:32	This is what I got. Now I'm asking you to leave, peacefully leave.

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Floyd(Black mal...:	02:38	I have never heard anything... You told him that?
Pratt(employee):	02:41	[inaudible 00:02:42] that's what she told me?
Floyd(Black mal...:	02:43	Who's she?
Pratt(employee):	02:43	I ain't giving out no names.
Kane(manager):	02:43	We cannot give names by law.
Pratt(employee):	02:43	She told me.
Kane(manager):	02:50	Complaints are legal contracts. We cannot give names out. If you want names, you better get a lawyer, and you better get a warrant.
Floyd(Black mal...:	02:57	This happened today?
Kane(manager):	02:57	And they have to be served.
Floyd(Black mal...:	02:59	This [00:03:00] happened today?
Kane(manager):	03:00	This has happened multiple times, most recently tonight, as of five minutes ago when I was coming in.
Floyd(Black mal...:	03:07	This did not happen today. This did not happen multiple times.
Kane(manager):	03:08	Officers-
Officer1:	03:08	Hey, bud.
Kane(manager):	03:08	Officer, please.
Floyd(Black mal...:	03:11	This has never happened whatsoever.
Officer1:	03:13	We're not going to go back and forth-

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24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD, Plaintiff, v. 24 HOUR FITNESS USA, Defendant.	Case No. 3:23-cv-00871-EMC Honorable Edward M. Chen **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET NINE** Action Filed: February 27, 2023

PROPOUNDING PARTY: MICHAEL DEVIN FLOYD

RESPONDING PARTY: 24 HOUR FITNESS USA, LLC

SET NUMBER: NINE (9)

Defendant 24 HOUR FITNESS USA, LLC, ("Defendant" or "24 Hour Fitness") by and through its attorneys Seyfarth Shaw LLP, and pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby objects and responds to Michael Devin Floyd's ("Plaintiff") Special Interrogatories, Set Nine, as follows:

PRELIMINARY STATEMENT

This response is made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statements contained herein, if such statements were made by a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

The information contained in each response is based only upon the information currently available to Defendant. Defendant's investigation and discovery in preparation for trial is continuing and will continue to and throughout the trial of this action. Additional investigation may disclose further information relevant to these responses, as could information obtained by Defendant from Plaintiff or third parties through additional discovery procedures. Defendant's responses to these interrogatories are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action. Defendant responds to these interrogatories as it understands them and reserves the right to provide different responses if Plaintiff later provides a different interpretation. Defendant is not making any incidental or implied admissions. The fact that Defendant has answered part or all of any interrogatory is not intended and shall not be construed to be a waiver by Defendant of all or any part of any objection to any interrogatory.

Discovery in this matter is ongoing. Defendant reserves its right to alter, amend, supplement or otherwise revise these responses if, for any reason, such revisions or supplements become appropriate or warranted.

INTERROGATORIES

INTERROGATORY NO. 1:

On October 1, 2022, I was told in the locker room that a woman complained of harassment. You also informed me that there were two people working at 24 Hour Fitness on that night: Walter Kane and Andrew Pratt? How many different complaints of harassment did each employee receive that night concerning my behavior? By different complaints of harassment, I mean different women complaining about being harassed. For example: Andrew Pratt: 0, Walter Kane: at least 1.

RESPONSE TO NO. 1:

Defendant objects to this Interrogatories to the extent its seek the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory as compound.

Notwithstanding these objections Defendant responds as follows: There was just one complaint of harassment on October 1, 2022. The member complained to Andrew Pratt. Mr. Pratt reported the complaint to Walter Kane.

DATED: November 12, 2024

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC

VERIFICATION

I, Jen Garrett, declare as follows:

1. I am the Sr. Director of Member Support Services for 24 Hour Fitness USA, LLC , Defendant in the above-referenced action, and have read the foregoing **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET NINE**, and know the contents thereof.

2. The same is true of my own knowledge, except as to the matters that are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this _11__ day of November, 2024, at Carlsbad, California.

Jen Garrett

Jen Garrett

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On November 12, 2024, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET NINE

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

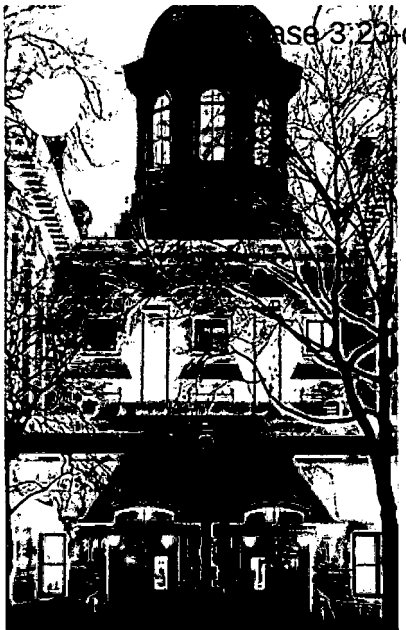
Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 12, 2024, at Los Angeles, California.

Kassandra Cutler

Kassandra Cutler



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD

Plaintiff(s),

vs. Case No.: 3:23-cv-00871-EMC

24 HOUR FITNESS USA, LLC

Defendant(s).

REMOTE STREAMING DEPOSITION OF

ANDREW PRATT

TAKEN VIA ZOOM ON

TUESDAY, OCTOBER 22, 2024

12:20 P.M.

CALIFORNIA, U.S.A.

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Tom Hazelhurst, Naegeli Technician

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EXAMINATION BY MR. FLOYD 5

EXHIBIT INDEX

EXHIBIT NO. PAGE

(NONE MARKED)

REMOTE STREAMING DEPOSITION OF

ANDREW PRATT

TAKEN VIA ZOOM ON

TUESDAY, OCTOBER 22, 2024

12:20 P.M.

THE REPORTER: All right. We are on the record at 12:20 p.m.

Mr. Pratt, will you please raise your right hand, sir?

Thank you.

Do you affirm under penalty of perjury that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE REPORTER: All right. Thanks so much.

Counsel, you may proceed.

ANDREW PRATT, having been first duly affirmed to tell the truth, was examined, and testified as follows:

EXAMINATION

BY MR. FLOYD:

Q. All right, Mr. Pratt, if you have resided in California, can you state the years which California was your residence?

A. California, started -- well, lived in Vegas but started in California about 2012, 2013 till now.

Q. Okay. In 2022, were you employed by 24 Hour Fitness?

A. Indeed, I was.

Q. What part of 2022 were you employed by 24 Hour Fitness?

A. Around August, July.

Q. August, July. Okay.

A. Yeah.

Q. And what was your position?

A. I was a sales consultant.

Q. Sales consultant. And did you only have that position at one 24 Hour Fitness location?

A. Yeah.

Q. And which location was that?

A. That was the one in Hayward. Whipple. Whipple Road.

Q. Okay. All right. I'm going to show Exhibit 1.

Give me one second.

I'll wait to show Exhibit 1, actually.

Oh, okay. So you said you started employment sometime in July and August and you said

-- were you employed by 24 Hour Fitness for the duration of 2022 from July or August?

A. I left around October, like 2023.

Q. Around October 2023. Okay. So, okay. Good. So you were there during October 2022. Excuse me. You were there during October 22; is that correct?

A. Yeah. I was there.

Q. Okay. There was an incident that occurred on October 1, 2022, with me and an alleged other member. And two other employees.

Were you present on October 1, 2022?

A. Yes, I was.

Q. Okay. Was there a female that complained about me on October 1, 2022?

A. It was brought up to my attention. Yes.

Q. Was it brought to your attention by the female?

A. Yes, it was.

Q. Do you recall the female?

A. Yes, I do.

Q. Do you recall what race she was?

A. I'd say if I had to take a guess it was like --

MS. SCALERO: Actually, no. No guessing.

THE WITNESS: No guessing.

MS. SCALERO: And I'm going to object based on relevance.

BY MR. FLOYD:

Q. She can object but you can still answer the question.

Do you recall what race she was?

MS. SCALERO: I'm also going to object based on privacy grounds to the extent that this could potentially identify her to you. So I'm instructing the witness to not answer.

MR. FLOYD: I would be able to identify the person just based off of a race but the witness can answer at this moment.

MS. SCALERO: Because if he identifies the race then you might recall who it was that is complaining about you.

THE WITNESS: Does the race even matter? It doesn't.

BY MR. FLOYD:

Q. Race matters because what I've gotten from their discovery that there's maybe about 39 potential possible people that checked into 24 Hour Fitness during that time. It would narrow down the people that they are claiming is there. I mean, I

remember the night very clearly in my mind. For one, I do not believe that it's even -- excuse me -- for one, I do not believe it's even possible that there were 39 females there present in that gym during that time because it was relatively dead that Saturday night. But what they're claiming is that there's 39 people that checked in sometime that could be there. The race would have narrowed down exactly from that 39 people.

MS. SCALERO: I'm still going to object, Michael because --

BY MR. FLOYD:

Q. Do you recall the --

MR. FLOYD: yeah, I mean, you're objecting but that is the reason. I mean, we're saying it's 39 but do you recall the race she was?

MS. SCALERO: I'm going to object. I'm objecting based on privacy.

BY MR. FLOYD:

Q. Was there --

MS. SCALERO: I'm sorry. Let me speak. I need to lodge my objection.

Based on privacy and I am instructing the witness to not answer, which I'm allowed to do.

BY MR. FLOYD:

Q. Do you recall any details about her?

A. Details about the incident?

Q. The woman?

A. I can tell you details about the incident, what I was told.

Q. How tall was she?

MS. SCALERO: Objection. Objection based on privacy. Your questions are -- you're trying to figure out who it was and you're not entitled to that information based on privacy.

MR. FLOYD: Let me move over from the computer. There's actually somebody cutting grass unfortunately right where I was. I'll move the computer.

BY MR. FLOYD:

Q. Okay. So you have not provided me any details whatsoever about any specifics of the woman but you do recall specifically about the woman; am I correct?

Are you there?

A. I'm here.

Q. Yeah. So I mean, you did not provide this to me but you could recollect as to some specifics about the woman and what she looked like; am I correct?

A. I could tell you about the incident.

Q. Yeah. You can tell me about the incident but I'm just saying if you had pictures and you would be able to identify the person, you would be able to identify the person; am I correct?

A. Does the race -- does the race even matter?

Q. We're past the race. I just wanted to ask you if you could --

A. I can give you a suggestion. I can give you -- I can't tell a race. Everybody can be any race.

Q. Would you be able to remember what she looked like enough to identify her?

MS. SCALERO: You can answer the question.

THE WITNESS: I have a clear detail a little bit that I can remember.

BY MR. FLOYD:

Q. Okay. And what specifically did this woman tell you?

A. Technically, that that woman was being recorded by you. You were making sexual comments.

Q. You said the woman was being recorded by me?

A. That's what I was told.

Q. Did the woman tell you that specifically?

A. Yes.

Q. So the woman told you specifically that I was being recorded -- that I was recording her?

A. Yes.

MS. SCALERO: Objection. Asked -- objection. Asked and answered.

You can answer again, Drew.

BY MR. FLOYD:

Q. What does it mean to record somebody?

A. What does it mean?

Q. Yeah.

A. That you're using your phone for purposes to record somebody. Or record them in general --

Q. She told you I was -- okay. Okay. All right. I guess I didn't understand what you meant. I understand now.

And what else did she say besides the recording? I couldn't remember.

A. Sexual comments.

Q. Sexual comments. Did she give you any specific details on these sexual comments?

A. Not that I can remember.

Q. But she did at the time?

A. Yes.

Q. Was there only one woman that complained that night?

A. On that night, yes.

Q. That was the only thing she told you?

A. As I can remember, yes.

Q. What did she do after she told you that?

A. I brought it up to one of my other consultants.

Q. And then what happened after that?

A. Then my consultant took care of it. He did what he did.

Q. Who called the police?

A. I'm not sure. I just know that they arrived.

Q. Okay. So did you call the police?

A. No.

Q. How long between, if you can approximate or you can remember, how long in duration was it between when the girl reported that to you and the police arriving?

A. I don't know. About, what, an hour and a half between that.

Q. So it was an hour and a half time between the report made against me and the police arriving?

A. Yeah. From what I can remember, yeah.

Q. Did she specifically point me out, like I guess pointing finger-wise or anything?

A. No. What was described.

Q. Okay. Did you see me in the gym during that hour and a half?

A. Yeah.

Q. Did you ever come in close proximity with me in the gym during that hour and a half?

A. No.

Q. Did you ever talk to me in the gym during that hour and a half?

A. No.

Q. Do you remember who the other employee was that was working with you during that day?

A. Yes.

Q. Was he taller or shorter than you?

A. Does that matter? I know who my other worker was. Yes. But does the height matter?

Q. What is the name of the other worker?

A. I'm not telling you that.

MS. SCALERO: Actually, you can tell him that. You can answer the question of the other worker that was there that night.

THE WITNESS: Walter. That's the name. Did you hear that?

BY MR. FLOYD:

Q. Yeah. Yeah, I heard it. I heard it.

Were you present in the locker room when I was removed by the police on October 1, 2022?

A. Yes.

Q. Do you remember what happened?

A. Yes.

Q. Can you provide any further details?

A. I mean, they arrived. They were taken to you. They asked you questions. You wasn't complying. Then you had a matter to resist and they alleged after that as far as I can know. I seen it.

Q. You said I mattered to resist?

A. Well, you wasn't complying to what they was asking you to do.

Q. How many police were on the scene?

A. If I can remember, like two to three.

Q. Okay. And do you remember the police placing a taser on my leg?

A. No.

Q. Who collected my belongings?

A. As I can remember --

Q. You said what?

A. If I could remember --

MS. SCALERO: Drew, I can't -- I can't see

you on the video.

THE WITNESS: Oh, my bad. My bad. My bad. My bad.

MS. SCALERO: Thank you.

THE WITNESS: As I can remember, I believe I did. Or Walter did. I don't know who did. But I know it was one of the consultants. It was either me or him.

BY MR. FLOYD:

Q. As a sales consultant, did you ever get new members to sign up for membership?

A. Yeah. That's part of the job.

Q. Do members take pictures when they sign up?

A. No. Why? Did you take a picture when you signed up?

Q. It was just a question. Just a question. I don't remember actually. I thought I did.

A. Okay.

Q. I signed up in 2022, so I couldn't quite frankly remember. And there is a place on the -- don't worry about it. There's a place on the member notes they gave me that has a place for it looks like a picture but I didn't have a picture on there but I assumed there was a picture taken. I just

could not remember.

A. Got it.

Q. Where were you located when the female member reported a problem with me?

A. The check-in desk.

Q. The check-in desk? So she walked to the check-in desk and reported the problem?

A. Yes.

Q. What did she do after? Did she go back and continue working out? Did she leave or what?

A. I believe she kept working out but --

Q. Okay.

A. -- left soon.

Q. But what? What was the last part?

A. That she left soon after that.

Q. Okay. All right. Have you received any other reports of harassment from other gym patrons --

A. They were brought to my attention. Yes.

Q. About me?

A. Yes.

Q. Did you ever record any of these problems in the notes for 24 Hour Fitness?

A. Some people already reported it before me.

Q. So you've just been --

A. I was just told of it.

Q. You were just told of these problems. But has anybody besides that person reported problems to you?

A. Yes.

Q. And are those problems the ones that were already in the notes from Exhibit 1? Do you want me to show Exhibit 1?

A. Yes. I already read it. Yeah. But yeah.

Q. Were you ever one of the employees who has reported who the accusers reported the problems to in Exhibit 1?

A. Yes.

Q. Okay. I'm going to show Exhibit 1. Okay. Exhibit 1.

Do you recognize Exhibit 1?

Are you there?

A. I'm reading it.

Q. Oh, okay. Cool. Cool.

Can you see the screen?

A. I can see the screen.

Q. Awesome.

A. What date are you pointing to?

Q. Okay. I was going to -- I was just asking -- I was trying to make sure you could recognize

Exhibit 1 as the member notes that they take in the system for 24 Hour Fitness I guess when members have complaints and problems that they need to record. I was referring to -- we can start with the first one on June 15, 2022.

Did you read these notes before -- did you read these notes before this deposition?

A. It looks familiar like I read this.

Q. You've read this.

Were you -- were you present during this time on June 15, 2022?

A. I can't remember if I was there that day but I could have been.

Q. Okay. You can't remember but could have been. Okay. Just asking.

What about July 18, 2022? It says, "We had a handful of female members come and complain that he has been harassing during their workouts." On one occasion, July 9, 2022, he went up to a female guest and touched her mid-workout. She responded with, "Please don't touch me." But we wanted to say when was the last time a man touched you like that?

A. I was told of this one.

Q. You were told of this one?

A. Yeah.

Q. Were you present when it happened?

A. I don't remember if I was present. But I was aware of this situation.

Q. Okay. The September 10th notes that documents September 9th events about me yelling at a female member, trying to get the dumbbells from the dumbbell rack and I was using them and she gives them back to me. Were you present during that?

A. No, I wasn't.

Q. Okay. All right.

What about this one on September 30th when it says I was waiting for her to leave the gym and followed her to her car. Were you present during that?

A. I don't remember if I was present that day but I was aware of that situation as well.

Q. Okay. All right.

Are there any events that any member has complained to you about me but is not in this system?

A. Not that I couldn't remember. No. I mean, I'm aware of every situation on this list, on here.

Q. Okay. All right. Hold on one second.

To the best of your knowledge, do you know if your other employee at the time, Walter, talked to me before the police arrived on October 1st?

A. Yes. I believe, yeah, I believe so.

Q. You believe what?

A. I believe he did talk to you.

Q. You believe he talked to me prior to the police arriving?

A. I believe so. I only went back there when the police went.

Q. Okay. Did you see him talk to me before police arrived?

A. No.

Q. Okay. Can you provide any more details you believe are important?

A. I can't provide any more details that was important. What, on that night?

Q. Yeah.

MS. SCALERO: Objection. Vague and ambiguous.

What's your question?

MR. FLOYD: I guess that was the question. Any more details that he may have concerning the night.

MS. SCALERO: On October 1st?

BY MR. FLOYD:

Q. On October 1st. That is correct.

A. No. That's pretty much everything.

Q. Okay.

A. Any other details, you was involved. You was already involved with.

Q. Okay. Let me make sure.

MR. FLOYD: At this point I have no further questions.

MS. SCALERO: I have no questions.

THE REPORTER: All right.

THE WITNESS: No questions.

THE REPORTER: All right. While we're still on the record, Mr. Floyd, would you like to order the original of the transcript, sir?

MR. FLOYD: Yes.

THE REPORTER: Thank you.

Ms. Scalero, would you like to order a copy?

MS. SCALERO: Yes, please.

THE REPORTER: All right. Thank you very much. With that we're off the record at 12:50 p.m.

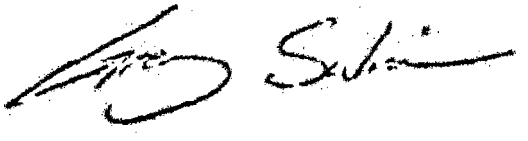
(WHEREUPON, the deposition of ANDREW PRATT concluded at 12:50 p.m.)

CERTIFICATE

I, Greg Salina, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 12th day of November, 2024.



Greg Salina

CORRECTION SHEET

Deposition of: Andrew Pratt Date: 10/22/24

Regarding: Floyd vs 24 Hour Fitness USA LLC

Reporter: Salina / Morrison

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet and the line provided.

