SUPREME COURT
OF THE STATE OF WASHINGTON

JACOB NIEDERQUELL Appellant, vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY. Respondents.	)	Case No. 1042523 **STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT**

I. INTRODUCTION

Appellant, Jacob Niederquell, hereby seeks direct review of summary and final judgment from the Supreme Court of Washington under RAP 4.2(a)(3), (4) due to:

1. Issues of urgent statewide public importance and constitutional magnitude created by the superior court's rulings;
2. The need for the Supreme Court to resolve a conflict between Division I Court of Appeals' use and

application of employment law requirements to a discrimination in public accommodations case in **Hartleben v. Univ. of Wa, 194 Wn. App. 877 (2016)** and Washington Supreme Court's distinction between employment standards and public accommodations standards in **Floeting v. Grp. Health Coop., 192 Wn. 2d 848 (2019)**;

3. The need for the Supreme Court to resolve the conflict between **Frisino v. Seattle Sch. Dist., 160 Wn. App. 765, 780 (2011) (**court held that an interactive process ***between employer and employee*** is necessary for determining appropriate accommodations when effective accommodations cannot be objectively predicted or measured), and **Hartleben v. Univ. of Wa., 194 Wn. App. 877, 890 (2016)** (court held that "parties must" engage in the interactive process to determine appropriate accommodations, creating the requirement in all cases where an accommodation is requested, even in public accommodations cases); and

4. The constitutional implications of administrative cost burdens (such as transcription, designation of clerk's papers, etc.) precluding unrepresented, indigent plaintiffs from seeking and obtaining appellate relief from unjust trial court decisions, especially in cases that affect civil rights.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court's findings of fact were insufficient, distorted key evidence, failed to establish necessary determinations for proper legal analysis, and shifted scrutiny away from Respondents' legal obligations and onto Appellant's lawful self-advocacy methods, drawing legal conclusions that contradict its own findings of fact, rely on unproven assumptions, and conflict with the evidence in the case record and trial testimony, rendering its final decision unconstitutional.
2. Whether the trial court abused its discretion by granting summary judgment for the defendants on the unlawful

summoning of law enforcement count finding "good faith" despite Defendants' expressed unlawful intent.

3. Whether the trial court deprived Appellant of the minimum protection required under Title III ADA by applying an employment law interactive process requirement to his request for reasonable accommodation in a public accommodations discrimination claim, in violation of the equal protection clause of the **Fourteenth Amendment**. (**28 C.F.R. Part 36**)
4. Whether **Hartleben v. Univ. of Wa., 194 Wn. App. 877, 890 (2016)**, created conflicts with **Frisino v. Seattle Sch. Dist., 160 Wn. App. 765, 780 (2011)** regarding when and where an "interactive process" is required to determine appropriate accommodations.
5. Whether the trial court abused its discretion by (a) requiring Appellant to negotiate ineffective alternative accommodations without requiring Respondents to justify the denial of his request with competent evidence, (b) failing to evaluate Respondents'

obligations to provide "same service" access under WLAD (**WAC 162-26-060, -080**) and ADA's "most integrated setting" standard (**28 C.F.R. § 36.203(a)**), (c) upholding Respondents' footwear policy as "neutral" without assessing its disproportionate impact on protected classes or the absence of objective evidence supporting Respondents' speculated "health and safety" stereotypes and generalizations, and (d) failing to conduct the undue burden analysis required under **WAC 162-26-080** and **Hartleben**, rendering the final decision legally untenable.

6. Whether the trial court erred by denying Appellant's **ER 201** request and determining his disability was merely "perceived" rather than medically cognizable, contradicting its own findings, minimizing Appellant's claim, and creating an appearance of judicial bias.
7. Whether the trial court's pretrial decisions establish a pattern of bias from the case outset.
8. Whether the trial court's misapplication of law, mishandling of facts, and ultimate claim denial due to

hostility toward Appellant's self-advocacy violated due process and equal protection requirements, unjustly excluding Appellant from access to justice as a form of punishment for lawfully defending his civil rights.

9. Whether the trial court's cumulative errors demonstrate fundamental disregard for Appellant's civil rights warranting admonishment and de novo review of its decisions.

10. Whether the superior court's reliance on prohibitive administrative costs foreclosed the unrepresented, indigent Appellant's ability to challenge biased rulings, insulating unjust trial court decisions from scrutiny and raising constitutional concerns warranting modification of **RAP 15.2** to ensure financial barriers do not deprive protected classes of access to appellate remedies, particularly in civil rights cases.

III. GROUNDS FOR DIRECT REVIEW

Pretrial Errors and Evidence of Bias

On June 5, 2025, Division III Court of Appeals struck Appellant's pending motion for discretionary review with appendix reference case number 40903-1, after learning of Appellant's intent to transfer and consolidate that motion with this appeal. (herein "Motion" or "Mot. D.R."; attached herein as Exhibit B) The Motion highlights numerous biased pretrial decisions that unfairly prejudiced the appellant and demonstrates the trial court's favoritism to the respondents and their lawyers throughout the proceedings, suggesting collusion between the trial court and defense counsel to deprive Appellant of basic civil rights from the case outset. The pattern of bias highlighted in the Motion demonstrates the superior court's proactive abuse of power to force an unjust outcome for the case. The grievances in the Motion directly pertain to the issues raised in this appeal and therefore the discretionary review should be reinstated and consolidated with this appeal.

Matters of particular concern in the Motion are:

1. March 22, 2024, hearing and decision denying Appellant's motion for preliminary injunction and subsequent denial of reconsideration based on the court's reliance on subjective, nonspecific and vague allegations of "behavior" warranting nonservice in defense declarations and disregard for or exclusion of Appellant's contradictory objective evidence, misapplication of legal standards, and an expressed commitment to prevent the appellant from prevailing in the trial court. (Mot. D.R. pp. 8-11) Notably, the court also obstructed the appellant from addressing concerns of spoliation and perjury at the hearing. (*Id.*)
2. August 2, 2024, hearing and August 6, 2024, order blanket-granting Respondents' protective order blocking Appellant from obtaining critical discovery, including name and contact information for the alleged "another member" who was testified about at length at trial and

referenced by the court in the final decision, substantially prejudicing the appellant. (Mot. D.R. pp. 11-13)

3. October 4, 2024, hearing and order granting leave to amend the complaint in limited fashion and subsequent denial of reconsideration where the trial court applied the wrong legal standards to grant defense counsel's specific ask prejudicing the appellant and demonstrating favoritism to the respondents. (Mot. D.R. pp. 13-14)
4. October 23, 2024, order denying Appellant's ex-parte motion for show cause for contempt that demonstrated serious violations of law and professional/judicial ethics and the superior court's collusion with the respondents or defense counsel to rig the case outcome in Respondents' favor consistent with the court's March 22 commitment to prevent the appellant from prevailing at trial. (Mot. D.R. pp. 15-16)

5. December 20, 2024, hearing and January 2, 2025, order blanket-granting Respondents' discovery request effectively ordering an invasion of Appellant's medical privacy in defiance of statutory restrictions on discovery and applying disparate standards of scrutiny to Respondents' discovery requests from those applied to Appellant's requests on August 2, 2024. (Mot. D.R. pp. 16-26) The court failed to identify or address the specific requests, whether orally or written, in both discovery rulings, merely identifying what defense counsel wanted and granting that on both occasions. (*Id*.)

The judge's statement during the very first hearing asserting that the appellant must "prevail on appeal" to obtain any remedy—made immediately after that same judge made several legal errors in its decision—indicates bias. This statement, combined with numerous subsequent rulings that disregard or defy established law, suggests that the unprecedented errors in the final judgment were

deliberate due to Appellant's known financial limitations and current **RAP 15.2** restrictions precluding a fair opportunity for Appellant to be heard on appeal.

The trial court's disregard for and defiance of statutory protections and higher court precedents and misapplication of legal standards on virtually every material issue brought before it consistently favored the respondents in the case record. Only the decision in limine to admit the audio recording excluded on March 22, 2024, contrasts the observable pattern of biased rulings.

However, the recording's content was ignored in the April 25 decision following a bench trial, indicating the court's prior intent to ignore that evidence before ruling it admissible for trial. No unbiased factfinder could reasonably be expected to ignore that evidence and the court's conclusion that Appellant's gym membership was canceled and law enforcement were summoned in "good faith" due to Appellant's behavior are entirely precluded by that objective evidence.

These actions have cumulatively deprived the appellant of due process and equal protection of the laws, fundamentally compromised the judicial system's fairness and integrity of proceedings, and effectively condoned discrimination against the appellant as officially encouraged by Washington State courts despite explicit federal prohibitions. The court's pretrial and substantive rulings so far deviate from the fundamental principles of fairness, impartiality, and justice, from what's required by law, and from the ordinary course of judicial proceedings, that they create urgent and pressing matters of state concern requiring direct review to ensure Appellant's constitutional protections are upheld by Washington State courts.

The sheer volume of erroneous rulings in the case precludes a presumption that the trial court acted impartially when rendering any of its decisions, including summary and final judgment, but instead indicates intent to deprive the appellant of rights under color of Washington State law from the case outset, necessitating

admonishment from the Supreme Court. The Supreme Court has original jurisdiction over state officers therefore direct review of this appeal, and of the superior court judges' conduct in the case, is necessary to remedy the damage caused by the trial court's extralegal acts.

Trial and Final Judgment Errors

Trial

The defendants testified at trial that Appellant always behaved appropriately at the gym "even when visibly agitated" by staff confronting and harassing him about his sensory impairment. They admitted that the shoes requirement was the only rule Appellant ever broke. Defendants stated that they ***felt*** "intimidated" and "disrespected" by Appellant's insistence that his disability rights be upheld and by his refusal to passively accept exclusion because of his sensory impairment. Defendants testified that their "health and safety reasons" for the footwear requirement was based entirely on speculation, stereotypes, and generalizations, rather than on medical or

scientific evidence establishing actual risk created by Appellant's bare feet.

Defendants acknowledged receiving Appellant's written accommodation request on November 1, 2023, and admitted discussing it before refusing to provide Appellant with same-service access to the gym. Other than his need for accommodation, which they refused to provide, the defendants admitted that they had no reason to exclude the appellant from the gym. Defendants acknowledged that Appellant's reasonable accommodation request was essentially that they simply ignore his feet and they provided no evidence or testimony that doing so would create any burden for the gym.

These facts together preclude the trial court's Conclusions of Law in its decision on the discrimination count rendering the decision ***unconstitutional*** because it punishes Appellant's lawful and appropriate self-advocacy in violation of the **First Amendment** and deprives Appellant of Title III ADA and WLAD protections in violation of the **Fourteenth Amendment**.

Producing the transcripts of this testimony is critical to the appeal and to upholding the appellant's right to due process on appeal, yet current restrictions under **RAP 15.2** prevent the indigent appellant from obtaining the transcripts at state expense. The trial court exploited this fundamental flaw in the court rules to shield its unconstitutional decision from scrutiny, raising issues of constitutional magnitude that are matters of urgent state concern necessitating direct review.

Only the Supreme Court has authority to modify **RAP 15.2** to ensure that trial courts cannot deprive indigent plaintiffs of basic civil rights by weaponizing appellate administrative cost burdens against them, therefore, direct review of this issue is necessary.

Additionally, the court reviewed an audio recording of the appellant's interaction with the respondents on November 8, 2023, in which they openly admitted to knowing that refusing service was unlawful. Respondents twice invited Appellant to bring a lawsuit, emphasizing that the footwear rule was meant for his own speculative

safety. When the appellant stated that he would proceed as if there were no issues, a defendant immediately responded, “I’m going to call 911, then,” demonstrating that summoning law enforcement was purely intended to coerce the surrender of disability rights and to cause Appellant to be expelled from a place where he was lawfully located in violation of **RCW 4.24.345**.

These facts preclude the court’s granting of summary judgement for the defendants on the unlawful summoning of law enforcement count and highlight Judge Anderson’s deliberate interference with the administration of justice through abuse of the office of superior court judge in rendering that extralegal decision, necessitating direct review and admonishment.

The respondents’ defense strategy revolved around attacking the appellant’s character and begging the court to aid and abet continued discrimination against him for daring to defend his civil rights independently without expensive legal representation. Judge Anderson repeatedly left the bench to control the record and prevent

the appellant from preserving issues for appeal during trial. Finally, despite Appellant's overwhelming objective evidence, the admissions of the defendants, and the lack of evidence supporting any affirmative defenses, the court still ruled in favor of the defendants, condoning discrimination and depriving Appellant of mandatory protections required under **28 C.F.R. Part 36** and under WLAD in violation of the **Fourteenth Amendment**, necessitating direct review and admonishment.

Decision

The trial court's ruling undermines core civil rights protections, setting a dangerous precedent that erodes WLAD, Title III ADA, and constitutional guarantees. By failing to assess whether Appellant's requested accommodation posed an undue burden on Respondents, the court disregarded statutory mandates and its own cited case law, replacing legal analysis with bias-driven conclusions that unlawfully deprived Appellant of his basic civil rights. (**Hartleben at ¶24-¶28**; Exhibit A pp. 4-12)

The court treated Appellant's lawful insistence on equal access as grounds for exclusion, demonstrating deliberate interference with civil rights enforcement in violation of due process and equal protection principles. (Exhibit A pp. 10-12) Allowing this ruling to stand would condone judicial retaliation against disabled individuals for independently defending their civil rights, depriving them of basic legal personhood and undermining public accommodations law.

The court further erred by concluding that Respondents' rigid enforcement of a dress code treated Appellant "no differently than any other member", despite the clear deprivation of full access required under WLAD. (Exhibit A pp. 10-12)

> The WLAD requires that a place of public accommodation provide a reasonable accommodation to a person with a disability when providing the same service or treatment it provides to persons without disabilities would not give the disabled person full enjoyment of that place. (emphasis added) (**Hartleben ¶18**)

WLAD mandates reasonable accommodation unless the business proves an undue burden—yet the trial

court never conducted the required undue burden analysis, instead justifying exclusion based on subjective discomfort rather than legal necessity. (**WAC 162-26-080(1), (2)**; Exhibit A pp. 10-12)

Importantly, the court stated that Appellant "urged staff to simply ignore his bare feet," effectively admitting that the requested accommodation was reasonable, effective, and imposed no burden on Respondents. (Exhibit A pg. 6) The court contradicted itself—acknowledging that ignoring Appellant's feet was a feasible solution yet refusing to consider it legally valid. Had the court upheld its oath it would have recognized that allowing Appellant's barefoot access required no effort or expense, making it mandatory accommodation under both ADA and WLAD and precluding a finding in Respondents' favor. Instead, the court deliberately defied the law to deprive Appellant of rights under color of law, necessitating direct review, reversal, and admonishment.

The court erroneously relied on employment law principles in analyzing a public accommodations claim,

misapplying WLAD and contradicting Washington Supreme Court precedent in **Floeting at ¶12**. To justify Appellant's exclusion, the court improperly cited **Hartleben v. Univ. of Wa, 194 Wn. App. 877, 890 (2016)**, which referenced **Frisino v. Seattle Sch. Dist., 160 Wn. App. 765, 780 (2011)**, imposing an employment-specific interactive process requirement on a public accommodations case—a fundamental legal error in **Hartleben**. (Exhibit A pp. 10-12; **RCW 49.60.040(7)(d)**).

WLAD places the burden on defendants to prove undue burden with objective evidence and does not require an interactive process in public accommodations cases. (**RCW 49.60.040(7)(d); RCW 49.60.215(2); WAC 162-26-070, -080; Lewis v. Doll, 53 Wn. App. 203 (1989)**) The imposition of an interactive process requirement in public accommodations cases creates unconstitutional procedural barriers to access, providing less protection than the minimum standards required under Title III ADA. Therefore, direct review and reversal of **Hartleben** are necessary.

The trial court's decision also constitutes a deliberate violation of federal law under Title III ADA (**28 C.F.R. Part 36**):

1. Failing to modify a dress code as needed to provide Appellant with equal access to the gym, without establishing with "current medical knowledge" or "the best available objective evidence... The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether... auxiliary aids or services will mitigate the risk" or that it "would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations" of the gym, is an act made unlawful by **28 C.F.R. § 36.208(b), § 36.302(a).**
2. Denying Appellant an opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the gym directly, or through the use of contract terms in any membership agreement, because of his lack of footwear stemming

from his “documented sensory issues,” is an act made unlawful by **28 C.F.R. § 36.202(a)**.

3. Failing to afford goods, services, facilities, privileges, advantages, and accommodations to Appellant in the most integrated setting appropriate to his individual needs (i.e., “simply ignore his feet”) is an act made unlawful by **28 C.F.R. § 36.203(a)**.
4. Use of standards, criteria, or methods of administration (such as policy enforcement, membership agreement enforcement, etc.) that have the effect of discriminating against the appellant, or that perpetuate discrimination against other members based on a disability, is an act made unlawful by **28 C.F.R. § 36.204**.

Appellant repeatedly cited ADA provisions throughout the case record, yet the court failed to recognize or apply them to its analysis, ignoring federal protections and warranting admonishment. More disturbingly, the trial court itself engaged in unlawful retaliation, violating **28 C.F.R. § 36.206**, which prohibits both public and private

entities from interfering with or punishing individuals who exercise or enforce ADA rights.

The court's ruling effectively punishes Appellant for opposing discrimination, warning of legal action, exercising his right to access, and bringing this case, constituting direct interference with protected civil rights enforcement and a frontal assault on Appellant's **First and Fourteenth Amendment** rights. The Washington Supreme Court has original jurisdiction over state officers, including authority to discipline or restrain superior court judges, therefore direct review is necessary, here.