Page	Line	Reason for Change
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Signature: _____

Andrew Pratt

DECLARATION

Deposition of: Andrew Pratt Date: 10/22/2024

Regarding: MICHAEL DEVIN FLOYD vs 24 HOUR FITNESS USA

Reporter: Greg Salina

I declare under penalty of perjury the following to be true:

I have read my deposition and the same is true and accurate save and except for any corrections as made by me on the Correction Sheet herein.

Signed at _____, _____

on the _____ day of _____, 20____.

Signature: _____

Andrew Pratt

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Financial Information

Agreement Number	Receipt Date	Product	Cash Receipt Method	Metrics	Amount
24S03381897	1/5/2022 12:00:00 AM	Last Month Dues	N/A	Cash Received	$55
24S03381897	1/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	2/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	3/1/2022 12:00:00 AM	Annual Fee	N/A	Cash Received	$50
24S03381897	3/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	4/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	5/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	6/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	7/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	8/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55
24S03381897	9/5/2022 12:00:00 AM	Monthly Dues	N/A	Cash Received	$55

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
Total									388
MBR05167181	Floyd	Michael	00602	1/5/2022	12:19:07 PM	P	G		1
MBR05167181	Floyd	Michael	00602	1/5/2022	5:58:31 PM	M	G		1
MBR05167181	Floyd	Michael	00602	1/6/2022	11:12:55 AM	P	G		1
MBR05167181	Floyd	Michael	00602	1/7/2022	8:54:43 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/8/2022	7:41:12 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/9/2022	6:59:02 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/10/2022	10:17:08 AM	P	G		1
MBR05167181	Floyd	Michael	00602	1/11/2022	6:30:29 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/12/2022	9:59:35 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/13/2022	11:00:14 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/14/2022	6:53:54 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/15/2022	6:53:51 AM	M	G		1
MBR05167181	Floyd	Michael	00536	1/17/2022	6:10:22 AM	M	G		1
MBR05167181	Floyd	Michael	00501	1/18/2022	7:33:10 PM	M	G		1
MBR05167181	Floyd	Michael	00802	1/18/2022	9:56:52 AM	M	G		1
MBR05167181	Floyd	Michael	00536	1/21/2022	5:57:34 AM	M	G		1
MBR05167181	Floyd	Michael	00501	1/22/2022	6:00:19 AM	M	G		1
MBR05167181	Floyd	Michael	00802	1/22/2022	4:04:07 PM	M	G		1
MBR05167181	Floyd	Michael	00602	1/24/2022	7:14:26 AM	M	G		1
MBR05167181	Floyd	Michael	00602	1/24/2022	7:20:20 PM	M	G		1
MBR05167181	Floyd	Michael	00536	1/26/2022	6:38:04 PM	M	G		1
MBR05167181	Floyd	Michael	00602	1/27/2022	6:33:50 AM	M	G		1
MBR05167181	Floyd	Michael	00811	1/27/2022	12:45:41 PM	M	G		1
MBR05167181	Floyd	Michael	00493	1/28/2022	5:02:16 AM	P	G		1
MBR05167181	Floyd	Michael	00602	1/28/2022	6:20:16 PM	M	G		1
MBR05167181	Floyd	Michael	00493	1/29/2022	6:33:50 AM	P	G		1
MBR05167181	Floyd	Michael	00488	1/30/2022	6:01:51 PM	M	G		1
MBR05167181	Floyd	Michael	00488	1/30/2022	6:03:07 PM	B	G		1
MBR05167181	Floyd	Michael	00272	1/31/2022	7:23:53 AM	B	G		1
MBR05167181	Floyd	Michael	00272	1/31/2022	11:07:34 AM	B	G		1
MBR05167181	Floyd	Michael	00501	1/31/2022	6:55:33 PM	B	G		1
MBR05167181	Floyd	Michael	00272	2/1/2022	5:46:30 AM	B	G		1
MBR05167181	Floyd	Michael	00501	2/1/2022	6:46:29 PM	B	G		1
MBR05167181	Floyd	Michael	00501	2/2/2022	7:06:44 AM	B	G		1
MBR05167181	Floyd	Michael	00501	2/2/2022	5:34:32 PM	B	G		1
MBR05167181	Floyd	Michael	00802	2/2/2022	5:06:02 PM	B	G		1
MBR05167181	Floyd	Michael	00272	2/3/2022	6:54:45 AM	B	G		1
MBR05167181	Floyd	Michael	00602	2/3/2022	7:30:09 PM	E	G		1
MBR05167181	Floyd	Michael	00544	2/4/2022	8:08:10 AM	B	G		1
MBR05167181	Floyd	Michael	00602	2/4/2022	6:31:02 PM	E	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00875	2/5/2022	7:21:49 AM	E	G		1
MBR05167181	Floyd	Michael	00501	2/7/2022	5:16:08 AM	B	G		1
MBR05167181	Floyd	Michael	00536	2/7/2022	6:18:26 PM	B	G		1
MBR05167181	Floyd	Michael	00602	2/8/2022	5:47:31 AM	P	G		1
MBR05167181	Floyd	Michael	00488	2/9/2022	6:40:10 AM	B	G		1
MBR05167181	Floyd	Michael	00501	2/9/2022	7:16:30 PM	B	G		1
MBR05167181	Floyd	Michael	00602	2/10/2022	5:48:21 AM	E	G		1
MBR05167181	Floyd	Michael	00602	2/11/2022	6:14:21 AM	E	G		1
MBR05167181	Floyd	Michael	00493	2/15/2022	6:07:16 AM	E	G		1
MBR05167181	Floyd	Michael	00602	2/15/2022	7:06:03 PM	E	G		1
MBR05167181	Floyd	Michael	00493	2/16/2022	5:24:04 AM	E	Y		1
MBR05167181	Floyd	Michael	00501	2/18/2022	6:57:31 PM	B	G		1
MBR05167181	Floyd	Michael	00875	2/18/2022	5:50:40 AM	E	G		1
MBR05167181	Floyd	Michael	00272	2/19/2022	7:09:09 AM	B	G		1
MBR05167181	Floyd	Michael	00501	2/19/2022	5:49:33 PM	B	G		1
MBR05167181	Floyd	Michael	00501	2/20/2022	6:34:03 AM	B	G		1
MBR05167181	Floyd	Michael	00602	2/21/2022	2:21:03 PM	E	G		1
MBR05167181	Floyd	Michael	00602	2/22/2022	4:32:19 PM	E	G		1
MBR05167181	Floyd	Michael	00602	2/23/2022	6:43:24 AM	E	G		1
MBR05167181	Floyd	Michael	00602	2/25/2022	5:49:29 AM	E	G		1
MBR05167181	Floyd	Michael	00493	2/26/2022	6:34:18 AM	E	G		1
MBR05167181	Floyd	Michael	00875	2/26/2022	4:49:13 PM	E	G		1
MBR05167181	Floyd	Michael	00501	2/27/2022	6:44:32 PM	B	G		1
MBR05167181	Floyd	Michael	00602	2/28/2022	6:02:30 AM	E	G		1
MBR05167181	Floyd	Michael	00493	3/1/2022	6:28:55 AM	E	G		1
MBR05167181	Floyd	Michael	00875	3/1/2022	6:25:26 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/2/2022	5:46:28 AM	E	G		1
MBR05167181	Floyd	Michael	00602	3/2/2022	3:14:11 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/3/2022	5:19:41 AM	E	G		1
MBR05167181	Floyd	Michael	00602	3/3/2022	5:50:03 PM	E	G		1
MBR05167181	Floyd	Michael	00517	3/4/2022	5:22:13 AM	E	G		1
MBR05167181	Floyd	Michael	00875	3/4/2022	6:34:47 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/5/2022	6:08:47 AM	E	G		1
MBR05167181	Floyd	Michael	00272	3/7/2022	6:46:37 AM	B	G		1
MBR05167181	Floyd	Michael	00272	3/8/2022	5:59:23 AM	B	G		1
MBR05167181	Floyd	Michael	00536	3/9/2022	5:58:10 AM	E	G		1
MBR05167181	Floyd	Michael	00875	3/11/2022	5:24:36 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/12/2022	5:46:38 AM	E	G		1
MBR05167181	Floyd	Michael	00875	3/13/2022	6:09:01 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/14/2022	4:59:45 AM	E	G		1
MBR05167181	Floyd	Michael	00602	3/15/2022	4:54:51 AM	E	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00602	3/16/2022	6:43:13 AM	E	G		1
MBR05167181	Floyd	Michael	00602	3/16/2022	6:16:35 PM	E	G		1
MBR05167181	Floyd	Michael	00602	3/17/2022	6:04:33 AM	E	G		1
MBR05167181	Floyd	Michael	00602	3/18/2022	7:08:18 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/19/2022	8:42:04 AM	E	G		1
MBR05167181	Floyd	Michael	00875	3/19/2022	3:55:07 PM	E	G		1
MBR05167181	Floyd	Michael	00875	3/20/2022	6:15:06 AM	P	G		1
MBR05167181	Floyd	Michael	00875	3/20/2022	5:21:03 PM	E	G		1
MBR05167181	Floyd	Michael	00602	3/21/2022	5:15:53 PM	B	G		1
MBR05167181	Floyd	Michael	00875	3/21/2022	5:33:46 AM	P	G		1
MBR05167181	Floyd	Michael	00875	3/21/2022	7:56:13 PM	P	G		1
MBR05167181	Floyd	Michael	00875	3/22/2022	5:04:02 AM	P	G		1
MBR05167181	Floyd	Michael	00875	3/22/2022	6:32:09 PM	E	G		1
MBR05167181	Floyd	Michael	00493	3/23/2022	6:33:37 AM	E	G		1
MBR05167181	Floyd	Michael	00493	3/24/2022	6:08:00 AM	E	G		1
MBR05167181	Floyd	Michael	00488	3/25/2022	6:07:09 PM	B	G		1
MBR05167181	Floyd	Michael	00493	3/25/2022	6:43:52 AM	E	G		1
MBR05167181	Floyd	Michael	00488	3/26/2022	5:52:02 AM	B	G		1
MBR05167181	Floyd	Michael	00536	3/26/2022	4:48:02 PM	B	G		1
MBR05167181	Floyd	Michael	00272	3/27/2022	6:19:32 PM	B	G		1
MBR05167181	Floyd	Michael	00532	3/27/2022	5:40:09 PM	B	Y		1
MBR05167181	Floyd	Michael	00536	3/27/2022	6:36:42 AM	B	G		1
MBR05167181	Floyd	Michael	00272	3/28/2022	5:50:49 AM	B	G		1
MBR05167181	Floyd	Michael	00493	3/29/2022	5:56:06 AM	P	G		1
MBR05167181	Floyd	Michael	00493	3/31/2022	5:35:30 AM	E	G		1
MBR05167181	Floyd	Michael	00493	4/1/2022	6:41:48 AM	E	G		1
MBR05167181	Floyd	Michael	00875	4/1/2022	6:57:55 PM	E	G		1
MBR05167181	Floyd	Michael	00493	4/2/2022	6:18:32 AM	E	G		1
MBR05167181	Floyd	Michael	00501	4/3/2022	7:01:52 PM	B	G		1
MBR05167181	Floyd	Michael	00272	4/4/2022	5:33:11 AM	E	G		1
MBR05167181	Floyd	Michael	00488	4/4/2022	6:22:05 PM	B	G		1
MBR05167181	Floyd	Michael	00488	4/5/2022	6:04:31 AM	B	G		1
MBR05167181	Floyd	Michael	00536	4/5/2022	6:44:40 PM	E	G		1
MBR05167181	Floyd	Michael	00536	4/6/2022	5:26:29 AM	B	G		1
MBR05167181	Floyd	Michael	00517	4/7/2022	5:26:19 AM	E	G		1
MBR05167181	Floyd	Michael	00493	4/8/2022	6:45:30 AM	E	G		1
MBR05167181	Floyd	Michael	00875	4/8/2022	6:49:25 PM	E	G		1
MBR05167181	Floyd	Michael	00493	4/9/2022	5:58:08 AM	E	G		1
MBR05167181	Floyd	Michael	00875	4/9/2022	5:40:13 PM	E	G		1
MBR05167181	Floyd	Michael	00602	4/11/2022	6:15:49 AM	B	G		1
MBR05167181	Floyd	Michael	00602	4/11/2022	6:25:34 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00602	4/12/2022	5:40:10 AM	B	G		1
MBR05167181	Floyd	Michael	00602	4/12/2022	6:30:05 PM	B	G		1
MBR05167181	Floyd	Michael	00602	4/13/2022	6:03:28 AM	B	G		1
MBR05167181	Floyd	Michael	00602	4/13/2022	6:12:28 PM	B	G		1
MBR05167181	Floyd	Michael	00504	4/14/2022	2:24:26 PM	P	G		1
MBR05167181	Floyd	Michael	00602	4/14/2022	5:50:57 AM	B	G		1
MBR05167181	Floyd	Michael	00517	4/15/2022	6:59:35 AM	E	G		1
MBR05167181	Floyd	Michael	00602	4/15/2022	7:24:34 PM	B	G		1
MBR05167181	Floyd	Michael	00602	4/16/2022	6:27:12 AM	B	G		1
MBR05167181	Floyd	Michael	00493	4/18/2022	5:53:56 AM	E	G		1
MBR05167181	Floyd	Michael	00493	4/20/2022	6:45:43 AM	E	G		1
MBR05167181	Floyd	Michael	00875	4/20/2022	5:29:11 PM	E	G		1
MBR05167181	Floyd	Michael	00602	4/21/2022	6:53:57 AM	B	G		1
MBR05167181	Floyd	Michael	00602	4/21/2022	2:56:16 PM	B	G		1
MBR05167181	Floyd	Michael	00602	4/22/2022	3:51:14 PM	B	G		1
MBR05167181	Floyd	Michael	00602	4/23/2022	5:47:16 AM	B	G		1
MBR05167181	Floyd	Michael	00602	4/23/2022	3:36:17 PM	B	G		1
MBR05167181	Floyd	Michael	00602	4/25/2022	6:28:20 AM	B	G		1
MBR05167181	Floyd	Michael	00493	4/27/2022	6:03:30 AM	E	G		1
MBR05167181	Floyd	Michael	00875	4/27/2022	4:48:29 PM	P	G		1
MBR05167181	Floyd	Michael	00493	4/29/2022	6:08:28 AM	P	G		1
MBR05167181	Floyd	Michael	00493	4/30/2022	8:01:41 AM	E	G		1
MBR05167181	Floyd	Michael	00602	4/30/2022	5:05:16 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/1/2022	6:00:44 PM	E	G		1
MBR05167181	Floyd	Michael	00493	5/2/2022	7:02:52 AM	P	G		1
MBR05167181	Floyd	Michael	00875	5/2/2022	5:29:48 PM	P	G		1
MBR05167181	Floyd	Michael	00875	5/3/2022	6:01:39 PM	B	G		1
MBR05167181	Floyd	Michael	00493	5/4/2022	5:26:48 AM	E	G		1
MBR05167181	Floyd	Michael	00875	5/4/2022	6:39:49 PM	B	G		1
MBR05167181	Floyd	Michael	00272	5/5/2022	7:34:39 PM	B	G		1
MBR05167181	Floyd	Michael	00501	5/5/2022	6:19:36 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/5/2022	5:36:20 AM	B	G		1
MBR05167181	Floyd	Michael	00272	5/6/2022	6:27:07 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/6/2022	5:47:15 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/7/2022	6:09:41 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/8/2022	7:13:37 AM	B	G		1
MBR05167181	Floyd	Michael	00493	5/10/2022	5:00:47 AM	P	G		1
MBR05167181	Floyd	Michael	00602	5/10/2022	2:53:24 PM	B	G		1
MBR05167181	Floyd	Michael	00602	5/11/2022	6:56:37 AM	B	G		1
MBR05167181	Floyd	Michael	00602	5/11/2022	5:56:54 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/12/2022	5:38:56 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00493	5/13/2022	5:59:40 AM	B	G		1
MBR05167181	Floyd	Michael	00493	5/14/2022	6:03:32 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/14/2022	5:35:15 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/15/2022	9:06:01 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/15/2022	6:01:17 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/16/2022	7:22:09 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/16/2022	7:15:06 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/17/2022	6:11:09 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/17/2022	6:41:58 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/18/2022	7:03:36 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/18/2022	7:18:44 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/19/2022	6:15:46 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/19/2022	6:09:13 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/20/2022	6:05:33 AM	B	G		1
MBR05167181	Floyd	Michael	00602	5/21/2022	6:12:44 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/22/2022	5:45:58 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/22/2022	5:43:04 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/23/2022	6:04:08 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/23/2022	4:53:30 PM	B	G		1
MBR05167181	Floyd	Michael	00602	5/24/2022	6:28:54 AM	B	G		1
MBR05167181	Floyd	Michael	00810	5/24/2022	5:18:56 PM	E	G		1
MBR05167181	Floyd	Michael	00810	5/25/2022	6:25:56 AM	E	G		1
MBR05167181	Floyd	Michael	00810	5/25/2022	7:14:57 PM	E	G		1
MBR05167181	Floyd	Michael	00602	5/26/2022	7:17:57 PM	B	G		1
MBR05167181	Floyd	Michael	00810	5/26/2022	6:03:47 AM	E	G		1
MBR05167181	Floyd	Michael	00488	5/27/2022	5:46:10 PM	B	G		1
MBR05167181	Floyd	Michael	00602	5/27/2022	6:38:20 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/28/2022	5:33:54 AM	B	G		1
MBR05167181	Floyd	Michael	00488	5/28/2022	2:22:13 PM	B	G		1
MBR05167181	Floyd	Michael	00875	5/29/2022	6:35:24 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/29/2022	6:53:40 AM	B	G		1
MBR05167181	Floyd	Michael	00875	5/29/2022	9:24:17 PM	B	G		1
MBR05167181	Floyd	Michael	00493	5/30/2022	6:40:02 AM	E	G		1
MBR05167181	Floyd	Michael	00875	5/30/2022	5:17:32 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/31/2022	7:33:31 PM	B	G		1
MBR05167181	Floyd	Michael	00488	5/31/2022	11:09:17 PM	B	G		1
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MBR05167181	Floyd	Michael	00488	6/2/2022	6:32:23 AM	B	G		1
MBR05167181	Floyd	Michael	00488	6/2/2022	6:33:49 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00488	6/3/2022	6:49:33 AM	B	G		1
MBR05167181	Floyd	Michael	00488	6/3/2022	7:23:04 PM	B	G		1
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MBR05167181	Floyd	Michael	00488	6/5/2022	10:01:54 PM	B	G		1
MBR05167181	Floyd	Michael	00875	6/5/2022	6:51:23 AM	B	G		1
MBR05167181	Floyd	Michael	00488	6/6/2022	6:45:30 AM	B	G		1
MBR05167181	Floyd	Michael	00488	6/6/2022	7:18:06 PM	B	G		1
MBR05167181	Floyd	Michael	00488	6/7/2022	7:39:55 PM	B	G		1
MBR05167181	Floyd	Michael	00602	6/8/2022	9:57:11 AM	B	G		1
MBR05167181	Floyd	Michael	00602	6/8/2022	6:47:48 PM	B	G		1
MBR05167181	Floyd	Michael	00602	6/9/2022	6:33:05 PM	B	G		1
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MBR05167181	Floyd	Michael	00602	6/13/2022	8:54:40 AM	B	G		1
MBR05167181	Floyd	Michael	00493	6/14/2022	8:35:48 PM	B	G		1
MBR05167181	Floyd	Michael	00602	6/14/2022	1:01:06 PM	B	G		1
MBR05167181	Floyd	Michael	00493	6/16/2022	6:39:56 AM	E	G		1
MBR05167181	Floyd	Michael	00875	6/16/2022	6:35:41 PM	B	G		1
MBR05167181	Floyd	Michael	00493	6/17/2022	6:16:18 AM	B	G		1
MBR05167181	Floyd	Michael	00493	6/18/2022	6:06:49 AM	B	G		1
MBR05167181	Floyd	Michael	00493	6/19/2022	6:38:48 AM	B	G		1
MBR05167181	Floyd	Michael	00493	6/19/2022	7:19:28 PM	B	G		1
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MBR05167181	Floyd	Michael	00488	6/21/2022	7:32:24 PM	B	G		1
MBR05167181	Floyd	Michael	00517	6/21/2022	6:45:30 AM	E	G		1
MBR05167181	Floyd	Michael	00272	6/22/2022	6:24:16 PM	B	G		1
MBR05167181	Floyd	Michael	00488	6/22/2022	6:28:59 AM	B	G		1
MBR05167181	Floyd	Michael	00272	6/23/2022	6:07:45 AM	B	G		1
MBR05167181	Floyd	Michael	00488	6/23/2022	6:40:05 PM	B	G		1
MBR05167181	Floyd	Michael	00488	6/24/2022	6:14:55 AM	B	G		1
MBR05167181	Floyd	Michael	00602	6/25/2022	6:30:38 AM	B	G		1
MBR05167181	Floyd	Michael	00602	6/25/2022	6:35:29 PM	B	G		1
MBR05167181	Floyd	Michael	00602	6/27/2022	2:21:04 PM	B	G		1
MBR05167181	Floyd	Michael	00602	6/28/2022	6:04:38 PM	B	G		1
MBR05167181	Floyd	Michael	00875	6/29/2022	4:28:33 PM	B	G		1
MBR05167181	Floyd	Michael	00493	6/30/2022	5:49:29 AM	B	G		1
MBR05167181	Floyd	Michael	00875	6/30/2022	6:00:10 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/1/2022	6:37:09 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/1/2022	6:13:24 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/2/2022	6:39:04 AM	B	G		1
MBR05167181	Floyd	Michael	00810	7/2/2022	6:18:20 PM	E	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00517	7/3/2022	6:08:31 AM	E	G		1
MBR05167181	Floyd	Michael	00517	7/3/2022	5:35:24 PM	E	G		1
MBR05167181	Floyd	Michael	00517	7/4/2022	6:56:16 AM	E	G		1
MBR05167181	Floyd	Michael	00602	7/4/2022	6:35:18 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/5/2022	7:22:32 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/5/2022	7:00:17 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/6/2022	6:19:31 PM	B	G		1
MBR05167181	Floyd	Michael	00602	7/6/2022	6:16:43 AM	B	G		1
MBR05167181	Floyd	Michael	00488	7/7/2022	6:18:20 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/7/2022	5:19:36 AM	B	G		1
MBR05167181	Floyd	Michael	00488	7/8/2022	6:23:26 AM	B	G		1
MBR05167181	Floyd	Michael	00488	7/8/2022	5:51:05 PM	B	G		1
MBR05167181	Floyd	Michael	00488	7/9/2022	5:54:56 AM	B	G		1
MBR05167181	Floyd	Michael	00488	7/9/2022	11:37:44 AM	E	G		1
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MBR05167181	Floyd	Michael	00493	7/17/2022	10:28:04 AM	B	G		1
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MBR05167181	Floyd	Michael	00493	7/18/2022	4:40:34 AM	B	G		1
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MBR05167181	Floyd	Michael	00493	7/22/2022	6:19:58 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/22/2022	5:58:15 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/23/2022	5:15:26 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/23/2022	5:49:14 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00493	7/24/2022	6:21:01 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/24/2022	4:52:38 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/25/2022	5:51:25 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/25/2022	5:33:01 PM	B	G		1
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MBR05167181	Floyd	Michael	00602	7/27/2022	5:24:53 AM	B	G		1
MBR05167181	Floyd	Michael	00875	7/27/2022	5:58:14 PM	B	G		1
MBR05167181	Floyd	Michael	00488	7/28/2022	5:40:27 PM	B	G		1
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MBR05167181	Floyd	Michael	00602	7/30/2022	1:20:22 PM	B	G		1
MBR05167181	Floyd	Michael	00493	7/31/2022	6:31:30 AM	B	G		1
MBR05167181	Floyd	Michael	00602	8/1/2022	6:24:01 AM	B	G		1
MBR05167181	Floyd	Michael	00602	8/1/2022	5:01:03 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/2/2022	5:37:55 AM	B	G		1
MBR05167181	Floyd	Michael	00602	8/2/2022	7:08:35 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/2/2022	10:00:40 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/3/2022	6:25:04 AM	B	G		1
MBR05167181	Floyd	Michael	00875	8/3/2022	6:21:28 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/4/2022	5:54:08 AM	B	G		1
MBR05167181	Floyd	Michael	00875	8/4/2022	6:16:08 PM	B	G		1
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MBR05167181	Floyd	Michael	00488	8/11/2022	6:37:00 AM	B	G		1
MBR05167181	Floyd	Michael	00488	8/11/2022	6:57:55 PM	B	G		1
MBR05167181	Floyd	Michael	00493	8/12/2022	5:36:35 AM	B	G		1
MBR05167181	Floyd	Michael	00493	8/12/2022	8:14:53 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
MBR05167181	Floyd	Michael	00875	8/13/2022	10:43:14 AM	B	G		1
MBR05167181	Floyd	Michael	00602	8/14/2022	1:00:51 PM	B	G		1
MBR05167181	Floyd	Michael	00875	8/15/2022	6:31:27 AM	B	G		1
MBR05167181	Floyd	Michael	00875	8/16/2022	7:29:07 PM	B	G		1
MBR05167181	Floyd	Michael	00887	8/16/2022	6:40:36 AM	B	G		1
MBR05167181	Floyd	Michael	00488	8/17/2022	5:33:33 AM	B	G		1
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MBR05167181	Floyd	Michael	00887	8/19/2022	6:51:09 AM	B	G		1
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MBR05167181	Floyd	Michael	00493	8/21/2022	6:20:38 AM	B	G		1
MBR05167181	Floyd	Michael	00493	8/21/2022	5:46:35 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/22/2022	6:18:45 AM	B	G		1
MBR05167181	Floyd	Michael	00493	8/23/2022	8:00:20 PM	B	G		1
MBR05167181	Floyd	Michael	00493	8/24/2022	6:11:58 AM	B	G		1
MBR05167181	Floyd	Michael	00602	8/25/2022	10:06:51 PM	B	G		1
MBR05167181	Floyd	Michael	00602	8/27/2022	9:22:03 AM	B	G		1
MBR05167181	Floyd	Michael	00811	8/31/2022	7:19:14 PM	E	G		1
MBR05167181	Floyd	Michael	00811	9/1/2022	7:43:33 PM	E	G		1
MBR05167181	Floyd	Michael	00536	9/2/2022	6:18:22 PM	B	G		1
MBR05167181	Floyd	Michael	00488	9/3/2022	6:35:45 AM	B	G		1
MBR05167181	Floyd	Michael	00493	9/4/2022	6:02:45 AM	B	G		1
MBR05167181	Floyd	Michael	00493	9/5/2022	4:04:27 AM	B	G		1
MBR05167181	Floyd	Michael	00811	9/5/2022	3:19:25 PM	P	G		1
MBR05167181	Floyd	Michael	00488	9/6/2022	7:17:19 PM	B	G		1
MBR05167181	Floyd	Michael	00493	9/6/2022	6:33:11 AM	B	G		1
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MBR05167181	Floyd	Michael	00875	9/9/2022	9:46:39 AM	B	G		1
MBR05167181	Floyd	Michael	00875	9/9/2022	9:47:10 AM	B	G		1
MBR05167181	Floyd	Michael	00488	9/10/2022	6:31:07 AM	B	G		1
MBR05167181	Floyd	Michael	00488	9/11/2022	6:07:39 AM	B	G		1
MBR05167181	Floyd	Michael	00602	9/12/2022	7:00:52 AM	B	G		1
MBR05167181	Floyd	Michael	00602	9/13/2022	7:02:09 AM	B	G		1
MBR05167181	Floyd	Michael	00602	9/13/2022	6:20:52 PM	B	G		1
MBR05167181	Floyd	Michael	00602	9/14/2022	6:55:26 AM	B	G		1
MBR05167181	Floyd	Michael	00602	9/14/2022	7:40:01 PM	B	G		1