The trial court's ethical misconduct and constitutional violations are numerous and egregious in its decision:

1. The trial court's decision acknowledges the Appellant's autism and associated sensory processing challenges, but fails to apply the correct legal standard for reasonable accommodation in public accommodations. (Exhibit A pp. 4, 8)
2. The court explicitly recognizes Appellant's social and communication deficits, and limited insight and

motivation which are hallmark traits of autism, yet it cites these traits as its basis for denying Appellant's claim. (Exhibit A pp. 5, 10-12)

3. Instead of treating Appellant's self-advocacy methods as a reflection of these traits combined with inspiration drawn from effective anti-discrimination activism during the Civil Rights Era, the court punishes him for self-advocating and attacks his character, stating that he "used his disability as a weapon." (Exhibit A pg. 12)
4. This reasoning is legally indefensible, as none of the "behaviors" identified by the court are unlawful, inappropriate, or dangerous to property or persons—therefore, they do not justify refusal of service under WLAD. (**RCW 49.60.215(2)**)
5. The court systematically mischaracterizes Appellant's self-advocacy as misconduct, finding his "unequivocal demand" for an obviously effective and nonburdensome accommodation to be "disrespect" that precludes a failure-to-accommodate claim. (Exhibit A pg. 12)

6. This rationale is unprecedented in American law.
7. Defendants neither raised nor substantiated an undue burden defense despite statutory requirements to do so. (**42 U.S.C. 12182(2)(A)(ii)**)
8. Even **Hartleben**, which the court relied on to deny Appellant's claim, was decided based on an undue burden analysis and analysis of whether its plaintiff's requested accommodation was "reasonable," yet the court failed to conduct such analyses, here. (**Hartleben at ¶24-¶28**)
9. The court faults Appellant for continuing to use the gym despite being excluded solely based on his disability. (Exhibit A pg. 11)
10. The court frames Appellant's refusal to passively accept unjust exclusion as "disrespect," failing to recognize that the exclusion itself was invidious discrimination prohibited by state and federal law. (Exhibit A pg. 6)
11. The court construes Appellant's citation of statutes and warnings of legal action as "disrespectful" and

"intimidating" warranting nonservice. (Exhibit A pg. 11)

12. Public accommodations cannot deny service simply because a disabled person insists upon their rights or warns of legal consequences for violations.

13. The court states that Appellant "would accept only full access to the facility without any footwear," yet requesting an accommodation tailored to one's disability is not improper—it is a protected right under WLAD. (Exhibit A pg. 6)

14. The court attacks Appellant's email advocacy, describing it as "not inviting collaboration or discussion" and "terse, quoting regulations and statutes" (Exhibit A pg. 5).

15. Asserting legal rights is not misconduct, and public accommodations must comply unless they can prove undue burden, which Respondents failed to do.

Constitutional Deprivations

The trial court's decision violates Appellant's constitutional guarantees:

First Amendment – the right to petition for a redress of grievances protects individuals from retaliation for seeking justice, yet the court treated Appellant's self-advocacy as wrongdoing, violating that right.

Fourteenth Amendment – The Equal Protection Clause prohibits disability-based discrimination, yet the court effectively discriminated against the appellant by depriving him of access to justice simply because he is autistic, poor and self-represented.

Fourteenth Amendment – The Due Process Clause mandates a fair legal process and impartiality from the court, yet the court repeatedly ignored statutory requirements and binding precedents, applied disparate scrutiny to the parties' requests and arguments, derived conclusions in Respondents' favor without supporting evidence, failed to conduct the required undue burden analysis, and essentially lawyered from the bench on Respondents' behalf from the case outset through final judgment.

IV. CONCLUSION

The trial court's decision is legally, factually, and constitutionally indefensible. It contradicts its own findings, skips mandatory legal analyses, asserts facts not in evidence, deprives Appellant of constitutional protections, relies on biased characterizations rather than legal mandates, illuminates conflict in Washington case law, and constitutes unlawful discrimination in itself. By relying on **Hartleben** to undermine WLAD, violate federal law, and interfere with disability rights enforcement, the trial court sets a dangerous precedent, twisting anti-discrimination protections into a tool for exclusion rather than access and weaponizing limitations under **RAP 15.2** against the appellant to shield itself from scrutiny.

Direct review is necessary to address and correct the trial court's bias and extralegal conduct, the fundamental legal errors in **Hartleben** (including the conflicts created between **Frisino** and **Floeting** and **Hartleben**), and the due process deprivations created by **RAP 15.2** restrictions

excluding indigent plaintiffs from obtaining at minimum clerk's papers and trial court transcripts at state expense, which are needed for challenging unjust decisions affecting civil rights on appeal.

Statement of Grounds for Direct Review Word Count: 3,907 excluding exemptions in compliance with RAP 18.17(c)(1).

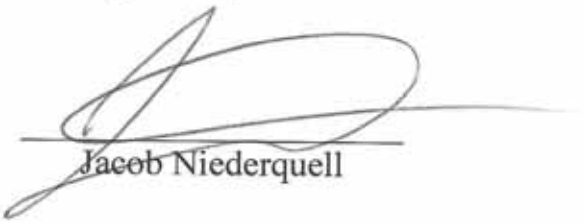
DATED THIS 16 Day of June, 2025.

Respectfully submitted,

JACOB NIEDERQUELL
Appellant
3722 E. Ermina Ave.
Spokane, WA 99217
541-659-4785

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of June, 2025, I caused to be served a true and correct copy of the foregoing document via the Washington State Appellate Court's Secure Portal Electronic Filing System for the Washington Supreme Court.



Jacob Niederquell

EXHIBIT A

Final Judgment w/Decision

Spokane County Superior Court No. 23-2-04946-32

Pages 32 - 44

Per CR5(e) & Judge Anderson this document
Has been filed with Clerk on:

MAY 12 2025

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR
THE COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiff,

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ,

Defendants.

No 23-2-04946-32

JUDGMENT FOR DEFENDANTS

This matter was tried by the Court without a jury from March 3, 2025 to March 6, 2025, the Honorable Rachelle E. Anderson presiding. Plaintiff appeared Pro Se and represented himself. Defendants appeared through their attorneys of record, Gerald Kobluk and Yvonne Leveque Kobluk of KSB Litigation, P.S.

The Court received the evidence and testimony offered by the parties, considered the pleadings filed in this action and heard the oral argument of the Plaintiff and counsel for Defendants. On March 6, 2025, at the conclusion of the trial, the Court advised the matter would be taken under advisement.

KSB LITIGATION, P.S.
510 W. RIVERSIDE AVE., #300
SPOKANE, WASHINGTON 99201
PHONE (509) 624-8988

The Court issued its Decision RE: Trial, which included findings of fact and conclusions of law on April 25, 2025. That Decision was entered with the Court on April 28, 2025. A copy of the Court's Decision, findings and conclusions is attached as Exhibit A.

Consistent with the Court's Decision, findings and conclusions, the Court finds in favor of the Defendants and enters FINAL JUDGMENT in this matter as follows:

1. All claims for damages and equitable relief made by Plaintiff, Jacob Niederquell, against Defendants in this action are DISMISSED with prejudice.
2. Defendants are the prevailing party entitled to costs, disbursements and fess pursuant to CR 54(d) and RCW 4.84.
    a. As detailed in Defendants' Cost Bill, filed separately, Defendants are awarded taxable costs in the amount of $470.90.
    b. Defendants are awarded statutory attorney fees in accordance with RCW 4.84.080 in the amount of $200.
3. A total money judgment in the amount of $ 670.90 plus post-judgment interest shall be entered in favor of Defendants against Plaintiff, Jacob Niederquell.

DATED this 16th day of May, 2025.

Honorable Judge Rachelle Anderson

Presented by:

KSB LITIGATION, P.S.

Gerald Kobluk, WSBA #22994
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2025, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed as follows:

Jacob Niederquell	____	U.S. MAIL
3722 E Ermina Ave	____	OVERNIGHT MAIL
Spokane, WA 99217	X	DELIVERED
jakeniederquell@outlook.com	____	FACSIMILE
madscientist.tag@gmail.com	X	E-MAIL

M. Hernandez

CN: 2320494632
SN: 182
PC: 10

FILED
APR 28 2025
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

Jacob Niederquell Plaintiff(s)	)	CASE NO. 23-2-04946-32
vs.	)	**COURT'S DECISION RE: TRIAL**
Fitness Center Inc, Eric W Kinney, Joseph G Fenske, Gene Cavender, Kara S Kinney, and Alison J Fenske Defendant(s)	)	

FINDINGS OF FACT

Plaintiff Jacob Niederquell is an individual who does not wear shoes. He has been diagnosed as being on the Autism spectrum, and one of the resulting manifestations of that spectrum disorder is that he has tactile issues, whereby wearing shoes makes him feel restricted. On November 1, 2023, Mr. Niederquell joined the Spokane Fitness Center, which operates 3 locations in Spokane, Washington. Mr. Niederquell signed up for his membership by going in to the location at 110 W. Price Avenue, Spokane, and filling out membership paperwork in an online format that included a three-page document titled "Terms, Conditions, Policies & Rules," and an application form which had check boxes which indicated that by checking the boxes, Mr. Niederquell agreed to all the terms and conditions in the agreement.

Terms and conditions contained in the agreement stated, among other things, that the individual acknowledged his responsibility in communicating any physical and psychological concerns that might conflict with participation in activity, (D 101, P 002); those rules consist of participants wearing shirts and CLEAN athletic shoes at all times, and must be respectful to other members, guests and staff, (D 101 P 004), and that

violation of the policies or destruction of property could subject a person to immediate termination of membership, and that Spokane Fitness Center reserves the right to refuse service to anyone and can terminate a member's account "at any time, for any reason without explanation." (D 101 P 003).

At 4:13 pm that same day, November 1, 2023, Mr. Niederquell sent an email to Kara Kinney, the manager of the Spokane Fitness Center. The email acknowledged that as Mr. Niederquell was leaving the Fitness Center, just after signing up, he was informed by the front desk clerk that Ms. Kinney had sent an email stating that Mr. Niederquell would not be allowed access to the facilities due to the dress code issues. Mr. Niederquell's email was an attempt to address the issue of his need for accommodation despite the dress code's requirement to wear athletic shoes.

Mr. Niederquell's email never stated what his disability was, only that "I don't wear shoes." He stated he had a documented sensory issue, but did not provide any documentation. The email went on to cite Mr .Niederquell's former Washington State property and casualty insurance producer license number and the fact that he was an honor roll paralegal student as a way to lend credibility to his statements as to the status of the law that he was quoting. He then went on to defend the nature of his bare feet versus the nature of other people's bare feet as being less prone to sweat and being cleaner. He also indicated that he was "prone to violent outbursts due to sensory overwhelm caused by the burning and aching sensations and feelings of being trapped caused by wearing shoes."

This email did not ask for a conversation or discussion about what sort of accommodations could be made for Mr. Niederquell's perceived disability. The email stated, "unequivocally that making reasonable accommodation in the form of modification to policies, practices and procedures, in order to provide (him) with 'same service' access to the facilities similar to any other member's access is mandatory under Washington State and US Federal Law and therefore does not create any additional liability or duties of care for Spokane Fitness Center."

The tone of the email did not invite collaboration or discussion. Rather, it was terse, quoting the Washington Administrative Code, as well as State and Federal law, and threatening fines and a lawsuit if Mr. Niederquell's terms were not complied with.

Through his testimony in court, it was apparent the only accommodation Mr. Niederquell would accept was full access to the entire facility without any footwear. In other words, he wanted to be allowed to go barefoot throughout the entire facility. This was the accommodation he sought and for which he filed suit.

Mr. Niederquell continued attempting to use the facility, visiting on several occasions and urging staff to simply ignore his bare feet. During his November 7, 2023, visit, gym staff informed Mr. Niederquell that he was required to wear something on his feet. Mr. Niederquell responded that he would proceed as if there were no issue.

The next day, Mr. Niederquell returned to the facility. In anticipation of another confrontation with staff, he recorded the exchange on his phone. Again, he was asked to leave because he refused to wear the appropriate footwear, and he refused to engage in a good faith conversation with management about possible accommodation, aside from his sole demand.

On November 17, 2023, Mr. Niederquell filed this lawsuit in Spokane County Superior Court, claiming violations of the Washington Law Against Discrimination, as well as claims for Unlawfully Summoning Law Enforcement and the tort of Outrage/Intentional Infliction of Emotional Distress. On March 5, 2025, the claims of Unlawfully Summoning Law Enforcement and the tort of Outrage/Intentional Infliction of Emotional Distress were dismissed after a Summary Judgment hearing (heard as a pre-trial motion). A bench trial was held before the Honorable Rachelle E. Anderson on March 3 – 6, 2025, whereby Plaintiff Mr. Jacob Niederquell represented himself and the Defendants were represented by Mr. Gerald Kobluk and Ms. Yvonne Kobluk. The Court heard testimony from the following witnesses:

Plaintiff Jacob Niederquell

Defendant Kara Kinney,

Christine Bagby

Trea Moore

Joey Fenske

Rodney Walker

CONCLUSIONS OF LAW

Plaintiff, as the moving party, bears the burden of proving by a preponderance of the evidence, that the four necessary elements of discrimination exist:

1) That Plaintiff has a disability that is recognized under the statute;
2) That the Defendant's business or establishment is a place of public accommodation;
3) That Plaintiff was discriminated against by receiving treatment that was not comparable to the level of designated services provided to individuals without disabilities at the place of public accommodation; and
4) The disability was a substantial factor causing discrimination.

Under RCW 46.50.215, disability is defined as:

" (7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

Mr. Niederquell's stated disability is that he is on the Autism spectrum which manifests in his inability to wear shoes, among other things. The Plaintiff is on the Autism spectrum and has a history of social communication/social interaction deficits, along with limited insight and motivation. Based on his disability, he qualified for Social Security Disability benefits from June 1, 2011, continuing through at least 36 months thereafter. This disability insurance was awarded to the Plaintiff for his inability to hold down employment, however, for the purpose of demonstrating a disability under the statute, section (7)(a)(iii) includes any perceived disability, whether it exists or not. The intention is to protect individuals from prejudgment and discrimination based on insufficient information or stereotypes about disabilities. The approach aligns with the broader purpose of WLAD to eliminate and prevent discrimination in various contexts, including employment, public accommodations and real estate transactions. *Clipse v. Commercial Driver Services, Inc.* 12 Wash. App.2d 557 (2020).

Mr. Niederquell's medical evidence consisted of two reports from 2015 and 2016. His Social Security Administration Adjudication and Review dated October 27, 2017, referenced several reports that were never provided. While Mr. Niederquell's medical evidence was old, the statute is intended to be liberally construed as it defines "disability," especially in terms of perceived disability and the effect of that perception. The Court does find that the Plaintiff has met his burden for this prong by a preponderance of the evidence.

Next, the Plaintiff must establish that the Defendant's business or establishment is a place of public accommodation. The Washington Law Against Discrimination (WLAD), originally enacted in 1949, is a broad remedial statute. The statute's purpose is to prevent and eradicate discrimination on the basis of race, creed, color, national origin, sex or disability in "public accommodations. The Act recognizes that the right to be free from such discrimination is a civil right enforceable in private civil actions by members of the enumerated protected classes. Although the rights enumerated include employment, public accommodation, assembling and amusement, the protected rights are not limited to those. When determining whether an institute, club, or place of accommodation is distinctly private to establish a statutory basis for exemption from Washington Law Against Discrimination (WLAD), emphasis should be placed on whether the organization is a business or a commercial enterprise and whether its membership policies are so unselective and unrestricted that the organization can fairly be said to offer its services to the public. *Fraternal Order of Eagles v. Grand Aerie,* 148 Wash.2d 224, (2002).

A place of public accommodation is defined as "(a)ny place of public resort, accommodation, assemblage, or amusement" and includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, ... or where food or beverages of any kind are sold for consumption on the premises, or

where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, ... PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution. RCW 49.60.040(2).

In this case, while the Spokane Fitness Center **is** a fitness club, where a person "joins" by "signing up," the main purpose of the club is as a business. This is a facility for the benefit and use of those seeking health and recreation, and it is used for sports and recreation. There are rules that a member agrees to upon joining that govern decorum, use of the facility and equipment, dress code requirement and assumption of risk. There is also an agreement to pay timely for the services. The main purpose of the Spokane Fitness Center is to operate as a for-profit business. It is a commercial enterprise. As the plain language of the statute reads, this is not a private "fraternal organization" or a "bona fide club" with restrictive membership with a purpose other than for a commercial venture. As such, the Spokane Fitness Center meets the requirement of operating as a place of public accommodation as defined by the statute.

Next, prongs 3 and 4 should be analyzed together. These prongs present the question of whether Mr. Niederquell was discriminated against by receiving treatment that was not comparable to the level of services provided to individuals without disabilities at the place of public accommodation and whether the disability was a substantial factor causing the discrimination.

As mentioned above, the only accommodation Mr. Niederquell sought was full use and access to all Spokane Fitness Club facilities without wearing shoes. As a condition of membership, each member agrees to abide by neutral membership rules that ensure health and safety of all members. These rules include wearing clean athletic shoes and treating staff and other members with respect. Every member agrees that a violation of membership rules may result in termination of membership at the club's

discretion. The plaintiff was held to this neutral standard and treated no differently than any other member.

For a person with a disability, a place of public accommodation must provide a "reasonable accommodation" to allow the disabled person full enjoyment of the public accommodation. *Hartleban v. University of Washington,* 194 Wn.App. 877, 844 (2016). A defendant is not required to offer *extra* or *greater* services to disabled people; it simply may not deny full access to services already provided. *Id.* Importantly, when determining whether there is a need for a reasonable accommodation, the "parties must work in good faith to exchange information in order to determine what reasonable accommodation best suits the Plaintiff's disability." *Id.* at 890. An absolute demand to be "accommodated" only on Plaintiff's terms is insufficient to support a discrimination claim.

In this case, Mr. Niederquell never attempted to work in good faith with the Fitness Center to determine what reasonable accommodations could be made for his use of the facilities. In fact, testimony established that Spokane Fitness Center made accommodations for another member on a prior occasion with regard to footwear. The disability was not the same, but the request was similar. Ms. Kinney's testified that they were able to reach an agreeable accommodation that allowed the members to wear loose-fitting, croc-like footwear that didn't constrict his feet, but still afforded the health and safety that the facilities required. In contrast, Mr. Niederquell emailed almost immediately after signing up for his membership, aggressively quoting statutes and regulations, and claiming that it was "mandatory" for the Fitness Center to waive its rules for him because anything less would be a "violation of his Constitutional rights" subjecting the Defendants to legal action. Plaintiff's absolute demand for an exception to the membership rules, to apply in all areas and during all activities, was not a good faith attempt to find a reasonable accommodation.