Customer Number	Last Name	First Name	Club	Date	Timestamp	Scan Flag	Warning Level	Metrics	Checkin Count
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MBR05167181	Floyd	Michael	00814	9/16/2022	6:46:32 PM	M	G		1
MBR05167181	Floyd	Michael	00493	9/17/2022	6:38:11 AM	B	G		1
MBR05167181	Floyd	Michael	00493	9/18/2022	5:50:58 AM	B	G		1
MBR05167181	Floyd	Michael	00602	9/19/2022	6:54:55 AM	B	G		1
MBR05167181	Floyd	Michael	00493	9/20/2022	6:40:16 AM	B	G		1
MBR05167181	Floyd	Michael	00488	9/30/2022	6:20:56 PM	B	G		1
MBR05167181	Floyd	Michael	00493	9/30/2022	6:13:21 AM	B	G		1
MBR05167181	Floyd	Michael	00488	10/1/2022	6:18:50 AM	B	G		1
MBR05167181	Floyd	Michael	00488	10/1/2022	7:45:27 PM	B	G		1
MBR05167181	Floyd	Michael	00488	10/2/2022	7:37:28 AM	B	G		1
MBR05167181	Floyd	Michael	00493	10/2/2022	8:26:04 AM	B	G		1
MBR05167181	Floyd	Michael	00493	10/3/2022	7:00:02 PM	B	R		1
MBR05167181	Floyd	Michael	00602	10/3/2022	6:08:20 AM	B	G		1
MBR05167181	Floyd	Michael	00602	10/5/2022	12:12:13 PM	B	R		1
MBR05167181	Floyd	Michael	00602	10/5/2022	12:12:24 PM	B	G		1
MBR05167181	Floyd	Michael	00488	10/15/2022	6:08:27 AM	M	R		1
MBR05167181	Floyd	Michael	00930	3/14/2023	5:25:28 PM	M	R		1

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Attorneys for Defendant
24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 4:23-cv-00871-EMC

Honorable Edward M. Chen

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET ONE

Action Filed: February 27, 2023

PROPOUNDING PARTY: MICHAEL DEVIN FLOYD

RESPONDING PARTY: 24 HOUR FITNESS USA, LLC

SET NUMBER.: ONE (1)

Defendant 24 HOUR FITNESS USA, LLC ("Defendant" or "24 Hour Fitness"), by and through its attorneys Seyfarth Shaw LLP, and pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby objects and responds to Michael Devin Floyd's ("Plaintiff") Special Interrogatories, Set One, as follows:

PRELIMINARY STATEMENT

This response is made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statements contained herein, if such statements were made by a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

The information contained in each response is based only upon the information currently available to Defendant. Defendant's investigation and discovery in preparation for trial is continuing and will continue to and throughout the trial of this action. Additional investigation may disclose further information relevant to these responses, as could information obtained by Defendant from Plaintiff or third parties through additional discovery procedures. Defendant's responses to these interrogatories are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action. Defendant responds to these interrogatories as it understands them and reserves the right to provide different responses if Plaintiff later provides a different interpretation. Defendant is not making any incidental or implied admissions. The fact that Defendant has answered part or all of any interrogatory is not intended and shall not be construed to be a waiver by Defendant of all or any part of any objection to any interrogatory.

Discovery in this matter is ongoing. Defendant reserves its right to alter, amend, supplement or otherwise revise these responses if, for any reason, such revisions or supplements become appropriate or warranted.

GENERAL OBJECTIONS

The following general objections apply to the entirety of Plaintiff's Special Interrogatories, Set No. One (the "Interrogatories"). The assertion of same, similar, or additional objections to the individual Interrogatories does not waive any of Defendant's general objections as set forth below.

1. Defendant objects to the Interrogatories to the extent they request the disclosure of any information protected by the attorney client privilege or the attorney work product privilege. No such information will be disclosed.

2. Defendant objects to each Interrogatory to the extent that it seeks confidential information relating to current or former employees of Defendant protected from disclosure by Article I, Section I of the California Constitution, and/or statutory and/or common law rights of privacy.

3. Defendant objects to the Interrogatories to the extent they seek the disclosure of trade secrets, confidential, competitively sensitive proprietary information, or other information protected from disclosure.

4. Defendant objects to the Interrogatories to the extent they are overbroad as to time or scope, unduly burdensome, or oppressive.

5. Defendant objects to the Interrogatories to the extent they seek the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

6. Defendant objects to the Interrogatories to the extent they are compound.

Subject to the foregoing General Objections, which are incorporated into each specific response below and expressly subject thereto, Defendant responds as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY each person able to testify as a witness that claims the Plaintiff grabbed his/her buttocks in Defendant's place of business on or before October 2, 2022. If full

name is not provided due to an objection based on confidentiality, state this objection and then provide the initials of that witness instead.

RESPONSE TO NO. 1:

Defendant objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy.

Subject to and without in any way waiving the foregoing general and specific objections, Defendant responds as follows: Defendant has not been able to identify the gym member that made the complaint as described in this interrogatory. However, 24 Hour Fitness employees Alyse Bryant and Michael Martinez, and former 24 Hour Fitness employee Eric Tapia-Barron can offer testimony regarding female gym members that made complaints against Plaintiff.

INTERROGATORY NO. 2:

IDENTIFY each person employed by 24 Hour Fitness that was within the locker room when the Plaintiff was arrested under trespassing charges. Please state their full name and rank within Defendant's place of business (ex: manager, staff member).

RESPONSE TO NO. 2:

Defendant objects to this interrogatory as vague and ambiguous as to the term "within the locker room." Subject to and without in any way waiving the foregoing general and specific objections, Defendant responds as follows: Andrew L. Pratt, former 24 Hour Fitness Sales and Service Expert, worked a shift at 24 Hour Fitness on October 1, 2022, between 2:00 p.m. and 11:00 p.m. Walter J. Kane, former 24 Hour Fitness Sales and Service, Overnight, worked an overnight shift at 24 Hour Fitness that began on October 1, 2022, from 10:04 p.m. to 10:40 p.m., and resumed on October 2, 2022, from 12:00 a.m. to 5:23 a.m.

INTERROGATORY NO. 3:

IDENTIFY each person able to testify as a witness that claims the Plaintiff harassed/intimidated him/her in Defendant's place of business on or before October 2, 2022. If full name is not provided due to an objection based on confidentiality, state this objection and then provide the initials of that witness instead. For each witness, state the date(s) the harassment/intimidation occurred along with the date(s) reported to the staff at 24 Hour Fitness. Also provide a brief description of the harassment/intimidation by the Plaintiff.

RESPONSE TO NO. 3:

Defendant objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy.

Subject to and without in waiving the foregoing general and specific objections, Defendant responds as follows: 24 Hour Fitness members identified as V. H., member number 06883049; and H.S., member number 03697104. *See* documents bate stamped 24 Hour Fitness adv. Floyd 000110 to 24 Hour Fitness adv. Floyd 000115, for the dates, times, and description of these incidents.

DATED: June 6, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC

VERIFICATION

I, Jen Garrett, declare as follows:

1. I am the Sr. Director of Member Support Services for 24 Hour Fitness USA, LLC , Defendant in the above-referenced action, and have read the foregoing **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET ONE**, and know the contents thereof.

2. The same is true of my own knowledge, except as to the matters that are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 5 day of June, 2024, at Carlsbad, California.

Jen Garrett
Jen Garrett

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **June 6, 2024**, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET ONE

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1901 Iowa Avenue Kenner, LA 70062 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **June 6, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

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Attorneys for Defendant
24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 4:23-cv-00871-EMC

Honorable Edward M. Chen

DEFENDANT 24 HOUR FITNESS USA'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET ONE

Action Filed: February 27, 2023

PROPOUNDING PARTY: PLAINTIFF, MICHAEL DEVIN FLOYD

RESPONDING PARTY: DEFENDANT, 24 HOUR FITNESS USA

SET NUMBER: ONE

Defendant 24 HOUR FITNESS USA, LLC, ("Defendant" or "24 Hour Fitness") by and through its attorneys Seyfarth Shaw LLP, and pursuant to Rule 36 of the Federal Rules of Civil Procedure, hereby objects and responds to Michael Devin Floyd's ("Plaintiff") Request for Admissions, Set One, as follows:

PRELIMINARY STATEMENT

This response is made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statements contained herein, if such statements were made by a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

The information contained in each response is based only upon the information currently available to Defendant. Defendant's investigation and discovery in preparation for trial is continuing and will continue to and throughout the trial of this action. Additional investigation may disclose further information relevant to these responses, as could information obtained by Defendant from Plaintiff or third parties through additional discovery procedures. Defendant's responses to these interrogatories are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action. Defendant responds to these interrogatories as it understands them and reserves the right to provide different responses if Plaintiff later provides a different interpretation. Defendant is not making any incidental or implied admissions. The fact that Defendant has answered part or all of any interrogatory is not intended and shall not be construed to be a waiver by Defendant of all or any part of any objection to any interrogatory.

Discovery in this matter is ongoing. Defendant reserves its right to alter, amend, supplement or otherwise revise these responses if, for any reason, such revisions or supplements become appropriate or warranted.

GENERAL OBJECTIONS

The following general objections apply to the entirety of Plaintiff's Request for Admissions, Set One (the "Requests"). The assertion of same, similar, or additional objections to the individual Requests does not waive Defendant's general objections.

1. Defendant objects to the Requests to the extent they request the disclosure of any information protected by the attorney client privilege or the attorney work product privilege. No such information will be disclosed.

2. Defendant objects to each Request to the extent that it seeks confidential information relating to current or former employees of Defendant protected from disclosure by Article I, Section I of the California Constitution, and/or statutory and/or common law rights of privacy.

3. Defendant objects to the Requests to the extent they seek the disclosure of trade secrets, confidential, competitively sensitive proprietary information, or other information protected from disclosure.

4. Defendant objects to the Requests to the extent they are overbroad as to time or scope, unduly burdensome, or oppressive.

5. Defendant objects to the Requests to the extent they seek the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

6. Defendant objects to the Requests to the extent they are compound.

Subject to the foregoing General Objections, which are incorporated into each specific response below and expressly subject thereto, Defendant responds as follows:

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSIONS NO. 1:

Admit that each member of 24 Hour Fitness (Hayward, CA on Whipple Rd.) who accesses the specific club mentioned in the parentheses must check-in at the front desk before accessing the gym.

RESPONSE TO NO. 1:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as vague and ambiguous, regarding the term "check-in."

Subject to and without in any way waiving the foregoing general and specific objections, and to the extent Defendant understands this request, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 2:

Admit that each guest of a member of 24 Hour Fitness (Hayward, CA on Whipple Rd.) who accesses the specific club mentioned in the parentheses must check-in at the front desk before accessing the gym.