Ultimately Plaintiff's membership was cancelled, and he was not allowed to use the facilities at all. To satisfy the last prong, Mr. Niederquell would need to establish that his disability caused this alleged discrimination. However, his membership being cancelled was not due to his disability, Rather, the evidence heavily suggests that it

was the behavior of the Plaintiff in violation of the standards of being respectful to other members and staff at all times and his clear disregard to any adherence to the rules, ignoring the rules to wear shoes and intentionally "proceeding like there was no issue;" threating legal action if Defendants did not capitulate to his demands, refusing to leave when requested, intimidating the staff with his behavior both in person and through email, and his disrespect. Mr. Niederquell did not seek to try to get an accommodation for his disability, he used his disability as a weapon, as a way to demand the terms of how he would be accommodated, not collaboratively work with the public facility on how they could work together on accommodation. This is not discrimination. The Court finds in favor of the DEFENDANTS.

As the Court finds in favor of the DEFENDANTS, there is no basis for an award of damages for the Plaintiff. The remainder of his request for relief is DENIED.

DATED this 25th day of April, 2025

RACHELLE E. ANDERSON
SUPERIOR COURT JUDGE

DECLARATION OF SERVICE

I, Tracy L Rayfield, certify that on April 25, 2025, I served a copy of this Order to:

[x] E-Mail	[x] E-Mail	[ ] E-Mail
[ ] US Mail	[ ] US Mail	[ ] US Mail
[ ] Hand Delivery	[ ] Hand Delivery	[ ] Hand Delivery

Gerald Kobluk
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Jacob Niederquell
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I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing Statement is true and correct.

Date: April 25, 2025

Tracy L Rayfield, Judicial Assistant to
Rachelle E. Anderson
Superior Court Judge

EXHIBIT B

Motion for Discretionary Review w/Appendix

Div. III Court of Appeals No. 40903-1

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Case No. 40903-1

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JACOB NIEDERQUELL
Appellant,
v.
THE FITNESS CENTER, INC. d/b/a Spokane Fitness Center,
Respondent,
and
EUGENE "GENE" CAVENDER, JOSEPH "JOEY" and ALLISON FENSKE, KARA and ERIC KINNEY,
Defendants.

ON PETITION FOR DISCRETIONARY REVIEW
FROM SPOKANE

COUNTY SUPERIOR COURT

(Hon. Rachelle Anderson)

MOTION FOR DISCRETIONARY REVIEW

Jacob Niederquell; pro se.

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TABLE OF AUTHORITIES

CASE LAW:

STATUTES:

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OTHER AUTHORITIES:

I. IDENTITY OF APPELLANT

Appellant is Jacob Niederquell, pro se Plaintiff in the underlying action, who is guaranteed equal protection of the laws under Amendment 14 Section 1 of the United States Constitution and under Article 1 Section 12 of the Washington State Constitution.

II. DECISIONS

Appellant requests discretionary review of the following Superior Court decision pursuant to RAP 2.3(b)(1), (2), (3):

1) January 2, 2025, Order Granting Defendants' Motion to Compel Discovery Responses in defiance of RCW 49.60.510 provisions.

III. ISSUES PRESENTED FOR REVIEW

1. Whether persons with disabilities are afforded equal protection of the laws in Washington State including

privacy protections consistent with the legislative purpose of RCW 49.60.510.

2. Whether the trial court erred by ordering the dissemination of Appellant’s entire Social Security Disability claim records, warranting review and necessitating a change in law.
3. Whether the trial court abused its discretion by applying disparate standards of scrutiny to discovery requests, showing greater concern for the defendants’ privacy interests regarding potentially incriminating evidence during the August 2, 2024, proceedings, compared with the plaintiff's privacy interests regarding irrelevant medical history on December 20, 2024, substantially limiting Appellant’s freedom to act and showing favoritism for the defendants.
4. Whether the trial court abused discretion by denying Appellant’s preliminary injunction, accepting and relying on the defendants’ declarations, and excluding/ignoring the appellant’s evidence on March 22, 2024, depriving Appellant of due process and equal

protection of the laws and showing favoritism for the defendants.

5. Whether the trial court abused discretion by restricting the facts Appellant could plead in an amended complaint on October 4, 2024, and by denying reconsideration seeking amendment of the language of its order on October 21, 2024, substantially limiting Appellant's right to be heard on all elements of his claim and showing favoritism for the defendants.
6. Whether the trial court abused its discretion on October 23, 2024, by denying Appellant's ex-parte motion for show cause and failing to take appropriate action to address perjury and other criminal misconduct established in the pleadings and exhibits, demonstrating bias against the unrepresented appellant and favoritism for the defendants and their lawyers.
7. Whether the Appearance of Fairness Doctrine has any impact on the trial court's orders, especially the preliminary injunction, defendants' protective order and the motion for leave to amend the complaint.

8. Whether the trial court’s cumulative actions have created a perception of judicial bias pervasive in Spokane Superior Court that substantially departs from the accepted and usual course of judicial proceedings warranting intervention and correction from this Court.

IV. STATEMENT OF THE CASE

Background

This case arises from a series of discriminatory actions taken by Spokane Fitness Center against the appellant who has a medically cognizable sensory impairment (sensory disturbance symptomatic of autism spectrum disorder). Appellant requested reasonable accommodation to the gym's dress code policy, which requires footwear, due to his medically documented sensory aversion to footwear. Despite being informed of the need for accommodation, the defendants refused to provide the requested accommodation and engaged in retaliatory actions, inviting the appellant to bring this lawsuit.

On November 1, 2023, the appellant activated a gym membership and requested an exception to the dress code requiring shoes via email, explaining his sensory impairment and highlighting applicable state law. (CP: 21-6) On November 8, 2023, Defendant Kinney acknowledged the appellant's email, refused to provide the accommodation, and threatened to cancel his membership if he didn't wear shoes. (CP: 418) Law enforcement was summoned to remove him from the premises explicitly due to his sensory impairment. (Appendix "App:" 138-9) Spokane County Sheriff's Office Deputy Hansmann refused to remove him, stating that removal would violate ADA requirements. (App: 145-6)

Deputy Hansmann also warned the defendants not to cancel Appellant's membership lest they be sued for discrimination. (*Id*.) Despite the deputy's warning, the defendants continued to confront the appellant, leading to a lawsuit being filed on November 17, 2023. (CP: 7-15)

On November 21, 2023, the defendants retaliated by terminating his gym membership. (CP: 31)

On November 27, 2023, the appellant filed a motion for preliminary injunction seeking an order to reinstate his membership and prohibiting further discriminatory acts pending the case outcome. (CP: 58-75; 147-55) On January 5, 2024, the defendants filed opposition to the motion attaching declarations from five (5) employees. (CP: 98-113) The declarations raised numerous subjective and vague allegations of behavior constituting remote or speculative risk and were unsupported by objective evidence. (App: 161-6; 203-32) The defendants also destroyed surveillance records to prevent impeachment of the declarants. (CP: 412-14; App: 234-7) On February 13, 2024, the defendants filed their Answer to the Complaint, admitting to discrimination and continued harassment but echoing the allegations of remote or speculative risk from their declarations. (CP: 118-24)

Perjury

On February 15, 2024, the appellant supplied the defendants' attorney with Deputy Hansmann's report, the 911 call audio from November 8, and a recording of the conversation between the appellant and Defendant Kinney from November 8, proving the declarations were perjurious. (CP: 43-4) The defendants' attorney withdrew without curing known perjury on February 28, 2024, violating RPC 3.3. (CP: 130-2) On February 29, 2024, Appellant objected to the defendants' substitution, asking the Court to address spoliation and subornation of perjury before allowing the substitution. (CP: 133-40) The appellant attached email correspondence with defense counsel as exhibits, with the attachments provided via USB per the court's specific instructions. (CP: 139-40; 141-4; App: 39)

On March 22, 2024, the Superior Court held a combined hearing on the preliminary injunction and the objection to substitution. (App: 85-6) Judge Bjelkengren ignored Appellant's evidence despite stating on record that

she reviewed it prior to the hearing. (App: 88-90). Judge Bjelkengren failed to address spoliation and subornation of perjury before granting the substitution, shielding those violations from scrutiny. (App: 91)

Pattern of Bias – Preliminary Injunction Denied

Judge Bjelkengren attached Appellant's evidence from the objection to substitution to the motion for preliminary injunction. (App: 92) Defense counsel raised an objection to Appellant's recording of a public conversation capturing a threat of harm citing *Gearhard*. (App: 107-8) Judge Bjelkengren excluded the recording based on the *Gearhard* objection without explaining *Gearhard* or how it was applicable. (App: 131-2)

The court relied on perjurious, subjective statements from the defendants' employees, submitted without objective evidence, violating this Court's precedent in *Lewis v. Doll*, 53 Wn. App 203, 209 – 10, 765 P.2d 1341 (1989), and disregarded Appellant's contrary objective evidence, depriving him of due process and

equal protection. (App: 125-30) The judge found that Defendants' allegations of remote or speculative risk warranted termination of Appellant's membership despite WAC 162-26-110 requiring evidence showing "immediate and likely, not remote or speculative" risk to persons or property, *presently*, whenever service is refused. (App: 129-30)

Judge Bjelkengren also violated RCW 49.60.040(7)(d) by applying the interactive process requirement. (App: 127-8) The court determined Appellant's request for accommodation was unreasonable despite being "readily achievable." (App: 127-9; *see* WAC 162-26-080; *see* 28 C.F.R. §36.104 "readily achievable") She also ignored Defendants' admissions to the elements of discrimination in their declarations while finding the appellant was unlikely to prevail on that claim. (CP: 76-77 ¶3, ¶5, ¶7-8)

The court denied the preliminary injunction on untenable grounds, relying solely on Defendants' vague allegations of remote or speculative risk provided without

supporting objective evidence, and ignoring or excluding Appellant's contrary objective evidence. (CP: 169-170; App: 125-32) Judge Bjelkengren found that the appellant's membership was cancelled due to non-specific "behavior" despite the defendants admitting to refusing service because of his lack of footwear. (App: 130)

Judge Bjelkengren ruled that an injunction was not necessary to protect Appellant's constitutional right to enjoy the gym, despite injunctions being suitable for safeguarding constitutional rights, and stated that money damages would be an adequate remedy if the appellant were to prevail on appeal. (App: 131) The statement that the appellant would have to "prevail on appeal" to obtain any remedy underscores the trial court's commitment to decide the case in the defendants' favor regardless of any facts or applicable law. (*Id*.)

The appellant moved for reconsideration outlining numerous legal and ethical errors in the decision denying preliminary injunction. (CP: 171-189) Judge Bjelkengren

denied reconsideration citing “good cause” without explanation on April 26, 2024. (CP: 203-204)

Pattern of Bias – Defendants’ Protective Order

On June 7, 2024, the defendants moved for a protective order asking the trial court to block the appellant from obtaining responses to several relevant discovery requests. (CP: 227-229)

The appellant had requested (1) the names and contact information of employees and members who were witnesses to the incidents in the Complaint, (2) the name and contact information of the former member who was allegedly accommodated according to defense declarations, (3) the names and contact information of former employees or ex-spouses who could testify regarding the defendants’ animosity toward poor people and people with disabilities, (4) information regarding the defendants’ history of animosity toward autistic people, (5) financial records that could lead to admissible evidence showing the declarants were compensated for submitting

false testimony, and (6) the disclosure of the defendants' personal or professional connections with public officials, especially court officials and law enforcement. (CP: 209-216)

The appellant highlighted the Court's bias in the previous hearing, and asked Judge Bjelkengren to recuse for prejudice in his response to Defendants' motion. (CP: 231-243) On June 20, 2024, Judge Bjelkengren recused on her own motion. (CP: 245-246)

On August 2, 2024, Judge Anderson narrowed Appellant's discovery requests to only those pertaining to what was "pled in the complaint." (App: 75) Appellant argued the requests were relevant to showing pretext and malice. (App: 71-2) Without identifying the specific requests or discussing their relevance, Judge Anderson blanket-granted the defendants' request stating, "I'm looking at whether your discovery requests are narrow enough to be relevant to your cause of action," showing favoritism to the defendants and limiting the appellant's ability to build a stronger case. (App: 76-8)

On August 6, 2024, the court entered its order granting Defendants' Motion for Protective Order allowing the defendants to conceal conflicts of interest and evidence of malice and pretext related to the Complaint and the defense raised, without findings of fact or conclusions of law, showing bias. (CP: 455-456)

Pattern of Bias – Leave to Amend Complaint

On September 10, 2024, Appellant moved for leave to amend the complaint. (CP: 255-262) On September 24, 2024, defense counsel filed an objection focusing entirely on the "illegal and inadmissible" recording excluded obviously contrary to law by Judge Bjelkengren. (CP: 285-290) Defendants asked the court to prohibit the appellant from alleging any facts that referenced or relied upon that evidence, demonstrating disregard for ethics requirements. (CP: 285) On September 25, 2024, Appellant replied demonstrating with substantial case law that the defendants' objection was without merit. (CP: 292-296)

On October 4, 2024, the court granted Appellant's Motion for Leave to Amend Complaint in Limited Fashion, imposing specific restrictions in alignment with defense counsel's unethical request, ignoring binding precedent, and demonstrating favoritism for the defendants and their lawyers (CP: 449)

On October 8, 2024, Appellant moved for reconsideration asking the trial court to amend the language of its Order to comply with well-established state law by honoring the distinction between private and non-private conversations consistent with well-established case law. (CP: 300-304)

The court denied reconsideration on October 21, 2024, stating, "the court… finds no basis to change its ruling," showing favoritism to the defendants, constituting obvious error prejudicing the appellant, and stopping him from filing his proposed amended complaint precluding him from being heard on all parts of his claim. (CP: 453)

Pattern of Bias – Ex-Parte Motion for Show Cause

On October 15, 2024, Appellant sought a hearing date for a motion for contempt for perjury and related offenses pursuant to RCW 9.72.090 from Judge Anderson's JA. (App: 150) On October 16, Appellant was instructed to email a copy of the motion for Judge Anderson's review, stating that Judge Anderson needed to order show cause before the motion could be accepted and scheduled. (App: 149) On October 17, Appellant was instructed to provide an additional physical bench copy. (App: 148)

The motion outlined the defendants' employees' perjury, their attorneys' subornation of perjury, Judge Bjelkengren's awareness of and reliance on perjury, the defendants' attorneys' collusion with the Superior Court to conceal perjury on March 22, and on September 24, and Judge Bjelkengren's collusion by excluding irrefutable proof of perjury to aid that misconduct. (App: 154-68) The motion identified specific material sworn statements made by the defendants' employees, demonstrated with

objective evidence—including 911 call transcripts, Sheriff's Office incident reports, a transcript of the erroneously excluded recording, and contradictions within the declarants' own statements—that the statements were false, and that Defendants' attorneys and judge Bjelkengren knew they were false. (App: 161-6; App: 234-6; 279-301)

Judge Anderson denied show cause on October 23, 2024, stating that the decision was within her discretionary privilege, ignoring judicial ethics rules requiring action be taken under the circumstances, encouraging the defendants to rely on perjury for trial, allowing defense counsel to ignore ethical requirements, and demonstrating the Superior Court's favoritism for the defendants and their lawyers. (CP: 446-7)

Pattern of Bias – Defendants' Motion to Compel

a. Pleadings and Exhibits

On October 18, 2024, the defendants filed a motion to compel discovery responses seeking:

> 1) "Itemize all accidents and/or incidents Plaintiff has been involved in during the past seven (7) years that resulted in any injury that required medical treatment, including mental health and/or counseling treatment." (CP: 314)
>
> 2) "State the name, address and description of the health care received from every health care provider who has examined, treated, hospitalized, counseled, or institutionalized Plaintiff over the past seven (7) years (whether related to this incident or not), including those health care providers who performed any physical examinations, mental health counseling, substance abuse programs or institutionalization." (CP: 315)
>
> 3) "Sign and produce the attached authorization for the release of medical records, including substance abuse/mental health/psychological records regarding Plaintiff." (CP: 316)

On October 24, 2024, Appellant opposed by indicating that the requests were statutorily overbroad, highlighting the legislative purpose of RCW 49.60.510, and requesting a protective order limiting discovery to only that which is authorized under RCW 49.60.510. (CP: 352-63) Appellant provided the court with the same documents previously provided to the defendants showing

the court his compliance with RCW 49.60.510. (CP: 353-4)

On October 29, 2024, the defendants replied arguing that "a plaintiff waives any health care privilege" whenever a failure to accommodate is alleged. (CP: 366) Defense counsel stated for the first time in his reply brief:

> For a good analysis and application of this statute in the context of a motion to compel medical records in a claim for disability discrimination, *see* Konda v. United Airlines. Inc., 2023 WL 2864562 (WD Wa,; April 10, 2023) (Court compelled plaintiff to produce medical information and records, and to sign a medical release to allow the Defendant to obtain the identified records).
> (*Id*.)

b. Hearing and Oral Decision

1. Overview

On December 20, 2024, Judge Anderson heard oral arguments on Defendants' Motion. (App: 10-37) Defense counsel reiterated his written arguments and requested the Court compel dissemination of Appellant's entire Social Security Disability claim records, which contains

substantial private health information that can no way be construed to be relevant to the case. (App: 13-5)

Appellant's argument focused on the court's history of depriving due process and equal protection of the laws, on the requirement that the Court "apply the controlling provisions of RCW 49.60.510 to the instant motion without bias, discrimination, or favoritism," and on his prior disclosure of the most up-to-date records regarding his diagnosis of a sensory aversion. (App: 16-21)

The appellant clarified that Dr. Bradburn had minimal interaction with him and did not evaluate, diagnose, or treat him, that Dr. Kaper was a consultant who made an initial disability determination without any interaction with him, and that an Administrative Law Judge later found Dr. Bradburn's and Dr. Kaper's opinions unreliable regarding his sensory impairment. (App: 20, 31-2)

Judge Anderson read aloud RCW 49.60.010 and indicated the appellant has a duty to provide evidence to establish that he had a disability requiring accommodation

at the time when service was refused. (App: 24-5) She then applied different standards to Defendants' discovery requests than what was applied to Appellant's requests on August 2:

> It's an adversarial process where one side puts forth their claim. The other side, because they are being sued and brought into this litigation, have the right to discovery **to see if there might be anything that they would have to point the judge to to disagree with your position.** (emphasis added)
> (App: 25)

Judge Anderson acknowledged Appellant's lack of financial resources for obtaining treatment for his injuries and allowed him to supplement his discovery responses to reflect that fact before addressing his burden to provide evidence of disability. (App: 25-6) She misrepresented Defendants' requests, stating, "on the interrogatories, I believe it was -- it was Interrogatory 415 [sic] in [sic] Request for Production 7, what's being asked for is verification of that underlying sensory condition." (App: 26) She clarified that under the best evidence rule the excerpts provided were inadequate and that full and

unredacted copies of the entire reports were required, indicating that failure to provide the full reports would result in the exclusion of the excerpts at trial. (App: 26-7)

2. Contrary Medical Opinions

Despite the appellant indicating that the contrary opinions sought by the defendants predate the initial and later confirmed diagnosis, and predate the ALJ's "fully favorable" decision which was based on expert review and testimony of those contrary opinions, Judge Anderson stated, "it would be appropriate for the defense to be able to reach out and depose those doctors" whose opinions are irrelevant to whether the statutory definition of disability applies to Appellant's sensory aversion. (App: 27)

Judge Anderson ordered the appellant to produce unredacted copies of the full reports from which his excerpted pages were derived. (*Id*.)