RESPONSE TO NO. 2:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as vague and ambiguous regarding the term "check-in."

Subject to and without in any way waiving the foregoing general and specific objections, and to the extent Defendant understands this request, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 3:

Admit that 24 Hour Fitness (Hayward, CA on Whipple Rd.) has records of the date and time each member who accesses the specific club mentioned in the parentheses.

RESPONSE TO NO. 3:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without in any way waiving the foregoing general and specific objections, Defendant responds as follows: Admit to the extent there are not unusual circumstances and notwithstanding appropriate deletion of records.

REQUEST FOR ADMISSIONS NO. 4:

Admit that 24 Hour Fitness (Hayward, CA on Whipple Rd.) has records of the date and time each guest of a member who accesses the specific club mentioned in the parentheses.

RESPONSE TO NO. 4:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as vague as to time.

Subject to and without in any way waiving the foregoing general and specific objections, Defendant responds as follows: Admit to the extent there are not unusual circumstances and notwithstanding appropriate deletion of records.

REQUEST FOR ADMISSIONS NO. 5:

Admit that each member of 24 Hour Fitness (Hayward, CA on Whipple Rd.) who accesses the specific club mentioned in the parentheses provided contact information to 24 Hour Fitness when beginning their membership.

RESPONSE TO NO. 5:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without in any way waiving the foregoing general and specific objections, Defendant responds as follows: Admit.

REQUEST FOR ADMISSIONS NO. 6:

Admit that each guest of a member of 24 Hour Fitness (Hayward, CA on Whipple Rd.) who accesses the specific club mentioned in the parentheses provided contact information to 24 Hour Fitness when beginning their guest access/membership.

RESPONSE TO NO. 6:

Defendant objects to this Request to the extent it seeks the disclosure of information not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as vague and ambiguous regarding the term "guest access/membership."

Subject to and without in any way waiving the foregoing general and specific objections, and to the extent Defendant understands this Request, Defendant responds as follows: Admit.

DATED: July 31, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC

VERIFICATION

I, Jen Garrett, declare as follows:

1. I am the Sr. Director of Member Support Services for 24 Hour Fitness USA, LLC , Defendant in the above-referenced action, and have read the foregoing **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET ONE**, and know the contents thereof.

2. The same is true of my own knowledge, except as to the matters that are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 29th day of July, 2024, at Carlsbad, California.

Jen Garrett
Jen Garrett

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **July 31, 2024**, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS, SET ONE

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1901 Iowa Avenue Kenner, LA 70062 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **July 31, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

SEYFARTH SHAW LLP
Kristina Launey (SBN 221335)
Email: klauney@seyfarth.com
400 Capitol Mall, Suite 2300
Sacramento, California 95814
Telephone No.: (916) 498-0159
Facsimile No.: (916) 558-4839

SEYFARTH SHAW LLP
Jeanine Scalero (SBN 203221)
Email: jscalero@seyfarth.com
601 South Figueroa Street
Los Angeles, California 90017
Telephone No.: (213) 270-9600
Facsimile No.: (213) 270-9601

Attorneys for Defendant
24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 4:23-cv-00871-EMC

Honorable Edward M. Chen

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET SEVEN

Action Filed: February 27, 2023

PROPOUNDING PARTY: MICHAEL DEVIN FLOYD

RESPONDING PARTY: 24 HOUR FITNESS USA, LLC

SET NUMBER.: SEVEN (7)

Defendant 24 HOUR FITNESS USA, LLC, ("Defendant" or "24 Hour Fitness") by and through its attorneys Seyfarth Shaw LLP, and pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby objects and responds to Michael Devin Floyd's ("Plaintiff") Special Interrogatories, Set Seven, as follows:

PRELIMINARY STATEMENT

This response is made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statements contained herein, if such statements were made by a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

The information contained in each response is based only upon the information currently available to Defendant. Defendant's investigation and discovery in preparation for trial is continuing and will continue to and throughout the trial of this action. Additional investigation may disclose further information relevant to these responses, as could information obtained by Defendant from Plaintiff or third parties through additional discovery procedures. Defendant's responses to these interrogatories are made without prejudice to its rights to introduce any and all documents and other evidence of any kind in the proceedings in this action. Defendant responds to these interrogatories as it understands them and reserves the right to provide different responses if Plaintiff later provides a different interpretation. Defendant is not making any incidental or implied admissions. The fact that Defendant has answered part or all of any interrogatory is not intended and shall not be construed to be a waiver by Defendant of all or any part of any objection to any interrogatory.

Discovery in this matter is ongoing. Defendant reserves its right to alter, amend, supplement or otherwise revise these responses if, for any reason, such revisions or supplements become appropriate or warranted.

INTERROGATORIES

INTERROGATORY NO. 1:

Does the 24 Hour Fitness on Whipple Rd in Hayward have a requirement for members to have some type of photo of themselves on file/record? (picture taken, license, etc.)

RESPONSE TO NO. 1:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this Interrogatory as vague and ambiguous as to time. Defendant objects to the extent this Interrogatory seeks the disclosure of trade secrets, confidential, and/or competitively sensitive proprietary information. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: No.

INTERROGATORY NO. 2:

Does the 24 Hour Fitness on Whipple Rd in Hayward have a requirement for guests to have some type of photo of themselves on file/record? (picture taken, license, etc.)

RESPONSE TO NO. 2:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this Interrogatory as vague and ambiguous as to time. Defendant objects to the extent this Interrogatory seeks the disclosure of trade secrets, confidential, and/or competitively sensitive proprietary information. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: No.

INTERROGATORY NO. 3:

Do all 24 Hour Fitness locations have a requirement for members to have some type of photo of themselves on file/record? (picture taken, license, etc.)

RESPONSE TO NO. 3:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this Interrogatory as vague and ambiguous as to time. Defendant objects to the extent this Interrogatory seeks the disclosure of trade secrets, confidential, and/or competitively sensitive proprietary information. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided,

would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: No.

INTERROGATORY NO. 4:

Do all 24 Hour Fitness locations have a requirement for guests to have some type of photo of themselves on file/record? (picture taken, license, etc.)

RESPONSE TO NO. 4:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this Interrogatory as vague and ambiguous as to time. Defendant objects to the extent this Interrogatory seeks the disclosure of trade secrets, confidential, and/or competitively sensitive proprietary information. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a

workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: No.

INTERROGATORY NO. 5:

Out of the female/gender-unknown persons who checked-in to 24 Hour Fitness on Whipple Rd in Hayward on Oct 1, 2022 from 5:45-9:45 PM, how many were members to the 24 Hour Fitness on Whipple Rd location?

RESPONSE TO NO. 5:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: All were members.

INTERROGATORY NO. 6:

Out of the female/gender-unknown persons who checked-in to 24 Hour Fitness on Whipple Rd in Hayward on Oct 1, 2022 from 5:45-9:45 PM, how many were guests to the 24 Hour Fitness on Whipple Rd location?

RESPONSE TO NO. 6:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: None. All were members.

INTERROGATORY NO. 7:

Out of the female/gender-unknown persons who checked-in to 24 Hour Fitness on Whipple Rd in Hayward on Oct 1, 2022 from 5:45-9:45 PM, how many have pictures on file/record?

RESPONSE TO NO. 7:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward

Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: None.

INTERROGATORY NO. 8:

Did the employee who was allegedly contacted by the alleged victim on Oct 1, 2022 concerning alleged assault (buttocks grabbing) by the Plaintiff view photos on file/record to identify that alleged victim?

RESPONSE TO NO. 8:

Defendant objects that this Interrogatory seeks information that is not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory to the extent it seeks information that, if provided, would be a violation of any individual's right to privacy under Article I, Section I, of the California Constitution, or under any other state or federal constitutional, statutory, or common law right of privacy. Defendant further objects to this Interrogatory to the extent it seeks to discover the victim's identities, in violation of the Court's March 19, 2024 Order. *See* Civil Minutes of Judge Edward Chen, dated March 19, 2024 [Doc. 44]. Defendant further objects to the extent Plaintiff is misusing civil discovery as a workaround to obtain victim information that is otherwise unavailable under criminal discovery procedures in Plaintiff's criminal case.

Subject to and without in any way waiving the foregoing objections, Defendant responds as follows: Not applicable.

DATED: October 10, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC

VERIFICATION

I, Jen Garrett, declare as follows:

1. I am the Sr. Director of Member Support Services for 24 Hour Fitness USA, LLC , Defendant in the above-referenced action, and have read the foregoing **DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET SEVEN**, and know the contents thereof.

2. The same is true of my own knowledge, except as to the matters that are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this _8__ day of October, 2024, at Carlsbad, California.

Jen Garrett

Jen Garrett

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **October 10, 2024**, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA, LLC'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET SEVEN

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **October 10, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

24 Hour Fitness **Employee Time Punches** **18-Jul-22**

Employee ID	Employee Name	Date	Punch In 1	Punch Out 1	Punch In 2	Punch Out 2
124620	Sousa, Alexander A	7/18/2022	3:30:00 PM	7:02:00 PM	7:32:00 PM	11:15:00 PM
1262S	Timbang, Sheila A	7/18/2022	5:29:00 PM	7:04:00 PM		
147091	Nguyen, Ha B	7/18/2022	7:00:00 PM	8:00:00 PM		
148926	Veloso, Abigail Sinclaire A	7/18/2022	11:04:00 AM	2:54:00 PM	3:26:00 PM	6:38:00 PM
153354	Padilla, Ana I	7/18/2022	3:00:00 PM	10:01:00 PM		
153467	Reed, Feyth Ellen A	7/18/2022	2:13:00 PM	7:20:00 PM	7:50:00 PM	10:34:00 PM
2018N	Rackham, Kelly M	7/18/2022	5:42:00 PM	7:14:00 PM		
2726U	Sanchez, Adan M	7/18/2022	5:00:00 PM	8:00:00 PM		
7757R	Perrilliat, Tracy L	7/18/2022	6:50:00 PM	9:10:00 PM		
9643N	Cannon, Minh T	7/18/2022	11:57:00 AM	1:05:00 PM	5:00:00 PM	6:02:00 PM

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **October 28, 2024**, I served the within document(s):

DEFENDANT'S DOCUMENT PRODUCTION 24 HOUR FITNESS ADV. FLOYD 000135

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **October 28, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

Gmail

Michael Floyd <mdf3039@gmail.com>

Incident report Michael Floyd

2 messages

Michael Floyd <mdf3039@gmail.com> Mon, Jul 25, 2022 at 11:13 AM
To: gmclub488@24hourfit.com

Here is what I wrote down after the incident happened. Thanks.

Incident07182022

--
Michael Floyd, MS

Michael Floyd <mdf3039@gmail.com> Thu, Oct 6, 2022 at 11:22 AM
To: gmclub488@24hourfit.com

Hello. I am not sure who looked over what happened in this incident, but now that the other incident occurred, I would like to provide a report of the most recent incident.
I also would like to receive a response detailing all of the complaints that have been made against me. I only know of one accusation of grabbing a woman on her ass on Saturday; the "multiple other complaints" I have been informed of were never mentioned to me.
[Quoted text hidden]
--
Michael Floyd, MS

Incident10012022.pdf
34K

Michael Devin Floyd
1214 Mount Hermon Rd
Scotts Valley, CA 95066
mdf3039@gmail.com
(713)562-7229

Michael Devin Floyd, IN PRO PER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael Devin Floyd Plaintiff - Appellant, vs. 24 Hour Fitness USA, LLC Defendant(s) - Appellee(s).	**Request for Judicial Notice of Alameda County Superior Court dismissal of 22-cr-012091** Date: March 27, 2025 Time: 1:30 PM Dept: Courtroom 05, 17th Floor Judge: Hon. Edward M. Chen Trial Date: June 23, 2025 Action Filed: Feb 27, 2023

The Plaintiff requests this Court to take judicial notice of the dismissal of the Alameda County Superior Court criminal proceedings 22-cr-012091 that were relevant and related to this case. (Exhibit 01). The Defendant's trespassing charge against the Plaintiff, along with the two counts of resisting arrest against the Plaintiff, have been dismissed. The Defendant's request for judicial notice in its summary judgment motion are outdated and unnecessary. (ECF No 96-2). That dismissal occurred on February 18, 2025. (Exhibit 01).

Federal Rule of Evidence 201 authorizes this Court to take judicial notice of documents that are "not subject to reasonable dispute" because they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be disputed." Fed. R. Evid. 201(b); Oneida Indian Nation of N.Y. v. State of N.Y., 691 F.2d 1070, 1086 (2d Cir. 1982). The scope of sources that may be judicially noticed is broad and includes documents from other legal proceedings. See, e.g., Achtman v. Kirby, McInerney & Squire, LLP, 464 F.3d 328, 337–38 (2d Cir. 2006); Rivera-Powell v. N.Y. City Bd. of Elecs., 470 F.3d 458, 464 (2d Cir. 2006); Rothman v. Gregor, 220 F.3d 81, 92 (2d Cir. 2000). Such documents are appropriate where the purpose is to establish that particular matters have been raised or stated in another forum. Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384, 1388 (2d Cir. 1992).

DATED: February 26, 2025

Michael Devin Floyd

22-CR-012091
CDM
Clerks Docket and Minutes
3080731

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

1. **WT:** **PO:** **Dept.** 712 **Court Date/Time:** 02/18/2025 - 2:00 PM
2. **Docket Name:** FLOYD, MICHAEL DEVIN **CEN:** 2385587 **Docket:** 22-CR-012091
3. **HG Type:** Pretrial Hearing **PFN:** BNK574
HG Comments:
4. CHARGES: 3 charge(s) **BAC:**

001: PC602.1(a)-M: OBSTRUCTING OR INTIMIDATING BUSINESS OPERATORS OR CUSTOMERS
002: PC148(a)(1)-M: RESIST, OBSTRUCT, DELAY OF PEACE OFFICER OR EMT
003: PC148(a)(1)-M: RESIST, OBSTRUCT, DELAY OF PEACE OFFICER OR EMT

5. **Bail:** OR **Bond Status / Amount:**
Time Waiver: TW-12/05/2022

PROCEEDING

6. **Judicial Officer:** Wong, Kevin T. ☐Video **Dep. DA:** Jake O'Malley ☐Video ***RADA***
7. **Dep Clerk:** Flores, Jessica ☐Video **Def. Atty:** ~~Pro Per~~ ☐Video ***RADC***
8. **Reporter:** Recorder, Liberty 2:20 ☐Video **Other:** John Santoro (legal) ☐Video

DEFENDANT: ☐ Video ***RA***
☑Present ☐In Custody ***DEFTIC*** ☐Pro Per ☐Not Present ☐Excused ☐977 on file ☐Failed to Appear ***DEFTA***
☐Interpreter ***INTR***:_____present ☐Certified ☐Sworn Language Interpreted:_____
☐Duly Arraigned ***ARR*** ☐Advised as to Constitutional Rights ☐Advisement of Rights Filed
☐Waives Formal Arraignment ***FAW***
Defendant / Attorney Served:☐ _____Complaint / Information / Indictment / Petition

Protective Order: ☐Issued ***CPO*** ☐Modified ***CPOM*** ☐Terminated ***CPOT*** ☐Served ☐Do Not Harass
☐Stay Away from:_____ ☐at least _____ yards
☐Referred to Public Defender ***PDREF*** ☐PD Files Conflict ***DCI*** ☐Financially Ineligible ☐PD Appointed ☐Private Aty Apptd
☐Waiver of Rights and Plea Form Filed ***PLF*** ☐Plea Withdrawn ☐Change of Plea ☐Plea in Absentia
☐**Plea Entered:** Not Guilty / Guilty / No Contest ☐Convicted Guilty / No Contest as to Count(s)_____
Plea to a lesser included/reasonably related offense: ☐Guilty / No Contest of Count(s) _____
To the charge of:_____

Clauses: ☐Denied ☐Admitted _____ ☐Dismissed _____ ☐Stricken Sentencing Purposes Only
Priors: ☐Denied ☐Admitted _____ ☐Dismissed _____ ☐Stricken Sentencing Purposes Only
Referred to: ☐Probation-F ***REFP*** ☐Probation-M ***RPM*** ☐Re-Referred to Probation ***REFP*** ☐Financial Hearing Officer ***REFFHO***

Time Waived ***TW***: ☐Trial ☐Sentence ☐Preliminary Exam 10 and 60 days ☐Preliminary Exam 10 day only ***TW10***
No Time Waiver ***NTW***: ☐Trial, due:_____ ☐Sentence ☐Time Waiver Withdrawn ***TWWD***
☐Preliminary Exam 10 days ***NTWPX10*** due:_____ ☐Preliminary Exam 60 days ***NTWPX60*** due:_____

Bail: ☐Bail Set at $_____***BS*** ☐BF Set Aside ***BFSA*** ☐Reinstated ***BREI*** ☐Exonerated ***BBEX***
☐Forfeited in Open Court While Court Was in Session ***BBFF*** ☐Summary Judgment Entered ***SJE***
☐Deft OR'd, see Order for conditions ***ROR*** ☐Cruz Waiver ***CRUZ*** ☐Released this Action Only ***RTA*** ☐Deft Remanded ***REMC***

Warrant: ☐Bench Warrant Issued $_____***BWI*** ☐Warrant Maintained ***WM*** ☐Warrant Recalled ***WRC***
☐Bench Warrant Held ***BWH*** $_____ ☐BW Withdrawn ***BWW*** ☐OR Revoked ***OREV*** ☐No Cite Release ☐Night Service

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

Docket Name: FLOYD, MICHAEL DEVIN **Docket:** 22-CR-012091

☑Petition / Motion by PD for/to Dismiss Case In Interest of Justice ☑Granted ☐Denied ☐Withdrawn

Probation: ☐Court *CP* ☐Formal *FP* Granted for ____ years / months ☐See attached conditions ☐Denied *PRD*
Prob. Violation: ☐Revoked *PRREV* ☐Summarily Revoked *PSR* ☐Denies Violation ☐Admits Violation *APV*
☐Matter Submitted ☐Hrg Waived ☐Found in Violation *FPV* ☐Not Found *NPV* ☐Reinstated *PRREI*
☐Continue Same Terms & Conditions ☐Modified ☐Extended to _____ *EXTP* ☐Terminated *PRTERM*

Community Supervision: ☐Revoked *CSREV* ☐Denies Violation ☐Admits Violation
☐Matter Submitted ☐Hrg Waived ☐Found in Violation ☐Not Found *NPV*
☐Restored and Modified *CSRM* ☐Restored Same Terms & Conditions *CSRSTC* ☐Terminated *CSTERM*

Parole Supervision: ☐Revoked *PREV* ☐Denies Violation ☐Admits Violation
☐Matter Submitted ☐Hrg Waived ☐Found in Violation ☐Not Found *NPV*
☐Restored & Modified *PREM* ☐Restored Same Terms & Conditions *PSTC* ☐Terminated *PST*

Mandatory Supervision: ☐Revoked *MSRV* ☐Denies Violation ☐Admits Violation
☐Matter Submitted ☐Hrg Waived ☐Found in Violation ☐Not Found *NPV*
☐Restored & Modified *MSRS* ☐Restored Same Terms & Conditions *MSSTC* ☐Terminated *MST*

Firearms Relinquishment: ☐ Compliant *FAC* ☐ Non-Compliant *NFAC*

☐Doubt Declared *1368D* ☐Criminal Proceedings Suspended *CPS* ☐Criminal Proceedings Reinstated *CPREI*