Judge Anderson stated:

> There were two doctors who were disclosed, a Dr. Bradburn and a Dr. Caper [sic]. To the extent that you have any reports from those doctors, I will direct that either you need to sign

> releases with those doctors solely for the purpose of Mr. Kobluk's office getting copies of reports… only as to your claims of your sensory issues that require you to have accommodations. But any relevant diagnoses that these doctors treated you for, you do need to sign a release and counsel has access to depose those doctors.
> (App: 30-1)

3. Disclosure of Social Security Records

Defense counsel asked the trial court to disregard RCW 49.60.510 by compelling the release of Appellant's entire Social Security Disability claim records and Judge Anderson confirmed the defendants were seeking Appellant's entire SSA claim and agreed. (App: 35) The appellant immediately objected, stating, "I believe that goes beyond the scope of RCW 49.60.510, Your Honor," indicating that the disability claim pertained to "things that have nothing to do with this case." (*Id*.)

Judge Anderson responded, "your Social Security determination that you're disabled very well **might be** relevant," and "discovery is an open process that gives leave to collect information that **might** lead to

discoverable evidence that is relevant. So again, your saying it's not relevant isn't what makes it so." (emphasis added) (App:36) This same rationale could have been applied to the defendants' request for a protective order, warranting denial of their request pertaining to the majority of discovery responses sought by the appellant on August 2, but it wasn't. Judge Anderson then advised that dissemination of Appellant's Social Security records was limited "to the extent that you will be relying on any of your Social Security findings" for trial, implying that the court was not compelling that release. (App: 36-7)

c. Order Granting Motion to Compel

On December 20, 2024, Appellant disclosed the full and unredacted copies of his excerpted reports to defense counsel via email. (App: 336) On December 23 defense counsel responded with a proposed order. (App: 337) On December 24 the appellant revised the order to better reflect Judge Anderson's oral decision, and to apply restrictions under RCW 49.60.510, and returned it to defense counsel. (App: 339-40) The appellant also

attached a copy of the ALJ's "fully favorable" decision entered on October 27, 2017. (*Id*.) On December 31, 2024, defense counsel submitted both proposed orders to the court, in Word format to allow Judge Anderson to make any necessary modifications to "whichever Order is most appropriate." (App: 342)

Dr. Gostnell, Ph.D., diagnosed the appellant with autism and indicated a sensory aversion to footwear as a symptom. (App: 307). Dr. Kaper stated he thought the lack of footwear was "a preference" and Dr. Vasquez, Ph.D., settled that dispute, stating:

> It is this writer's opinion Dr. Kaper has little experience assessing or working with individuals on the Autism Spectrum. His statement that Jake's intolerance for wearing shoes are "preferences more than anything else" is inconsistent with the wealth of information regarding hypo/hyper reactivity including tactile (touch) sensitivities in individuals with Autism Spectrum Disorder. **In fact, it is one of the specific examples listed under DSM-5 diagnostic criteria for Autism (p. 50, Criteria B.4)**. Jake's [sic] displayed a strong aversion to wearing shoes since he was a young child. During this current interview, he had visible physical reactions at the mere

> mention of wearing shoes. That is, his body clenched, pupils dilated, and his demeanor abruptly changed to an agitated state. His reaction, coupled with his history, suggests he has significantly [sic] difficulty tolerating shoes, and is not merely a "preference". (App: 318) (emphasis added)

On October 5, 2017, Appellant appeared for a hearing before Jo Hoenninger, an Administrative Law Judge in Portland, Oregon, and a medical expert also appeared to review the entire SSA claim records and provide expert testimony regarding his review of those records. (App: 329) The ALJ acknowledged and distinguished the appellant's sensory aversion to footwear as a medically cognizable symptom of autism, supported by "objective medical evidence," and creating a substantial limitation on the appellant's ability to engage in work-related activities, in its decision dated October 27, 2017. (App: 333)

The ALJ clearly cited Dr. Gostnell's and Dr. Vasquez' written reports and Dr. Bell's expert testimony for making its findings regarding the appellant's sensory impairment. (*Id*.) Despite these facts, on January 2, 2025,

Judge Anderson signed Defendants' proposed order without modification, allowing overbroad discovery, applying unequal scrutiny to the defendants' discovery requests from that previously applied to the appellant's requests, and ordering the dissemination of Appellant's entire Social Security claim records in defiance of RCW 49.60.510. (App: 01-3)

V. ARGUMENT

a. Standard for Review

At the core of this motion lies unresolved questions of statutory interpretation involving application of RCW 49.60.510, and constitutional challenges that the Superior Court's pattern of bias is barred by U.S. CONST. AMEND. XIV Section 1 and WASH CONST. Art. 1 Section 12.

Appellate courts review all constitutional challenges de novo. *Hale v. Wellpinit Sch. Dist.*, 165 Wn. 2d 494, 503, 198 P.3d 1021 (2009) citing *State v. Jones*, 159 Wn.2d 231, 237, 149 P.3d 636 (2006).

Interpretation of a statute is a question of law that appellate courts review de novo. *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014). "The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). Statutory interpretation begins with the statute's plain language and ordinary meaning. (*Id.*)

Additionally, a clear pattern of bias, and abuse of discretion in favor of that bias, is established in the above history of this case. Judicial discretion "means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result." *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 462, 303 P.2d 290 (1956).

An appellate court will find an abuse of discretion only "on a clear showing" that the court's exercise of

discretion was “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court's discretionary decision “is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).

b. Discovery

Appellant contends that discovery of his medical records is limited under RCW 49.60.510, while the defendants argue that he has waived all healthcare privilege by alleging a failure to accommodate. The trial court sided with the defendants.

RCW 49.60.510(2)(b) provides that any waiver due to an alleged failure to accommodate must relate “to the disability specifically at issue in the allegation.”

Defense counsel’s assertion that victims of disability discrimination waive “any healthcare privilege”

by filing lawsuits is inconsistent with the legislative purpose of RCW 49.60.510 and ignores equal protection requirements of the U.S. and Washington State Constitutions; the statute explicitly precludes a blanket waiver for all healthcare privilege. (App: 346) To support their overbroad discovery request, the defendants rely on *Konda v. United Airlines. Inc.*, 2023 WL 2864562 (WD Wa,; April 10, 2023).

In *Konda*, the defendant sought statutorily overbroad discovery including:

> 1) "Please produce all communications between Plaintiff and any person regarding Plaintiff's health (including mental and physical health) while Plaintiff has been employed by Defendant regarding the allegations in the Complaint." (*Konda* at *3)
>
> 2) "Produce all documents, including without limitation bills, statements, correspondence, progress notes, and prescriptions, that refer or relate to [every physical, emotional or mental ailment, complaint, condition, injury, or illness, which you claim to have suffered as a result of the wrongful conduct alleged in the Complaint]." (*Id*.)

> 3) "Produce all documents that refer or relate to [every clinic, hospital, physician, psychiatrist, psychologist, therapist, counselor or other health care provider that has consulted with and/or treated you for any reason since January 1, 2017]." (*Id*.)

In contrast with the instant case, the trial court in *Konda* clearly identified and carefully scrutinized the defendant's specific discovery requests, examined RCW 49.60.510 for its application to those requests, and granted in part and denied in part the motion to compel, limiting Defendant's discovery to the specific condition at issue in the claim and denying access to "any other health care records."

> The Court GRANTS IN PART AND DENIES IN PART United's motion, Dkt. No. 36, and compels Konda to produce medical records responsive to United's Requests for Production 9, 18, and 19 as follows:
>
> • With respect to her diabetes, all responsive medical records;
>
> • With respect to other maladies for which Konda seeks noneconomic damages and will rely on the records or testimony of a health care provider or expert witness to seek general damages, responsive medical records dating back

> to February 23, 2016 pertaining to those maladies that constitute a specific diagnosed physical or psychiatric injury.
>
> **The Court denies the motion as to any other health care records.** (emphasis added)
> (*Konda* at *10 "Conclusion")

In the instant case, defense counsel obviously prejudiced the appellant by misrepresenting *Konda* to the court in violation of RPC 3.3 and 8.4, apparently with impunity.

Considering the appellant's Social Security claim focused primarily on issues other than his tactile sensory impairment, that his sensory impairment wasn't referenced as a chief complaint in that claim, and that Dr. Gostnell's and Dr. Vasquez's reports are the only diagnostic records addressing the sensory impairment specifically, the trial court's decision to order dissemination of Appellant's entire Social Security Disability claim records was likely erroneous.