☐Burks Waiver *BKW*

Future Hearings: Date/Time: **Mar 10 2025 9:00AM** Dept: **705** Proc: **Jury Trial** VAC
Date/Time: **Mar 6 2025 2:00PM** Dept: **712** Proc: **Readiness Hearing**

Continued: ☐Office to Send Notice ☐Deft to be Booked *FIDEN*

Date_____ Time_____ Dept_____ Proc_____
Date_____ Time_____ Dept_____ Proc_____
Date_____ Time_____ Dept_____ Proc_____
Date_____ Time_____ Dept_____ Proc_____

Member number	Club of usage	Usage date	Usage timestamp
MBR03697104	488	1/6/2022	5:42:44 PM
[redacted]	488	1/7/2022	5:23:10 PM
	488	1/8/2022	10:43:06 AM
	488	1/9/2022	11:01:11 AM
	488	1/10/2022	5:27:44 PM
	488	1/11/2022	5:32:44 PM
	488	1/12/2022	5:46:38 PM
	488	1/13/2022	5:25:23 PM
	488	1/14/2022	5:49:11 PM
	488	1/15/2022	10:15:43 AM
	488	1/16/2022	10:36:07 AM
	488	1/17/2022	5:17:54 PM
	488	1/18/2022	5:45:47 PM
	488	1/19/2022	5:36:10 PM
	488	1/21/2022	5:34:58 PM
	488	1/22/2022	9:36:43 AM
	488	1/23/2022	5:25:26 PM
	488	1/24/2022	5:43:35 PM
	488	1/25/2022	6:17:15 PM
	488	1/26/2022	5:50:53 PM
	488	1/28/2022	5:47:49 PM
	488	1/29/2022	11:05:15 AM
	488	1/30/2022	11:18:33 AM
	488	1/31/2022	5:36:30 PM
	488	2/1/2022	5:35:44 PM
	488	2/3/2022	5:32:49 PM
	488	2/4/2022	5:21:53 PM
	488	2/5/2022	9:49:34 AM
	488	2/6/2022	10:25:17 AM
	488	2/8/2022	5:39:32 PM
	488	2/9/2022	5:45:54 PM
	488	2/10/2022	6:04:49 PM
	488	2/11/2022	5:58:43 PM
	488	2/12/2022	9:41:36 AM
	488	2/13/2022	10:31:31 AM
	488	2/14/2022	5:37:45 PM
	488	2/15/2022	5:58:58 PM
	488	2/16/2022	6:04:23 PM
	488	2/18/2022	5:48:20 PM
	488	2/19/2022	11:07:56 AM
	488	2/20/2022	12:33:50 PM
	488	2/21/2022	12:05:48 PM
	488	2/22/2022	6:00:02 PM
	488	2/23/2022	6:02:09 PM
	488	2/25/2022	5:54:01 PM
	488	2/26/2022	9:30:54 AM
	488	2/28/2022	6:02:27 PM
	488	3/1/2022	5:54:09 PM
	488	3/2/2022	5:58:12 PM
	488	3/4/2022	5:55:56 PM
	488	3/5/2022	5:54:55 PM
	488	3/6/2022	11:25:27 AM
	488	3/7/2022	5:54:22 PM
	488	3/8/2022	5:49:56 PM

MBR03697104	488	3/9/2022	5:54:01 PM
[redacted]	488	3/10/2022	5:52:19 PM
	488	3/11/2022	6:55:03 PM
	488	3/12/2022	10:45:14 AM
	488	3/13/2022	11:10:57 AM
	488	3/14/2022	5:53:33 PM
	488	3/15/2022	5:45:22 PM
	488	3/16/2022	5:57:55 PM
	488	3/18/2022	5:58:47 PM
	488	3/19/2022	3:58:53 PM
	488	3/21/2022	6:22:47 PM
	488	3/22/2022	5:55:47 PM
	488	3/23/2022	6:08:30 PM
	488	3/24/2022	7:10:07 PM
	488	3/25/2022	5:56:36 PM
	488	3/26/2022	2:38:46 PM
	488	3/27/2022	10:58:57 AM
	488	3/29/2022	5:58:15 PM
	488	3/30/2022	5:31:23 PM
	488	4/1/2022	5:58:34 PM
	488	4/2/2022	4:08:05 PM
	488	4/3/2022	11:06:29 AM
	488	4/4/2022	6:06:40 PM
	488	4/5/2022	5:29:09 PM
	488	4/6/2022	5:50:34 PM
	488	4/7/2022	6:01:09 PM
	488	4/9/2022	10:41:49 AM
	488	4/10/2022	10:58:19 AM
	488	4/11/2022	5:52:28 PM
	488	4/12/2022	5:42:12 PM
	488	4/13/2022	5:46:31 PM
	488	4/14/2022	6:03:42 PM
	488	4/17/2022	10:41:58 AM
	488	4/18/2022	6:11:50 PM
	488	4/19/2022	5:44:54 PM
	488	4/20/2022	5:32:20 PM
	488	4/21/2022	5:59:40 PM
	488	4/23/2022	10:01:22 AM
	488	4/24/2022	10:41:47 AM
	488	4/25/2022	5:57:24 PM
	488	4/27/2022	5:42:40 PM
	488	4/28/2022	5:46:56 PM
	488	4/30/2022	12:05:32 PM
	488	5/1/2022	10:52:09 AM
	488	5/2/2022	5:53:25 PM
	488	5/4/2022	5:49:03 PM
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	488	5/6/2022	5:54:51 PM
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	488	5/8/2022	11:50:31 AM
	488	5/9/2022	6:20:01 PM
	488	5/10/2022	5:52:52 PM
	488	5/11/2022	6:34:37 PM
	488	5/12/2022	5:53:02 PM
	488	5/14/2022	11:03:10 AM

MBR03697104	488	5/15/2022	10:26:31 AM
[redacted]	488	5/16/2022	6:22:11 PM
	488	5/18/2022	6:24:42 PM
	488	5/19/2022	6:01:31 PM
	488	5/21/2022	11:44:45 AM
	488	5/22/2022	11:20:13 AM
	488	5/23/2022	6:24:21 PM
	488	5/25/2022	5:56:40 PM
	488	5/26/2022	6:02:18 PM
	488	5/27/2022	5:59:17 PM
	488	5/28/2022	11:09:11 AM
	488	5/29/2022	11:44:40 AM
	488	5/30/2022	10:34:25 AM
	488	6/1/2022	6:22:07 PM
	488	6/2/2022	6:22:03 PM
	488	6/3/2022	6:14:59 PM
	488	6/5/2022	1:44:13 PM
	488	6/6/2022	6:07:14 PM
	488	6/7/2022	6:27:57 PM
	488	6/8/2022	5:44:01 PM
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	488	6/10/2022	6:08:13 PM
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	488	6/17/2022	5:52:24 PM
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	488	6/19/2022	11:08:59 AM
	488	6/20/2022	6:13:20 PM
	488	6/22/2022	6:17:38 PM
	488	6/23/2022	6:34:16 PM
	488	6/24/2022	6:43:38 PM
	488	6/25/2022	11:17:39 AM
	488	6/26/2022	1:44:11 PM
	488	6/27/2022	6:13:55 PM
	488	6/29/2022	6:15:33 PM
	488	6/30/2022	6:15:50 PM

Floyd v. 24 Hour Fitness

Member number	Club of usage	Usage date	Usage timestamp	Screen color	Check-in method	Check-in count
MBR03697104	488	7/1/2022	6:23:46 PM	Green	P	1
[redacted]	488	7/2/2022	2:41:53 PM	Green	P	1
	488	7/3/2022	1:04:12 PM	Green	P	1
	488	7/4/2022	12:17:43 PM	Green	P	1
	488	7/5/2022	6:25:48 PM	Green	P	1
	488	7/6/2022	6:24:02 PM	Green	P	1
	488	7/7/2022	6:26:29 PM	Green	P	1
	488	7/8/2022	6:00:20 PM	Green	P	1
	488	7/9/2022	11:35:10 AM	Green	P	1
	488	7/10/2022	12:08:24 PM	Green	P	1
	488	7/11/2022	6:18:13 PM	Green	P	1
	488	7/13/2022	6:20:18 PM	Yellow	B	1
	488	7/14/2022	6:17:25 PM	Yellow	P	1
	488	7/15/2022	6:26:05 PM	Yellow	P	1
	488	7/16/2022	11:42:11 AM	Yellow	P	1
	488	7/17/2022	12:27:43 PM	Yellow	P	1
	488	7/18/2022	6:32:01 PM	Yellow	P	1
	488	7/19/2022	6:36:10 PM	Yellow	P	1
	488	7/20/2022	6:27:43 PM	Yellow	P	1
	488	7/21/2022	6:32:19 PM	Yellow	P	1
	488	7/25/2022	6:37:56 PM	Yellow	P	1
	488	7/27/2022	6:02:26 PM	Yellow	P	1
	488	7/29/2022	6:53:10 PM	Green	P	1
	488	7/30/2022	4:37:14 PM	Green	P	1
	488	7/31/2022	7:27:30 PM	Green	P	1
	488	8/1/2022	6:28:10 PM	Green	P	1
	488	8/2/2022	6:27:55 PM	Green	P	1
	488	8/3/2022	6:19:36 PM	Green	P	1
	488	8/4/2022	6:23:23 PM	Green	P	1
	488	8/5/2022	6:36:01 PM	Green	P	1
	488	8/6/2022	1:44:50 PM	Green	P	1
	488	8/8/2022	6:35:26 PM	Green	P	1
	488	8/9/2022	6:39:05 PM	Green	P	1
	488	8/10/2022	8:01:05 PM	Green	P	1
	488	8/11/2022	6:29:28 PM	Green	P	1
	488	8/13/2022	12:26:25 PM	Green	P	1
	488	8/15/2022	6:40:40 PM	Green	P	1

MBR03697104	488	8/16/2022	6:01:59 PM	Green	B	1
[redacted]	488	8/17/2022	6:48:42 PM	Green	P	1
	488	8/18/2022	6:30:36 PM	Green	P	1
	488	8/19/2022	6:45:14 PM	Green	P	1
	488	8/20/2022	11:40:14 AM	Green	P	1
	488	8/22/2022	7:01:23 PM	Green	B	1
	488	8/23/2022	6:42:41 PM	Green	P	1
	488	8/24/2022	6:40:38 PM	Green	P	1
	488	8/25/2022	6:08:54 PM	Green	B	1
	488	8/26/2022	6:21:21 PM	Green	P	1
	488	8/27/2022	12:11:58 PM	Green	B	1
	488	8/28/2022	12:06:32 PM	Green	P	1
	488	8/29/2022	6:38:26 PM	Green	B	1
	488	8/30/2022	6:18:11 PM	Green	B	1
	488	8/31/2022	6:28:55 PM	Green	B	1
	488	9/1/2022	6:37:47 PM	Green	P	1
	488	9/2/2022	6:49:11 PM	Green	P	1
	488	9/3/2022	11:43:56 AM	Green	P	1
	488	9/5/2022	11:09:09 AM	Green	P	1
	488	9/7/2022	6:27:10 PM	Green	P	1
	488	9/8/2022	6:23:30 PM	Green	B	1
	488	9/9/2022	6:55:14 PM	Green	P	1
	488	9/10/2022	12:41:40 PM	Green	P	1
	488	9/11/2022	12:39:55 PM	Green	P	1
	488	9/12/2022	6:26:12 PM	Green	B	1
	488	9/13/2022	6:28:56 PM	Green	P	1
	488	9/14/2022	6:28:34 PM	Green	P	1
	488	9/15/2022	6:13:43 PM	Green	P	1
	488	9/16/2022	6:34:09 PM	Green	P	1
	488	9/17/2022	11:07:59 AM	Green	P	1
	488	9/19/2022	6:42:32 PM	Green	P	1
	488	9/20/2022	6:26:04 PM	Green	P	1
	488	9/21/2022	6:44:30 PM	Green	P	1
	488	9/22/2022	6:24:31 PM	Green	B	1
	488	9/23/2022	6:15:10 PM	Green	P	1
	488	9/24/2022	11:46:06 AM	Green	P	1
	488	9/26/2022	6:28:57 PM	Green	P	1
	488	9/27/2022	6:34:19 PM	Green	P	1
	488	9/28/2022	6:36:31 PM	Green	P	1
	488	9/29/2022	6:35:07 PM	Green	P	1

MBR03697104	488	9/30/2022	6:37:05 PM	Green	P	1
[redacted]	488	10/1/2022	4:19:55 PM	Green	P	1
	488	10/3/2022	6:36:36 PM	Green	P	1
	488	10/4/2022	6:37:11 PM	Green	P	1
	488	10/5/2022	6:50:25 PM	Green	P	1
	488	10/6/2022	6:43:42 PM	Green	P	1
	488	10/7/2022	6:32:41 PM	Green	P	1
	488	10/9/2022	11:37:35 AM	Green	P	1
	488	10/10/2022	6:28:39 PM	Green	P	1
	488	10/11/2022	6:29:33 PM	Green	P	1
	488	10/12/2022	7:15:44 PM	Green	P	1
	488	10/17/2022	6:27:41 PM	Green	P	1
	488	10/18/2022	6:54:38 PM	Green	P	1
	488	10/19/2022	6:38:12 PM	Green	P	1
	488	10/20/2022	6:45:39 PM	Green	P	1
	488	10/21/2022	6:34:45 PM	Green	P	1
	488	10/22/2022	11:17:47 AM	Green	P	1
	488	10/24/2022	6:31:39 PM	Green	P	1
	488	10/25/2022	6:51:11 PM	Green	P	1
	488	10/26/2022	6:42:58 PM	Green	P	1
	488	10/27/2022	6:39:14 PM	Green	P	1
	488	10/28/2022	6:36:37 PM	Green	P	1
	488	10/29/2022	11:47:49 AM	Green	P	1
	488	10/31/2022	7:44:55 PM	Green	P	1

Member number	Club of usage	Usage date	Usage timestamp
MBR06883049	488	4/12/2022	8:03:40 PM
[redacted]	488	4/13/2022	5:46:46 PM
	488	4/14/2022	6:03:51 PM
	488	5/2/2022	5:53:23 PM
	488	5/4/2022	5:49:05 PM
	488	5/10/2022	6:59:15 PM
	488	5/11/2022	6:34:59 PM
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	488	5/25/2022	6:15:34 PM
	488	5/26/2022	6:02:22 PM
	488	5/28/2022	11:20:08 AM
	488	5/30/2022	10:28:57 AM
	488	6/1/2022	6:22:11 PM
	488	6/2/2022	6:22:06 PM
	488	6/4/2022	9:43:18 PM
	488	6/8/2022	6:18:49 PM
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	488	6/13/2022	6:19:22 PM
	488	6/15/2022	6:03:24 PM
	488	6/16/2022	6:25:51 PM
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	488	6/22/2022	6:17:47 PM
	488	6/23/2022	6:34:18 PM
	488	6/24/2022	7:50:10 PM
	488	6/25/2022	11:17:42 AM
	488	6/27/2022	6:13:55 PM
	488	6/29/2022	6:15:37 PM
	488	6/30/2022	6:15:52 PM

Floyd v. 24 Hour Fitness

Member number	Club of usage	Usage date	Usage timestamp	Screen color	Check-in method	Check-in count
MBR06883049	488	7/6/2022	6:24:05 PM	Green	P	1
[redacted]	488	7/8/2022	5:54:34 PM	Green	B	1
	488	7/9/2022	11:35:14 AM	Green	P	1
	488	7/10/2022	12:08:31 PM	Green	P	1
	488	7/13/2022	6:20:15 PM	Yellow	P	1
	488	7/15/2022	10:02:17 PM	Yellow	P	1
	488	7/29/2022	6:54:29 PM	Green	P	1
	488	8/2/2022	6:28:12 PM	Green	B	1
	488	8/3/2022	6:19:46 PM	Green	P	1
	488	8/4/2022	6:23:43 PM	Green	P	1
	488	8/7/2022	5:37:33 PM	Green	P	1
	488	8/8/2022	6:35:24 PM	Green	P	1
	488	8/9/2022	6:39:16 PM	Green	P	1
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	488	8/31/2022	6:28:53 PM	Green	P	1
	488	9/1/2022	6:37:52 PM	Green	P	1
	488	9/6/2022	7:30:39 PM	Green	P	1
	488	9/7/2022	6:27:10 PM	Green	P	1
	488	9/8/2022	7:04:44 PM	Green	P	1
	488	9/13/2022	6:29:24 PM	Green	B	1
	488	9/19/2022	6:18:41 PM	Green	P	1
	488	9/21/2022	6:55:04 PM	Green	P	1
	488	9/22/2022	7:06:05 PM	Green	P	1
	488	9/25/2022	9:28:36 PM	Green	P	1
	488	9/27/2022	6:51:55 PM	Green	P	1
	488	9/28/2022	6:36:33 PM	Green	P	1
	488	9/29/2022	10:40:14 PM	Green	B	1
	488	10/3/2022	6:55:49 PM	Green	P	1
	488	10/4/2022	6:37:07 PM	Green	P	1

MBR06883049	488	10/5/2022	6:50:25 PM	Green	P	1
[redacted]	488	10/6/2022	6:43:48 PM	Green	P	1
	488	10/8/2022	3:31:10 PM	Green	B	1
	488	10/12/2022	6:28:20 PM	Green	P	1
	488	10/14/2022	7:30:00 PM	Green	P	1
	488	10/17/2022	10:18:12 PM	Green	B	1
	488	10/18/2022	6:52:49 PM	Green	P	1
	488	10/19/2022	6:38:20 PM	Green	B	1
	488	10/21/2022	10:44:14 PM	Green	P	1
	488	10/27/2022	7:15:23 PM	Green	B	1
	488	10/31/2022	9:11:37 PM	Green	P	1

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **November 21, 2024**, I served the within document(s):

DEFENDANT'S DOCUMENT PRODUCTION 24 HOUR FITNESS ADV. FLOYD 000136 - 24 HOUR FITNESS ADV. FLOYD 000144

☒	**(VIA EMAIL)**: by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **November 21, 2024**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

SEYFARTH SHAW LLP
Kristina Launey (SBN 221335)
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Attorneys for Defendant
24 HOUR FITNESS USA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA,

Defendant.

Case No. 3:23-cv-00871-EMC

Honorable Edward M. Chen

DEFENDANT 24 HOUR FITNESS USA, LLC'S VERIFIED ANSWER TO PLAINTIFF MICHAEL DEVIN FLOYD'S SECOND AMENDED COMPLAINT

Action Filed: February 27, 2023

Defendant 24 Hour Fitness USA, LLC ("Defendant"), by and through its attorneys, Seyfarth Shaw, LLP, hereby submits this Answer to the Second Amended Complaint of Plaintiff Michael Devin Floyd ("Plaintiff") as follows:

I. Jurisdiction and Venue

Defendant admits that this Court has jurisdiction over the matter. Defendant further admits that venue is proper. Defendant denies that Plaintiff's removal from 24 Hour Fitness was unlawful.

II. Divisional Assignment

Defendant admits that the divisional assignment of this action to the San Francisco Division is proper.

III. Statement of Claim

Defendant admits the allegations contained in Paragraph A.

Defendant admits there were several incidents involving Plaintiff, including but not limited to, an incident on October 1, 2022 and on July 18, 2022. Unless specifically admitted, Defendant denies the remaining allegations contained in Paragraph B.

Defendant admits that Plaintiff sent a letter stating his version of events that he alleges occurred on both October 1, 2022 and July 18, 2022. Defendant admits that on October 1, 2022, a 24 Hour Fitness staff member and manager walked into the locker room with police officers present and ordered Plaintiff to leave, based on allegations he was harassing female gym members, but Plaintiff refused to leave, which led to his arrest for trespassing. Defendant admits that Plaintiff insisted on showering first and resisted arrest. Unless specifically admitted, Defendant denies the remaining allegations contained in Paragraph C.

IV. Causes of Action

1. California Business & Professions Code § 17200: California Unfair Competition Law ("UCL")

The first paragraph of this claim states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies the allegations in the first paragraph, from lines 4:13-5:5 of this claim.

Regarding the second paragraph of this claim, Defendant admits that Plaintiff had a gym membership at 24 Hour Fitness. The remaining allegations in the second paragraph of this claim states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies the remaining allegations in the second paragraph, from lines 5:5-14, of this claim.

Subsection (a) of Claim 1 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies that it breached the contract and denies the remaining allegations contained in subsection (a), lines 5:16-6:6.

Subsection (b) of Claim 1 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies the allegations contained in subsection (b), lines 6:7-10.

Defendant denies the allegations contained in subsection (c) of Claim 1, lines 6:11-13.

2. Restatement (Third) of Torts § 47 – Negligent Conduct Directly Inflicting Emotional Harm on Another (CACI No. 1620)

The first paragraph of Claim 2, from lines 6:15-7:3, states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

The second paragraph of Claim 2, from lines 7:4-9, states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required,

Defendant denies. Defendant denies the remaining allegations of the second paragraph of Claim 2, lines 7:5-9.

Regarding the third paragraph of Claim 2, Defendant admits that it ordered Plaintiff to leave in the Defendant admits that it requested the officers arrest Plaintiff for trespassing when Plaintiff refused to leave. Unless specifically admitted, Defendant denies the remaining allegations.

3. Breach of Contract (CACI No. 303)

The first paragraph of Claim 3 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant admits the allegations in subsection (i) of Claim 3.

Defendant admits that Plaintiff paid his fees. Defendant denies the remaining allegations in subsection (ii) of Claim 3.

Defendant admits that there were harassment allegations against Plaintiff and that Plaintiff's membership was revoked. Defendant denies the remaining allegations in subsection (iii) of Claim 3.

Defendant admits that it terminated Plaintiff's membership. Defendant denies the remaining allegations in subsection (iv) of Claim 3.

Defendant denies the allegations in subsection (v) of Claim 3.

Subsection (vi) of this claim states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies the allegations in subsection (vi) of Claim 3.

4. Breach of Implied Duty to Perform With Reasonable Care (CACI No. 328)

The first paragraph of Claim 4 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant admits subsection (i) of Claim 4.

Defendant admits that Plaintiff paid his fees. Defendant denies the remaining allegations in subsection (ii) of Claim 4.

Subsection (iii) of Claim 4 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant admits that it terminated Plaintiff's membership. Defendant denies the remaining allegations in subsection (iv) of Claim 4.

Defendant denies the allegations in subsection (v) of Claim 4

5. Breach of Implied Covenant of Good Faith and Fair Dealing (CACI No. 325)

The first paragraph of Claim 5 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant admits the allegations contained in subsection (i) of Claim 5.

Defendant admits that Plaintiff paid his fees. Defendant denies the remaining allegations in subsection (ii) of Claim 5.

Subsection (iii) of Claim 5 states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant admits the allegations in subsection (iv) of Claim 5.

Defendant denies the allegations in subsection (v) of Claim 5.

Defendant denies the allegations in subsection (vi) of Claim 5.

6. Defamation and Slander (CACI No. 1704)

Defendant denies the allegations in paragraph 1 of Claim 6.

Defendant denies the allegations in paragraph 2 of Claim 6.

Defendant denies the allegations in paragraph 3 of Claim 6 and the subsection of paragraph 3 of Claim 6. Paragraph 10:9-19 also states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant denies the allegations in paragraph 4 of Claim 6.

Defendant denies the allegations in paragraph 5 of Claim 6 and the subsection of paragraph 5 of Claim 6. Paragraph 12:4-8 also states legal conclusions which Defendant is not required to admit or deny. To the extent an answer is required, Defendant denies.

Defendant denies the allegations in paragraph 6 of Claim 6.

Defendant denies the allegations in paragraph 7 of Claim 6.

Defendant denies the allegations in paragraph 8 of Claim 6.

Defendant denies the allegations in subsection (1) paragraph 8 of Claim 6.

Defendant denies the allegations in subsection (2) paragraph 8 of Claim 6.

Defendant denies the allegations in subsection (3) paragraph 8 of Claim 6.

Defendant denies the allegations in subsection (4) paragraph 8 of Claim 6.

7. **Restatement (third) of Torts § 46 - Intentional (or Reckless) Infliction of Emotional Harm (CACI No. 1600)**

The first sentence of the first paragraph of Claim 7 refers to the preceding subsection 6, which Defendant denies.

The second sentence of the first paragraph of Claim 7 refers to the Section V. on Injuries, which Defendant denies.

V. Injuries

Defendant has insufficient knowledge to either admit or deny the allegations contained in this Section describing Plaintiff's alleged injuries, and on that basis, denies each and every allegation contained in this Section.

VI. Relief

Defendants admits that Plaintiff seeks the relief stated but denies that Plaintiff is entitled to them.

VII. Trial by Jury

Defendant admits that Plaintiff is seeking a jury trial.

AFFIRMATIVE AND OTHER DEFENSES

Defendant assert the following defenses without assuming any burden of production or proof, except as required by applicable law with respect to the particular defense asserted.

FIRST AFFIRMATIVE DEFENSE

(Failure to State Claim)

1. Plaintiff's Second Amended Complaint fails to state any cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. Plaintiff's Second Amended Complaint is barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

(Equitable Doctrines)

3. Any recovery on Plaintiff's Second Amended Complaint is barred, in whole or in part, under the equitable doctrines of consent, waiver, estoppel, laches, acquiescence, and/or unclean hands to the extent discovery may reveal information that supports this defense.

FOURTH AFFIRMATIVE DEFENSE

(No Injury)

4. Plaintiff's Second Amended Complaint is barred because Plaintiff suffered no injuries, damages or loss by reason of any act or omission of Defendant.

FIFTH AFFIRMATIVE DEFENSE

(Speculative Damages)

5. Plaintiff's losses, if any, are speculative and/or uncertain, and therefore, not compensable.

SIXTH AFFIRMATIVE DEFENSE

(Comparative Fault)

6. If Plaintiff sustained any injury, damage or loss by reason of any act, error or omission on the part of Defendant (which Defendant denies), said injury, damage or loss must be reduced on the basis of comparative fault or negligence of others, or other third parties which contributed to and proximately caused any such injury, damage or loss.

SEVENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

7. If Plaintiff sustained any injury, damage or loss by reason of any act, error or omission on the part of Defendant, said injury, damage, or loss must be reduced to the extent that Plaintiff failed to exercise reasonable care to avoid or limit the alleged harm.

EIGHTH AFFIRMATIVE DEFENSE

(Contributory Negligence/Fault)

8. Plaintiff's Second Amended Complaint fails because any injury and/or damages incurred by Plaintiff were directly and legally caused and contributed to by the negligence of and/or fault of Plaintiff.

NINETH AFFIRMATIVE DEFENSE

(Privilege/Justification)

9. Assuming, arguendo, that any of the actions alleged in the Second Amended Complaint were taken by Defendant, such actions were at all times privileged or justified, and any conduct of which Plaintiff complains or which is attributed to Defendant was a just and proper exercise of management discretion, undertaken for lawful, fair and honest reasons, in good faith and without malice.

TENTH AFFIRMATIVE DEFENSE

(Good Faith)

10. Assuming, arguendo, that any of the actions alleged in the Second Amended Complaint were taken by Defendant, such actions were taken in good faith and were a lawful exercise of sound discretion of Defendant's legal rights, and were based on a rational, reasonable consideration of the facts.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure To State Claim For Punitive Damages)

11. Plaintiff's Second Amended Complaint fails to state facts sufficient to constitute a claim for punitive damages against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

(Constitutional Ban On Punitive Damages)

12. Defendant is not liable for any alleged exemplary or punitive damages because such damages violate their rights under the United States and California Constitutions, including, but not limited to, its right to due process and against excessive fines.

THIRTEENTH AFFIRMATIVE DEFENSE

(Set Off)

13. To the extent Plaintiff has received other benefits and/or awards attributable to an injury for which he seeks compensation in this case, such benefits and/or awards should offset, in whole or in part, by any award he receives here for the same injury.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Causation for Emotional Distress Damages)

14. Plaintiff's demand, and each and every purported cause of action alleged therein, are barred to the extent that Plaintiff has not alleged any tangible or medical evidence of emotional distress as a result of any conduct alleged in the demand. Alternatively, to the extent that any alleged emotional distress is alleged by Plaintiff, it was caused by a collateral source other than Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

(Preexisting Injury)

15. Plaintiff's alleged injuries, losses, or damages, if and to the extent they occurred, preexisted, or were suffered before the termination of Plaintiff's membership ended, were neither caused nor exacerbated by Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

(Business Judgment)

16. This action is barred in whole or in part because the alleged unlawful business practice of which Plaintiff complains was a reasonable exercise of business judgment not forbidden by law.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Practice is Not Unfair)

17. This action is barred in whole or in part because the alleged business practice of which Plaintiff complains is not unfair.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Mootness of Injunctive Relief)

18. Plaintiff's purported prayer for injunctive relief is moot because the alleged unlawful business practice of which Plaintiff complains never occurred, and/or has been discontinued and is not likely to recur.

NINETEENTH AFFIRMATIVE DEFENSE

(Restitution as Disguised Damage Claim)

19. Plaintiff's purported prayer for restitution is an impermissible form of damages which is not recoverable.

TWENTIETH AFFIRMATIVE DEFENSE

(Truth)

20. Plaintiff's claim of defamation is barred because the alleged defamatory comments are true or substantially true.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Qualified Privilege)

21. Plaintiff's claim of defamation is barred because any alleged defamatory statements made were subject to a qualified privilege.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Good Faith/No Malice)

22. Assuming the alleged statement was published, Plaintiff's claim of defamation is barred in whole or in part against Defendant because the alleged defamatory statement was made in good faith, honestly, and not maliciously.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Cal. Civil Code section 47(c) Qualified Privilege)

23. Assuming the alleged statement was published, Plaintiff's claim of defamation is barred in whole or in part against Defendant because the alleged statement was made, without malice, to a person or persons interested therein, by Defendant, who also was interested in the communication.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Absolute Privilege)

24. Assuming the alleged statement was published, Plaintiff's claim of defamation is barred in whole or in part against Defendant because the alleged statement was made during, or in connection with, a judicial, administrative, quasi-judicial, or other official proceeding authorized by law, and related to the proceeding in which Defendant was participating, and thus, it is privileged under California Civil Code section 47.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Severe Emotional Distress)

25. Plaintiff's claims, in whole or in part, are barred to the extent that Plaintiff has not suffered any severe emotional distress, as required to support a claim for emotional distress damages.

PRAYER

Wherefore, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing for the Second Amended Complaint;

2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;

3. That Defendant be awarded reasonable attorneys' fees;

4. That Defendant be awarded its costs of suit incurred herein; and

5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

DATED: March 13, 2025

Respectfully submitted,

SEYFARTH SHAW LLP

By: */s/ Jeanine Scalero*
Kristina Launey
Jeanine Scalero
Attorneys for Defendant
24 HOUR FITNESS USA, LLC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793.

On **March 13, 2025**, I served the within document(s):

DEFENDANT 24 HOUR FITNESS USA, LLC'S VERIFIED ANSWER TO PLAINTIFF MICHAEL DEVIN FLOYD'S SECOND AMENDED COMPLAINT

☒	electronically by using the Court's CM/ECF System.

Michael Devin Floyd, In Pro Per 1214 Mount Hermon Road Scott Valley, California 95066 Telephone No.: (713) 562-7229 Email: mdf3039@gmail.com	

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 13, 2025**, at Los Angeles, California.

Sandra Hinojosa

Sandra Hinojosa

01:57:28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FLOYD, PLAINTIFF, VS. 24 HOUR FITNESS USA, LLC, DEFENDANT.	CV-23-00871-EMC SAN FRANCISCO, CALIFORNIA MARCH 19, 2024 PAGES 1-20

TRANSCRIPT OF PROCEEDINGS BY ZOOM
BEFORE THE HONORABLE EDWARD M. CHEN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: MICHAEL DEVIN FLOYD, PRO SE
2323 BROADWAY
OAKLAND, CA 94612
BY: MICHAEL FLOYD

FOR THE DEFENDANT: SEYFARTH SHAW, LLP
601 S. FIGUEROA STREET, STE 3300
LOS ANGELES, CA 90017
BY: JEANINE SCALERO

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

SAN FRANCISCO, CALIFORNIA MARCH 19, 2024

P R O C E E D I N G S

(COURT CONVENED AT 2:38 P.M.)

02:38:24 THE CLERK: THE COURT IS CALLING THE CASE, FLOYD VERSUS 24 HOUR FITNESS USA, LLC. CASE NUMBER 23-871.

02:38:46 PLEASE STATE YOUR APPEARANCE FOR THE RECORD BEGINNING WITH THE PLAINTIFF.

02:38:49 MR. FLOYD: MICHAEL FLOYD APPEARING ON BEHALF OF THE PLAINTIFF, AS THE PLAINTIFF.

02:38:54 THE COURT: ALL RIGHT. THANK YOU, MR. FLOYD.

02:38:56 MS. SCALERO: GOOD AFTERNOON, YOUR HONOR.

02:39:00 JEANINE SCALERO APPEARING ON BEHALF OF DEFENDANT 24 HOUR FITNESS.

02:39:04 THE COURT: ALL RIGHT. THANK YOU, MS. SCALERO.

02:39:05 SO YOU HAD AN EARLY SETTLEMENT CONFERENCE, I GUESS WHAT, LAST WEEK, WITH JUDGE WESTMORE; IS THAT RIGHT?

02:39:14 MS. SCALERO: THAT'S RIGHT, YOUR HONOR.

02:39:15 THE COURT: AND I KNOW THIS CASE DIDN'T RESOLVE, BUT WHERE DID YOU LEAVE IT WITH JUDGE WESTMORE? ARE THERE ANY DISCUSSIONS ABOUT FURTHER SESSIONS, OR WHERE DID YOU ALL LEAVE IT WITH HER?

02:39:29 MR. FLOYD: I MEAN, I THINK SHE SAID SHE'S AVAILABLE, YOU KNOW, TO ASSIST, BUT I THINK WITHOUT DIVULGING ANYTHING, YOU KNOW, CONFIDENTIALITY, I THINK WE JUST DECIDED THAT IT WASN'T GOING TO BE PRODUCTIVE TO CONTINUE.

I DON'T KNOW, MR. FLOYD -- I DON'T KNOW IF MR. FLOYD HAS ANY --

THE COURT: I DON'T WANT TO HEAR WHO SAID WHAT OR -- I JUST WANT TO KNOW WHETHER THE THOUGHT ABOUT FURTHER -- GOING BACK TO HER MAYBE AFTER SOME DEVELOPMENT, DID YOU ALL TALK ABOUT POSSIBLY RETURNING OR NOT?

MS. SCALERO: NOT REALLY, YOUR HONOR, UNFORTUNATELY.

THE COURT: OKAY.

ALL RIGHT. ANY COMMENTS ON YOUR PART, MR. FLOYD?

MR. FLOYD: NO.

THE COURT: OKAY.

ALL RIGHT. SO THE DEFENDANT HAS INDICATED THAT THEY MAY WANT TO FILE A MOTION FOR SUMMARY JUDGEMENT AND A MOTION TO DECLARE THE PLAINTIFF AS A VEXATIOUS LITIGANT. WHAT IS YOUR PROPOSAL IN TERMS OF SEQUENCING THINGS AND TIMING?

MS. SCALERO: WELL, I WOULD LIKE TO TRY TO GET SOMETHING -- A MOTION FOR SUMMARY JUDGEMENT ON FILE SOONER RATHER THAN LATER. I DON'T PARTICULARLY THINK WE NEED A LOT OF DISCOVERY. WE HAVE ALREADY -- I MEAN, I THINK WE HAVE EXCHANGED ENOUGH INFORMATION WITH MR. FLOYD, IN TERMS OF HIS MEMBER FILE AND POLICIES AND, YOU KNOW, KIND OF THE INCIDENT REPORT.

AND SO I THINK THE DOCUMENTS ARE ALL THERE, AND SO I KIND OF THINK THE LAW IS ON OUR SIDE, AND SO YOU KNOW, I DON'T THINK MR. FLOYD HAS INDICATED THAT HE WANTS TO TAKE ANY DEPOSITIONS,

AND I DON'T THINK WE NEED TO TAKE MR. FLOYD'S DEPOSITION TO ACTUALLY FILE A MOTION FOR SUMMARY JUDGEMENT. SO I WOULD LIKE TO GET IT ON FILE MAYBE IN THE NEXT COUPLE OF MONTHS.

THE COURT: ALL RIGHT.

LET ME ASK MR. FLOYD, WHAT IS YOUR -- YOU UNDERSTAND WHAT A SUMMARY JUDGEMENT MOTION IS, IT'S A MOTION FILED BY ONE SIDE SAYING THAT BASED ON UNDISPUTED FACTS, THAT THEY ARE ENTITLED TO WIN -- TO A JUDGMENT AS A MATTER OF LAW.

ON THE OTHER HAND, IF THERE ARE DISPUTED ISSUES, WHAT WE CALL MATERIAL FACTS, THAT ARE FACTS THAT ARE RELEVANT TO ESTABLISH LIABILITY, THEN THE COURT WOULD DENY SUMMARY JUDGEMENT.

DO YOU HAVE A PLAN FOR DISCOVERY? I KNOW THERE'S GOING TO BE -- YOU'VE HAD SOME INITIAL DISCLOSURES AND SOME THINGS HAVE BEEN EXCHANGED, WHAT ARE YOUR THOUGHTS ABOUT DISCOVERY?

MR. FLOYD: I INTEND ON TAKING EITHER DEPOSITIONS OR CALLING THE MANAGERS AND THEIR ALLEGED VICTIM TO THE WITNESS STAND. I'M NOT SURE WHICH AT THIS MOMENT, MAYBE BOTH, BUT I MEAN, I DON'T THINK BOTH WOULD BE NECESSARY.

BUT YEAH, THEY CLAIM TO HAVE ONE ALLEGED VICTIM WHICH THEY WOULD NOT PROVIDE THEIR NAME WITH, AND I INTEND ON ADDING MANAGERS AND AN ALLEGED VICTIM INTO THE COMPLAINT, HOPEFULLY THAT GETS DONE WITHIN A MONTH AS WELL.

THE RESPONSE BACK FOR THE MOTION FOR DISCOVERY THAT DENIED ME FROM KNOWING WHO THE ALLEGED VICTIM IS, SO I STILL DON'T

02:43:20 KNOW EXACTLY WHO IT IS. BUT YEAH, I INTEND ON ADDING THEM INTO
02:43:24 THE COMPLAINT.
02:43:31 THE COURT: AND ARE YOU SAYING IT'S YOUR INTENT TO
02:43:34 TAKE DEPOSITIONS AS PART OF THIS TRIAL PREPARATION HERE?
02:43:38 MR. FLOYD: I'M NOT SURE WHETHER I WANT A DEPOSITION
02:43:42 OR WHETHER I WANT ALL THE WITNESSES ON THE STAND. I GUESS I'M
02:43:47 DEBATING TO MYSELF RIGHT NOW WHICH, BUT YEAH.
02:43:53 THE COURT: I TAKE IT YOU DON'T HAVE -- IS THERE ANY
02:43:56 PROSPECT THAT YOU WOULD HAVE AN ATTORNEY REPRESENT YOU IN THIS
02:43:59 CASE?
02:44:00 MR. FLOYD: IS THERE ANY POSSIBILITY THE COURT IS
02:44:02 WILLING TO GRANT ME AN ATTORNEY?
02:44:06 THE COURT: WELL, THE COURT -- WHAT THE COURT CAN
02:44:09 DO -- HAVE YOU TALKED TO OUR HELP DESK, OUR PRO SE HELP DESK?
02:44:15 MR. FLOYD: YEAH, I'VE TRIED THAT A LONG TIME AGO, I
02:44:18 THINK BACK IN '22 OR SO. I HAD A COUPLE OTHER CASES WITH THE
02:44:23 HELP DESK AND THE PRO SE HELP DESK, BUT I MEAN, I GUESS THAT
02:44:29 HAS LONG PASSED. I'M LOOKING FOR MAYBE MORE EXPERT ATTORNEY
02:44:34 HELP. I THINK I'M GOING TO PASS THE PRO SE HELP AT THIS STAGE.
02:44:37 THE COURT: OKAY. THAT'S WHAT WE CAN OFFER, THE HELP
02:44:41 DESK CAN GIVE YOU SOME ADVICE AND THAT SORT OF THING ABOUT HOW
02:44:46 TO HANDLE THE CASE. IF THEY FEEL IT'S APPROPRIATE, THEY CAN
02:44:50 HELP YOU TRY TO FIGURE OUT HOW TO ASK FOR APPOINTMENT OF
02:44:53 COUNSEL.
02:44:53 MR. FLOYD: YEAH.

02:44:54 THE COURT: AND SOMETIMES THEY CAN HELP US FIND
02:44:56 COUNSEL.
02:44:56 MR. FLOYD: YEAH. I GUESS I KNOW IT'S POSSIBLE TO
02:44:59 ASK. I GUESS THE MOTION FOR APPOINTMENT OF COUNSEL, IT CAN BE
02:45:03 GRANTED, IT'S NOT A DEFINITE THAT IT WOULD BE GRANTED, BUT IT
02:45:07 COULD BE, RIGHT? I KNOW IT'S NOT A CRIMINAL, SO I KNOW IT'S
02:45:11 NOT A DEFINITE --
02:45:13 THE COURT: YEAH, YEAH, YOU ARE NOT ENTITLED TO IT.
02:45:16 MR. FLOYD: BUT I GUESS I CAN --
02:45:19 THE COURT: I WOULD SAY IF THAT'S WHAT YOU ARE
02:45:21 INTERESTED IN, THE BEST ROUTE -- BECAUSE WHAT I WOULD DO IF YOU
02:45:24 ASK FOR IT IS I WOULD REFER YOU TO THE HELP DESK, THEY CAN
02:45:28 FIGURE OUT WHETHER OR NOT YOU WOULD BE ENTITLED TO COUNSEL AND
02:45:32 MAYBE THE BEST WAY TO PITCH IT. AND THEY MAINTAIN A LIST OF
02:45:35 POTENTIAL VOLUNTEERS, THAT'S WHERE WE GET OUR COUNSEL FROM
02:45:40 BECAUSE WE DON'T HAVE FUNDS TO PAY. AND SO I HAVE TO DEPEND ON
02:45:43 THEM, WHETHER THEY CAN PLACE THE CASE OR NOT.
02:45:45 BUT THAT WOULD BE MY RECOMMENDATION IS TO TALK WITH THEM
02:45:49 ABOUT YOUR CASE AND TELL THEM YOU ARE INTERESTED IN COUNSEL AND
02:45:55 SEE IF THERE'S ANYTHING THEY COULD DO.
02:45:56 OUTSIDE OF THAT, I TAKE IT YOU ARE NOT GOING TO HIRE --
02:45:59 IT'S UNLIKELY YOU WOULD GET YOUR OWN ATTORNEY ON YOUR OWN?
02:46:02 MR. FLOYD: YEAH, IT'S UNLIKELY I WILL GET MY OWN
02:46:06 ATTORNEY. I GUESS I WAS UNDER THE IMPRESSION THAT IF I MADE A
02:46:11 MOTION FOR COUNSEL FROM THE COURT THAT THE COURT COULD APPOINT

COUNSEL. SO THOSE FUNDS WOULD COME FROM WHERE, EXACTLY?

THE COURT: WHAT I WOULD DO IS REFER YOU TO THE HELP DESK.

MR. FLOYD: THE HELP DESK FOR AN ATTORNEY?

THE COURT: WELL THEY WOULD EVALUATE WHETHER IT'S POSSIBLE TO GET AN ATTORNEY, AND IF SO WHERE THEY CAN FIND SOMEBODY. SOMETIMES WE CAN FIND PEOPLE, SOMETIMES WE CAN'T, DEPENDING ON THE CIRCUMSTANCES.

MR. FLOYD: SURE.

THE COURT: SO WITH THE APPOINTMENT OF COUNSEL, YOU CAN MAKE A MOTION WITH ME OR YOU JUST GO DIRECTLY TO THE HELP DESK AND SAY YOU WOULD LIKE TO EXPLORE THE POSSIBILITY OF THEM HELPING YOU FIND COUNSEL AND THEY WOULD HELP YOU MAKE THE MOTION.

MR. FLOYD: OKAY.

THE COURT: THAT'S ONE THING WE CAN DO.

MR. FLOYD: YEAH, I GUESS I CAN MAKE MOTIONS, SIMPLE. BUT, OKAY, THANK YOU. I WILL TALK TO THE HELP DESK AND I WILL SEE ABOUT THE APPOINTMENT OF COUNSEL AND IF THERE IS ANY ATTORNEYS THAT ARE PRESENT AND AVAILABLE, AND IF POSSIBLE I WILL MAKE THE MOTION.

THE COURT: OKAY. SO -- ALL RIGHT. GOOD.

SO KNOWING THAT, THE DEFENSE IS PLANNING TO FILE WHAT'S CALLED A SUMMARY JUDGEMENT MOTION SAYING THAT THE EVIDENCE, AT LEAST THE UNDISPUTED EVIDENCE, SHOWS THAT THEY SHOULD WIN.

HAVE YOU THOUGHT ABOUT WHAT, IN ADDITION TO THE DOCUMENTS THEY PROVIDED YOU OR THEY ARE GOING TO EXCHANGE, IS THERE ANY OTHER DISCOVERY THAT YOU NEED TO PREPARE YOUR RESPONSE TO THAT MOTION THAT'S GOING TO COME IN A COUPLE OF MONTHS, A FEW MONTHS?

MR. FLOYD: I AM NOT SURE WHAT I DID ON JULY 18TH TO ACTUALLY CAUSE MY REMOVAL FROM 24 HOUR FITNESS, AND IF I CAN GET AN EXACT ALLEGATION OF WHAT I DID ON JULY 18TH, THEN THAT WOULD BE ALL I NEED.

THE COURT: SO THEN MS. SCALERO, YOU SAID YOU HAVE OR YOU ARE GOING TO SEND OVER -- THERE'S AN INCIDENT REPORT AND SOME INTERNAL NARRATIVE OR SOMETHING?

MS. SCALERO: CORRECT, YOUR HONOR. CORRECT. WE HAVE ALREADY PROVIDED MR. FLOYD WITH THAT INFORMATION.

SO HE HAS HIS MEMBERSHIP FILE, AND THERE'S LIKE A LOG, IT'S LIKE A MEMBER LOG, AND ANY TIME THERE'S AN INCIDENT IT GETS LOGGED INTO THAT REPORT. AND SO THAT WAS PROVIDED TO HIM. AND ALL THE POLICIES THAT APPLY TO HIM.

SO EVERYTHING THAT WE HAVE WAS GIVEN TO HIM, AND WE ALSO PROVIDED HIM WITH A VIDEO OF HIM BEING ESCORTED OUT BY THE POLICE. SO HE HAS ALL THAT INFORMATION.

HE ALSO, IN OUR INITIAL DISCLOSURES, EVEN THOUGH WE HAVEN'T PROVIDED THE NAME, SOME MEMBERS -- MY UNDERSTANDING IS SOME MEMBERS DIDN'T WANT TO PROVIDE THEIR IDENTITY. I KNOW THERE'S THE IDENTITY OF AT LEAST ONE, I KNOW THAT FOR SURE, AND

02:49:23 SO I JUST DON'T KNOW IF SHE'S WILLING TO COME FORWARD, IF SHE
02:49:29 WANTS TO BE IDENTIFIED OR NOT.
02:49:30 BUT MR. FLOYD DOES HAVE -- BECAUSE IN OUR INITIAL
02:49:33 DISCLOSURES WE IDENTIFIED THE GENERAL MANAGER AND THE SALES AND
02:49:39 SERVICE MANAGER AND ANOTHER EMPLOYEE THAT WAS PRESENT, SO HE
02:49:45 HAS THE NAMES OF THREE 24 HOUR FITNESS EMPLOYEES THAT HE'S
02:49:50 PERFECTLY WILLING TO DEPOSE.
02:49:52 YOU KNOW, I KNOW IT MIGHT BE EASIER IF HE HAD COUNSEL SO
02:49:56 THAT HE COULD DO THAT, BUT -- SO HE HAS -- THAT'S A WAY IN
02:50:01 WHICH HE COULD OBTAIN INFORMATION BY DEPOSING THOSE WITNESSES.
02:50:05 THE COURT: ALL RIGHT. LET ME ASK YOU, YOU SAID
02:50:08 THERE'S SOMETHING LIKE AN INCIDENT REPORT?
02:50:10 MS. SCALERO: CORRECT.
02:50:10 THE COURT: DOES THAT INCIDENT -- DOES IT LOOK LIKE A
02:50:14 TYPICAL POLICE REPORT WHERE THERE'S A WITNESS STATEMENT, PEOPLE
02:50:16 ARE INTERVIEWED? ARE THERE WITNESS STATEMENTS?
02:50:18 MS. SCALERO: NO, IT'S NOT -- SORRY, YOUR HONOR.
02:50:20 IT'S NOT LIKE THAT, IT'S MORE LIKE A LOG THAT THE EMPLOYEE THAT
02:50:25 RECEIVES IT ENTERS IT IN. IT HAS SOME FACTS IN THERE BUT IT'S
02:50:31 NOT LIKE A DETAILED INCIDENT, LIKE A POLICE REPORT, IT'S NOT
02:50:35 LIKE THAT.
02:50:35 THE COURT: SO THERE'S NOT -- THERE ARE NO WITNESS
02:50:38 STATEMENTS, LIKE VICTIM ONE SAID HERE'S WHAT HAPPENED, BLAH,
02:50:42 BLAH, BLAH, BLAH, OR THE MANAGER OR EMPLOYEE SAYING HERE'S WHAT
02:50:44 I SAW, LIKE YOU WOULD WHEN YOU HAVE A TRAFFIC ACCIDENT, THERE'S

02:50:48 WITNESSES OR A CLIENT REPORT OR SOMETHING, THERE'S NOTHING LIKE
02:50:50 THAT?
02:50:51 MS. SCALERO: RIGHT.
02:50:51 WELL IT DOES SAY -- IT SAYS A SENTENCE OR TWO OF WHAT WAS
02:50:54 REPORTED AT THAT TIME, SO THAT IS IN THERE. AND THEN THERE'S
02:51:00 ALSO AN E-MAIL FROM THE GENERAL MANAGER WHICH SHE ELEVATED IT,
02:51:07 AND SHE HAS -- YOU KNOW, IT'S A PRETTY LONG E-MAIL ABOUT HER
02:51:12 INTERACTIONS WITH MR. FLOYD, SO HE HAS THAT.
02:51:14 AND THEN HE HAS THE -- IT'S A MEMBER REVOKE FORM THAT IS
02:51:19 FILLED OUT THAT LISTS THE INCIDENTS. THERE'S NOT A LOT OF
02:51:25 DETAIL ON IT, BUT IT LISTS THE INCIDENTS AND THAT HE WAS TALKED
02:51:29 TO AND THE DATES AND THINGS LIKE THAT.
02:51:33 THE COURT: OKAY.
02:51:35 MS. SCALERO: SO THERE'S QUITE A LOT OF EVIDENCE ON
02:51:37 OUR END. I MEAN, WE HAVE INFORMATION.
02:51:40 THE COURT: AND IF MR. FLOYD WANTS TO GET MORE
02:51:43 DETAILS, WOULD THE NEXT STEP BE EITHER SOME KIND OF
02:51:47 INTERROGATORY OR DEPOSITION, FOR INSTANCE, OF THE MANAGER OR
02:51:49 THE WITNESSES?
02:51:51 MS. SCALERO: YES, YOUR HONOR. I THINK THAT WOULD BE
02:51:54 THE BEST PLACE TO START.
02:51:56 THE COURT: OKAY. WELL THAT'S WHERE IT MIGHT BE
02:51:59 USEFUL FOR YOU, MR. FLOYD, TO TALK TO THE HELP DESK BECAUSE
02:52:02 THEY COULD MAYBE GIVE YOU SOME ADVICE ABOUT WHAT DISCOVERY
02:52:05 TOOLS YOU MIGHT WANT TO USE, BECAUSE YOU HAVE THE RIGHT TO

PROPOUND WHAT'S CALLED INTERROGATORIES WHERE YOU CAN ASK QUESTIONS. YOU DO HAVE THE RIGHT TO TAKE A DEPOSITION, BUT THERE'S AN EXPENSE TO DEPOSITIONS, THEY ARE NOT CHEAP, YOU'VE GOT TO PAY A COURT REPORTER AND ALL THAT SORT OF STUFF.

BUT THAT'S SOMETHING YOU MIGHT WANT TO TALK TO THE HELP DESK ABOUT, LIKE KNOWING THAT THE OTHER SIDE IS PROBABLY GOING TO FILE WHAT'S CALLED A SUMMARY JUDGEMENT MOTION, WHAT DO YOU NEED TO DO TO PREPARE, IF YOU DON'T HAVE AN ATTORNEY.

SO THAT'S MY ADVICE IS TO TALK TO THE HELP DESK PEOPLE AND SO -- AND WE ALSO HAVE A BOOK. YOU'VE SEEN OUR HANDBOOK ON REPRESENTING YOURSELF IN FEDERAL COURT? IT'S ON OUR WEBSITE.

MR. FLOYD: YEAH. YEAH.

THE COURT: THERE'S A CHAPTER ON THERE ABOUT WHAT IS SUMMARY JUDGEMENT AND THERE'S A CHAPTER ABOUT WHAT ARE DIFFERENT TOOLS OF DISCOVERY, SO YOU MIGHT TAKE A LOOK AT THAT AS WELL.

BUT SO IT SOUNDS LIKE THE INITIAL DISCLOSURES HAVE BEEN MADE, RIGHT MS. SCALERO, YOU'VE PROVIDED THE DOCUMENTS?

MS. SCALERO: CORRECT, YOUR HONOR.

THE COURT: AND SO WHAT I'M GOING TO DO IS MAYBE GIVE MR. FLOYD A LITTLE BIT OF TIME TO TALK TO THAT HELP DESK SO IF THERE'S A POSSIBILITY OF WHETHER THERE'S A WAY TO FIND COUNSEL, IF NOT HE WILL HAVE TO HANDLE IT HIMSELF. AND THEN HE MAY -- I SHOULD AFFORD HIM SOME TIME TO DO, IF WANTS TO DO SOME DISCOVERY BEFORE YOU FILE YOUR MOTION, IT SOUNDS LIKE YOU WANT

02:53:38 TO FILE THE MOTION MAYBE A COUPLE MONTHS OUT.

02:53:40 I THINK WHAT WE SHOULD DO IS MAYBE SCHEDULE A FURTHER

02:53:44 STATUS CONFERENCE, MAYBE 60, 75 DAYS OUT TO SEE WHAT'S BEEN

02:53:48 DONE, AND AT THAT POINT I CAN SCHEDULE A SUMMARY JUDGEMENT

02:53:51 MOTION IF THAT'S YOUR NEXT STEP.

02:53:53 MS. SCALERO: THAT SOUNDS GOOD, YOUR HONOR. THAT WAS

02:53:55 WHAT I WAS GOING TO ASK YOU, IF YOUR PREFERENCE IS TO ALLOW THE

02:53:58 PLAINTIFF SOME TIME TO CONDUCT SOME DISCOVERY BEFORE WE FILE

02:54:01 THAT MOTION, AND THAT'S FINE.

02:54:05 AND ALSO, IT WAS NEWS TO ME THAT THE PLAINTIFF WAS

02:54:09 THINKING ABOUT AMENDING PLEADINGS, IS THAT SOMETHING THAT HE'S

02:54:12 ALLOWED TO DO AT THIS POINT?

02:54:14 THE COURT: WELL, LET'S SEE, HAVE YOU FILED AN

02:54:17 ANSWER?

02:54:18 MS. SCALERO: YES.

02:54:19 THE COURT: YOU DID.

02:54:20 MR. FLOYD: WELL I PUT IN MY COMPLAINT THAT I

02:54:22 INTENDED TO AMEND THE PLEADINGS, SO I MEAN, I GUESS THAT'S THE

02:54:29 THING I ALWAYS PLANNED TO DO. I WAS WAITING ON THE DISCOVERY

02:54:32 OF THE ACTUAL NAMES OF THE ALLEGED VICTIMS, BECAUSE LIKE I SAID

02:54:37 BEFORE, SOMEBODY IS ALLEGING SOMETHING, ON MANY DIFFERENT

02:54:42 OCCASIONS, THAT I DID SOMETHING WRONG. I'M NOT SURE EXACTLY

02:54:44 WHAT THESE THINGS ARE. SO I WANTED TO HAVE THE NAMES OF THESE

02:54:49 PEOPLE SO I CAN PUT THEM IN THE COMPLAINT.

02:54:55 I DON'T HAVE THE NAMES, SO I'M GOING TO ADD THEM AS

JANE DOE, AND SHE HAS ONLY INFORMED ME THAT THERE'S ONE ALLEGED VICTIM. SO -- AND SO I MEAN, I INTEND TO ADD HER NAME.

THE COURT: OKAY. SO FORMALLY, ONCE THE OTHER SIDE HAS FILED AN ANSWER, YOU NEED TO EITHER GET PERMISSION OR YOU FILE A MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT.

I WILL SEE THAT GENERALLY, ESPECIALLY AT THE OUTSET OF THE CASE, THE RULES ARE PRETTY LAX, AND COURTS ARE GENERALLY PRETTY LENIENT ABOUT AN EARLY AMENDMENT SO LONG AS IT'S NOT LATE IN THE CASE AND THERE'S NO REAL PREJUDICE SHOWN.

NOW IF YOU AMEND THE COMPLAINT IN A WAY THAT YOU ARE TRYING TO STATE A CLAIM THAT DOESN'T WORK, THAT COULD BE A PROBLEM, BUT YOU TECHNICALLY EITHER HAVE TO GET A STIPULATION FROM THE DEFENDANT TO ALLOW YOU TO FILE THIS AMENDED COMPLAINT OR YOU HAVE TO ASK -- YOU HAVE TO FILE A MOTION WITH THE COURT TO FILE AN AMENDED COMPLAINT.

MR. FLOYD: OKAY.

THE COURT: AGAIN, I THINK THAT'S IN THAT HANDBOOK BUT IT'S ALSO SOMETHING YOU CAN TALK TO THE HELP DESK ABOUT.

THESE ARE SOME OF THE COMPLEXITIES ABOUT BEING IN FEDERAL COURT, YEAH. SO I'M GOING TO GIVE YOU SOME TIME TO FIGURE THAT OUT IN THE COMPLAINT, I THINK THAT SHOULDN'T STOP YOU FROM -- IF YOU ARE GOING TO SEEK SOME DISCOVERY, I DON'T KNOW IF THERE ARE ANYMORE DOCUMENTS YOU THINK SHOULD BE PRODUCED OR IF YOU WANT TO SEND SOME WRITTEN QUESTIONS THROUGH INTERROGATORY OR IF YOU WANT TO SEEK TO DEPOSE SOMEBODY. YOU KNOW, DEPOSING -- AND

I DON'T KNOW IF THIS IS GOING TO COME UP OR NOT, BUT IF YOU SEEK TO DEPOSE THE VICTIM, WE WILL HAVE TO FIGURE OUT THE PROCESS BECAUSE I'VE GOT TO BALANCE YOUR RIGHTS AGAINST THE ALLEGED VICTIM'S RIGHTS OF PRIVACY, SO THERE'S PROBABLY A WAY OF DOING THAT.

MR. FLOYD: I GUESS -- I MEAN, I GUESS EVERYBODY IS SO CONCERNED ABOUT THIS ALLEGED VICTIM. ONE THING THAT KIND OF STICKS OUT IS WHATEVER SHE'S ALLEGING CANNOT BE ANYTHING THAT'S TOO SERIOUS IF IT COMES IN THE FORM OF, LET'S SAY ABUSE, VIOLENCE OR MOLESTATION.

SO I MEAN, TRYING TO, I GUESS, CONCEAL HER IDENTITY AND PROTECT HER IDENTITY, I'M NOT SURE WHY THERE'S SO MUCH EFFORT IN DOING THAT WHEN I GUESS THERE'S NOTHING REALLY AT HAND THAT IS THAT SERIOUS TOWARDS CONDUCT-WISE. BUT HERE WE ARE, I GUESS, TRYING TO PROTECT WHATEVER WE CAN PROTECT, WHICH IS FINE, BUT I MEAN, IT SEEMS A LITTLE BIT TOO MUCH.

THE COURT: WELL, YOU WILL BE ALLOWED TO ASK, YOU KNOW, IF SHE'S MADE A STATEMENT. I THINK YOU ARE ENTITLED TO SEE THAT STATEMENT, THE NAME WITH THE INITIALS OR SOMETHING LIKE THAT, BUT I'M TOLD THERE IS NO STATEMENT.

IF THERE ARE QUESTIONS THAT COME UP, YOU KNOW, I THINK THE ULTIMATE QUESTION IS IF YOU WANT TO CALL HER AS A WITNESS OR TAKE HER DEPOSITION, HOW DO WE HANDLE THAT? AND I SUSPECT THERE ARE WAYS OF DOING THAT SO YOU CAN GET THE BASIC INFORMATION, REALLY HER SPECIFIC NAME AND HER FULL NAME MAY NOT

BE ALL THAT RELEVANT, BUT I DON'T KNOW IF WE ARE GOING TO GET TO THAT POINT.

THE FIRST THING YOU'VE GOT TO DO IS LOOK AT THE DOCUMENTS YOU HAVE, FIGURE OUT WHAT OTHER DOCUMENTS YOU WANT, WHETHER IT MAKES SENSE WHETHER YOU WANT TO DEPOSE THE MANAGER OR THE WITNESSES -- I TAKE IT THERE'S AT LEAST ONE EMPLOYEE WITNESS, MS. SCALERO, YOU SAID?

MS. SCALERO: THERE'S THREE EMPLOYEE WITNESSES.

AND ALSO I JUST WANTED TO CORRECT MR. FLOYD. I DIDN'T SAY THERE WAS ONLY ONE VICTIM, I JUST KNOW THE IDENTITY OF ONE. I MIGHT BE ABLE TO FIND THE IDENTITY OF OTHERS.

AND MAYBE A WAY I CAN DO THIS IS SEE IF I CAN GET -- FIND THESE MEMBERS AND SEE IF I CAN GET SOME DECLARATIONS AND REDACT THE NAMES. WE CAN START FROM THERE, OR HE CERTAINLY COULD ASK QUESTIONS IN THE FORM OF INTERROGATORIES AND I CAN TRY TO GET THAT INFORMATION FOR HIM.

THE COURT: WELL THE DECLARATIONS, EVEN FOR NOW IF YOU REDACT THE NAMES, WOULD BE USEFUL TO MR. FLOYD BECAUSE THEN HE WILL SEE WHAT THESE WITNESSES ARE SAYING THEY CLAIMED HAPPEN, SO HE WILL KNOW AT LEAST THE STORY.

MS. SCALERO: OKAY.

THE COURT: YOU MAY NEED THAT FOR YOUR SUMMARY JUDGEMENT MOTION ANYWAY.

MS. SCALERO: CORRECT.

THE COURT: OTHERWISE YOU WILL HAVE A HEARSAY

02:59:09 PROBLEM. BUT THEN MR. FLOYD CAN DECIDE HOW WANTS TO RESPOND,
02:59:15 YOU KNOW, ET CETERA, ET CETERA, BUT THAT MAY BE A USEFUL TOOL.
02:59:20 SO WHAT I WILL DO IS I WILL SCHEDULE SOMETHING, LET'S
02:59:23 SAY -- LET'S DO 90 DAYS OUT, GIVE HIM A CHANCE TO TALK TO THE
02:59:27 PLAINTIFF, SEE IF HE CAN GET AN ATTORNEY, SEE IF HE WANTS TO
02:59:30 GET SOME DISCOVERY. GIVE YOU A CHANCE, MS. SCALERO, TO FIND
02:59:34 ANYMORE DOCUMENTS, INCLUDING IF THERE ARE DECLARATIONS, AND I
02:59:36 WILL ALLOW FOR NOW THIS USING OF INITIALS OR SOMETHING LIKE
02:59:40 THAT, THEY MAY BE REVEALED LATER AT SOME POINT, I DON'T KNOW,
02:59:45 IT DEPENDS.
02:59:45 MR. FLOYD: HOW LONG UNTIL YOU CAN GET THE NUMBER OF
02:59:48 ALLEGED VICTIMS SO I CAN FILE THE AMENDED COMPLAINT AND PUT
02:59:52 THEM AS JOHN AND JANE DOE'S, BECAUSE YOU TOLD ME IT WAS JUST
02:59:58 ONE, SO I WAS GOING TO PUT ONE JANE DOE, BUT NOW THAT YOU ARE
03:00:01 SAYING THAT THERE'S MORE --
03:00:03 MS. SCALERO: WELL I THINK I'VE ALWAYS -- I'M SORRY,
03:00:06 MR. FLOYD. I THINK IT'S ALWAYS BEEN STATED THAT THERE ARE WERE
03:00:10 MORE, THAT WAS -- IT'S BEEN IN ALL OF THE PLEADINGS THAT WE
03:00:14 FILED WITH THE COURT. BUT I WOULD SAY --
03:00:17 MR. FLOYD: NO, ALL IT SAYS IN THE PLEADINGS IS THAT
03:00:20 MEMBER COMPLAINT, MEMBER COMPLAINT.
03:00:22 I ASKED YOU SPECIFICALLY, YOU KNOW, WHICH VICTIM AND WHAT
03:00:26 PARTICULAR TIME, COULD YOU BRING TO THE STAND. AND YOU SAID
03:00:30 ONE VICTIM ON JULY 18TH. AND -- OKAY, I SAID OKAY. BECAUSE I
03:00:37 MEAN, IT'S FUNNY, JULY 18TH I HADN'T TALKED TO ANYBODY, BUT

THAT'S WHY I DISTINCTLY REMEMBER WHAT YOU SAID.

SO SHE HAS ONLY ONE WITNESS, RIGHT? SEE, THAT'S WHAT I WANTED, RIGHT?

THE COURT: ALL RIGHT. I THINK IT'S FAIR TO ASK HOW MANY ALLEGED VICTIMS THERE ARE, IS IT ONE, TWO, THREE, AND I THINK IT WILL ADVANCE THE CASE IF YOU CAN GET EITHER STATEMENTS OR DECLARATIONS SO MR. FLOYD CAN SEE WHAT THE NATURE OF EACH OF THEIR ALLEGATIONS ARE AND -- BECAUSE THAT'S GOING TO HAVE TO BE PRODUCED FOR SUMMARY JUDGEMENT ANYWAY. AND THIS WAY I THINK WE CAN MOVE THINGS ALONG.

BUT I AM GOING TO PERMIT, AT LEAST FOR NOW, THAT THE USE OF INITIALS AS OPPOSED TO FULL NAMES, THAT'S NOT SAYING THAT'S PERMANENT, BUT AT LEAST TO GET IT TO THE NEXT STAGE.

MS. SCALERO: SOUNDS GOOD.

THE COURT: SO I WILL SET SOMETHING OUT IN JUNE, VICKI, PERHAPS THE FIRST PART OF JUNE.

THE CLERK: JUNE 11TH AT 2:30, YOUR HONOR?

THE COURT: OKAY. JUNE 11TH AT 2:30.

AND THE PLAN IS FOR THE DEFENDANT TO IDENTIFY HOW MANY ALLEGED VICTIMS AND IF THEY CAN PRODUCE DECLARATIONS OR STATEMENTS ABOUT WHAT HAPPENED.

AND MR. FLOYD, YOU NEED TO DECIDE THEN WITHIN THESE NEXT 90 DAYS WHETHER YOU WANT TO TAKE ADVANTAGE OF SOME OF THE DISCOVERY TOOLS THAT YOU HAVE UNDER THE FEDERAL RULES OR WHAT, KNOWING THAT AFTER THIS PERIOD I'M PROBABLY GOING TO ALLOW THE

03:02:16 DEFENDANT TO FILE WHAT'S CALLED A SUMMARY JUDGEMENT MOTION.
03:02:19 BUT I WOULD URGE YOU TO TALK TO THE PLAINTIFFS ABOUT WHAT NEXT
03:02:23 STEPS YOU SHOULD TAKE AS WELL AS WHETHER THEY MIGHT BE ABLE TO
03:02:26 FIND YOU AN ATTORNEY.
03:02:27 MR. FLOYD: SURE. SURE.
03:02:29 AND JUST ONE SECOND. AS I HAD SAID, I MENTIONED IN THE
03:02:39 ALLEGED -- LET ME PULL UP THE COMPLAINT. YEAH, I MENTIONED IN
03:02:45 THE COMPLAINT AT THE END -- I'M TRYING TO FIND IT.
03:03:15 THE COURT: WHAT IS IT THAT YOU ARE LOOKING FOR?
03:03:18 MR. FLOYD: WHERE I MENTION IN THE COMPLAINT THAT I
03:03:27 WOULD AMEND THE COMPLAINT. BUT YEAH, MY INTENTION WAS ALWAYS
03:03:31 TO AMEND THE COMPLAINT TO ADD THE EXACT PEOPLE, RIGHT. SO I
03:03:35 MEAN, JUST SUING THE BUSINESS DOES NOT COVER MY INTENTION. I
03:03:41 INTEND TO AMEND THE ACTUAL PEOPLE THAT WERE INVOLVED INTO THE
03:03:45 COMPLAINT. SO THAT HAS ALWAYS BEEN THE INTENTION.
03:03:48 THE COURT: OKAY. WELL --
03:03:51 MR. FLOYD: I PLAN TO MOTION FOR IT IN COURT.
03:03:54 THE COURT: YEAH, I MEAN, MAYBE MS. SCALERO AND YOU
03:03:58 CAN TALK ABOUT STIPULATING AND AGREEING THAT WOULD ALLOW YOU TO
03:04:03 AMEND THE COMPLAINT. IF YOU DO WANT TO FILE THE MOTION, YOU
03:04:06 CAN DO THAT AS WELL.
03:04:07 LIKE I SAID, THE GENERAL RULE IS THE COURTS TYPICALLY
03:04:11 ALLOW AN AMENDMENT EARLY IN THE CASE, AT LEAST ONE TIME, SO
03:04:17 LONG AS IT'S REASONABLE. SO PROBABLY BETTER TO TAKE CARE OF
03:04:21 THAT SOONER RATHER THAN LATER. BUT LET'S SEE IF THAT CAN ALL

BE ACCOMPLISHED IN THE NEXT 90 DAYS. YOU CAN FIGURE OUT YOUR COMPLAINT, FIGURE OUT YOUR REPRESENTATION SITUATION, DEFENDANT WILL GIVE YOU SOME MORE INFORMATION SO YOU KNOW HOW MANY ALLEGED VICTIMS THERE ARE, AND IF THEY HAVE DECLARATIONS THEY CAN PROVIDE THAT, AND THEN YOU CAN DECIDE HOW YOU WANT TO PREPARE FOR THE FORTHCOMING SUMMARY JUDGEMENT MOTION, AND WE WILL TAKE IT ONE STEP AT A TIME, OKAY?

MR. FLOYD: OKAY.

THE COURT: SO WE WILL SEE YOU ON JUNE 11TH, RIGHT, VICKI?

THE CLERK: THAT'S CORRECT, YOUR HONOR.

THE COURT: AT 2:30 ON ZOOM.

AND YEAH, SO AGAIN, I THINK YOU MIGHT BENEFIT FROM TALKING TO THE COMPLAINT DESK -- I MEAN OUR HELP DESK.

OKAY. WE WILL SEE YOU IN JUNE.

MS. SCALERO: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

THE CLERK: THIS HEARING IS CONCLUDED.

(THE PROCEEDINGS WERE CONCLUDED AT 3:05 P.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATE: 7/23/25

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL DEVIN FLOYD,

Plaintiff,

v.

24 HOUR FITNESS USA, LLC,

Defendant.

Case No. 23-cv-00871-EMC (PHK)

ORDER ON MOTION FOR RECONSIDERATION RE: DISCOVERY ORDER OF NOVEMBER 6, 2023

Re: Dkt. No. 35

BACKGROUND

Pro se Plaintiff Michael Devin Floyd ("Plaintiff") brings this lawsuit, pursuant to 42 U.S.C. § 1981, alleging violations of his civil rights by Defendant 24 Hour Fitness USA ("Defendant"). Dkt. 1. The case has been referred to the undersigned for all discovery matters. *See* Dkts. 27-28.

Before the Court is Plaintiff's "Motion and Declaration for Leave to File Motion for Reconsideration of Order Denying Plaintiff's Requested Relief in Discovery Letter Briefs Without Prejudice to Renewal, Pursuant to Civil L.R. 7-9." Dkt. 35. The Court liberally construes Plaintiff's motion as a request for leave to file a motion for reconsideration of this Court's Order, entered on November 6, 2023, resolving three discovery letter briefs. *See* Dkt. 34; *see also Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013) ("Courts in this circuit have an obligation to give a liberal construction to the filings of pro se litigants."). For the following reasons, Plaintiff's request for leave is **DENIED**.

DISCUSSION

A party seeking reconsideration of an interlocutory court order must first seek leave to file such a motion. Civil L.R. 7-9(a). The moving party must specifically show one of the following:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know of such fact or law at the time of the interlocutory order; or

(2) The emergence of new material facts or a change of law occurring after the time of such order; or

(3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

Civil L.R. 7-9(b).

A party seeking reconsideration may not reargue any written or oral argument previously asserted to the Court. Civil L.R. 7-9(c). "Unless otherwise ordered by the assigned Judge, no response need be filed and no hearing will be held concerning a motion for leave to file a motion for reconsideration." Civil L.R. 7-9(d).

"Reconsideration is an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Gamevice, Inc. v. Nintendo Co.*, --- F. Supp. 3d ----, 2023 WL 4032009, at *1 (N.D. Cal. 2023) (quoting *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)). "As such, it [reconsideration] should not be granted 'absent highly unusual circumstances.'" *Id.* (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)).

Here, Plaintiff asks the Court to reconsider its November 6, 2023 Order resolving three discovery letter briefs pertaining to Defendant's alleged refusal to produce certain discovery that Plaintiff requested from Defendant's counsel on August 20, 2023. Dkt. 35; *see* Dkt. 34. As explained in that Order, the Court denied Plaintiff's request to compel Defendant to respond to the discovery requests at issue, first, because it was clear from the face of the discovery letter briefs that the Parties did not comply with the Court's meet and confer requirements regarding discovery disputes; and second, because Plaintiff's discovery requests were made prior to the Parties' Rule 26(f) conference and thus under the Federal Rules were premature. Dkt. 34 at 3-5.

Plaintiff seeks reconsideration of the Court's November 6, 2023 Order, arguing that the

Parties did somehow comply with the Court's meet and confer requirements, and also insisting that "Plaintiff's discovery requests were not premature." Dkt. 35 at 2-3.

Having reviewed Plaintiff's submission, the Court concludes that Plaintiff has not set forth adequate grounds for leave to file a motion for reconsideration. Plaintiff has not demonstrated the emergence of new material facts or a change in law occurring after the time of the Court's November 6, 2023 Order, nor has he shown that there is a material difference in fact or law from that which was previously presented to the Court. *See* Civil L.R. 7-9(b)(1)-(2). Further, Plaintiff has not offered any evidence of "manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order." Civil L.R. 7-9(b)(3).

In urging the Court to reconsider the November 6, 2023 Order, Plaintiff argues that he "did comply" with the Court's meet and conferral requirements with respect to the three discovery letter briefs, citing as evidence: (1) email correspondence in which Plaintiff requests that Defendant's counsel "add any detail you need and sign" Plaintiff's first unilateral discovery letter brief; (2) a copy of the Notice of Electronic Filing ("NEF") of Plaintiff's first unilateral discovery letter brief, dated October 16, 2023, stating that "Defendant elected not to participate and jointly file brief with Plaintiff[;]" and (3) email correspondence between the Parties and Judge Chen's Courtroom Deputy Clerk, in which Defendant's counsel states that "Defendant did not authorize [] or agree to" Plaintiff's filing of a unilateral discovery letter brief. Dkt. 35 at 2 (citing Dkts. 35-1, 35-2, 35-3). None of these materials constitute in-person, videoconference, or even telephonic direct verbal communications between the Parties in an attempt to resolve the matter through negotiated stipulation or otherwise. *See* Rutter Group Practice Guide: Federal Civil Procedure Before Trial (National Ed.) at Chapter 12-A § 12:12.5 (May 2023) ("Local rules may require counsel to contact opposing counsel before filing a motion to discuss the contemplated motion and attempt to resolve the matter by stipulation."). These materials do not show compliance with the minimum meet and confer requirements for presentation of discovery disputes to this Court as set forth in the Court's Discovery Standing Order, much less demonstrate grounds for the Court to revisit its previous Order.