Due to RCW 49.60.020 requirements, all the appellant is required to show to establish he has a qualified

"disability" under RCW 49.60.040(7)(a)(i)-(ii), and (b) is that his sensory aversion to footwear simply appears somewhere in his medical history. The administrative law judge specifically referenced Dr. Gostnell's and Dr. Vasquez' reports and Dr. Bell's impartial expert testimony to establish that the appellant's "long-standing aversion to wearing shoes" is supported by "objective medical evidence" and substantially limits his ability to engage in work-related activities. (App: 332-3) Therefore, only Dr. Gostnell's and Dr. Vasquez's full and unredacted reports, along with the ALJ's full and unredacted decision should be required to be disclosed to satisfy the needs of the case, the court should not have ordered any additional records, and this Court should overturn that decision.

The *Konda* case is the only case on Casetext that addresses RCW 49.60.510 in a disability discrimination claim and it is a federal case. This Court can provide Washington State courts with guidance by publishing its review of the trial court's decision in the instant case. To create needed precedent for protecting the privacy

interests of persons with disabilities under Washington State law, this Court should overturn the Superior Court's decision to compel overbroad discovery, and it should publish its decision.

c. Pattern of Bias

The Superior Court has consistently abused its discretion by ignoring or misapplying the law, failing to identify and address specific facts, or misrepresenting specific facts. It has showed favoritism towards the represented defendants while disregarding the unrepresented appellant's basic rights since March 22, 2024, when it denied the appellant's preliminary injunction and excluded his evidence on untenable grounds, perpetuating a "grave and continuing harm" to him during all proceedings.

Appellate courts review a trial court's decision to grant or deny a preliminary injunction for abuse of discretion. "For purposes of granting or denying injunctive relief, the standard for evaluating the exercise of judicial discretion is whether it is based on untenable grounds, or

is manifestly unreasonable, or is arbitrary." *Wash. Fed'n of State Employees, Council 28 v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983).

As outlined above, on March 22, 2024, the Superior Court denied the appellant's preliminary injunction on untenable grounds and ordered the continued "deprivation of personal dignity that surely accompanies denials of equal access to public establishments." (*see Floeting v. Grp. Health Coop.*, 192 Wn.2d 848, 855, 434 P.3d 39 (2019) quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) (quoting S. REP. NO. 88-872, at 16-17 (1964)).)

"Denial or deprivation of services on the basis of one's protected class is an affront to personal dignity." *Floeting* at 855 citing *Obergefell v. Hodges*, —— U.S. —— –, 135 S.Ct. 2584, 2604, 2607-08, 192 L.Ed.2d 609 (2015) (denial of marriage equality works a "**grave and continuing harm**") (emphasis added)

The Superior Court's obvious bias in the March 22, 2024, decision begs the question of whether any part of

that decision is valid considering "[u]nder the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing." *State v. Gamble*, 168 Wn. 2d 161, 187 (2010) (citing *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995)).

RCW 49.60.010 provides "This chapter shall be known as the 'law against discrimination.' It is an exercise of the police power of the state… **in fulfillment of the provisions of the Constitution of this state concerning civil rights**…" (emphasis added)

RCW 49.60.020 provides "The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof…"

RCW 49.60.030 provides:

> (1) The right to be free from discrimination because of… the presence of any sensory, mental, or physical disability… **is recognized as and declared to be a civil right**. This right shall include, but not be limited to: (b) The right to the full enjoyment of any of the accommodations,

> advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement. (emphasis added)

Together, these statutes confer a constitutional right on the appellant to fully enjoy the gym, which cannot be deprived by any person acting under color of law without meeting strict standards. RCW 49.60.215 and WAC 162-26-110 require objective evidence of immediate and likely risk to property or persons to deny service. Judge Bjelkengren deprived the appellant of his rights without meeting this standard, violating equal protection requirements. Public accommodations law mandates readily achievable accommodations be provided upon request without requiring the interactive process that is required "only in employment" cases. RCW 49.60.040(7)(d).

Additionally, victims of discrimination in public accommodations are entitled to injunctive relief and other remedies, as seen in *State v. Arlene's Flowers, Inc.*, 187 Wn. 2d 804, 819, 389 P.3d 543 (2017). Judge Bjelkengren's abuse of discretion continues to cause harm

to the appellant, potentially warranting de novo review and reversal of that decision.

VI. CONCLUSION

There are several decisions in this case that appear to be intentionally rather than accidentally erroneous, which together substantially impact the appellant's rights and freedom to act in the case, substantially deprive the appellant of an opportunity to be properly and fully heard on all aspects of his claim, and substantially demonstrate the Superior Court's pattern of favoritism for the defendants and their lawyers.

This Court should review the following decisions to determine if they establish a pattern of bias or favoritism that is prejudicial to the appellant and is likely to result in an unjust outcome for the case if not addressed by a higher court and if the decision for which review is currently sought is likely a continuation of such favoritism, even if the Court chooses not to intervene or order any changes to the decisions:

1) The Superior Court's decision to deny preliminary injunction (including reconsideration) based on the disregard for or exclusion of Appellant's critical objective evidence and reliance on Defendants' perjurious subjective declarations instead.

2) The Superior Court's decision to grant a blanket protective order blocking the appellant from obtaining relevant evidence, especially the name and contact information of the alleged "other member" who was supposedly previously accommodated by Defendants.

3) The Superior Court's decision to expressly limit the facts that the appellant was allowed to allege in an amended complaint based on evidence formerly excluded but later admitted for trial, which deprived the appellant of an opportunity to be heard on the additional causes of action which occurred after the filing of the initial complaint and substantially limited the appellant's right to be heard on all elements of his claim.

4) The Superior Court's decision to disregard or ignore the clear evidence of professional misconduct,

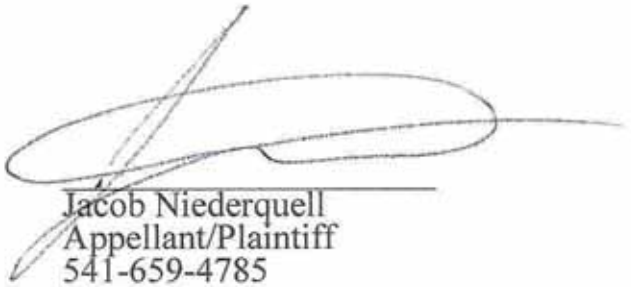
spoliation of evidence, subornation of perjury, the commission of perjury, and the applicable law cited and quoted in the appellant's ex-parte motion for show cause.

The Superior Court applied disparate standards to discovery requests blocking Appellant from obtaining relevant discovery while later ordering Appellant's dissemination of irrelevant medical records, constituting probable error substantially limiting Appellant's freedom to act and warranting review under RAP 2.3(b)(2). It has also demonstrated favoritism for the Defendants' and their lawyers constituting departure from the accepted and usual course of judicial proceedings warranting review under RAP 2.3(b)(3).

Therefore, even though the trial has been held since Notice for Discretionary Review of the decision was filed, this Court should grant review, reverse the Superior Court's decision to order Defendants' invasion of Appellant's medical privacy, and find that as a matter of law the documents provided by the appellant satisfy his discovery requirements under RCW 49.60.510.

Motion for discretionary review: 5,900 words in compliance with RAP 18.17(c)(11) and the Court's order granting leave to file an overlength motion for discretionary review.

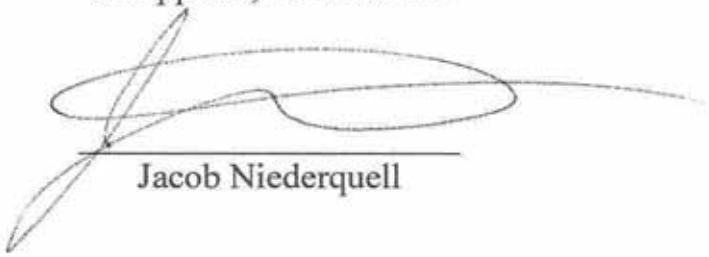
Respectfully submitted this 10 Day of March, 2025.



Jacob Niederquell
Appellant/Plaintiff
541-659-4785

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of March, 2025, I caused to be served a true and correct copy of the foregoing document via the Washington State Appellate Court's Secure Portal Electronic Filing System for the Court of Appeals, Division III.



Jacob Niederquell

Case No. 40903-1

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JACOB NIEDERQUELL
Petitioner,
v.
THE FITNESS CENTER, INC. d/b/a Spokane Fitness Center,
Respondent,
and
EUGENE "GENE" CAVENDER, JOSEPH "JOEY" and ALLISON FENSKE, KARA and ERIC KINNEY,
Defendants.

APPENDIX INDEX IN SUPPORT OF PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

Jacob Niederquell; pro se.

APPENDIX INDEX

COPY
Original Filed
JAN 02 2025
TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiffs,

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ,

Defendants.

No 23-2-04946-32

ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES

[PROPOSED BY DEFENDANTS]

This matter came before the Court on December 20, 2024, on Defendants' Motion to Compel Discovery Responses. The Court heard oral arguments and considered the pleadings and materials filed in this matter including:

1. Defendants' Motion to Compel Discover Responses;
2. Declaration of Gerald Kobluk, with Exhibits;
3. Plaintiff's Opposition to Defendants' Motion to Compel Discovery Responses and Motion for Protective Order;
4. Declaration of Jacob Niederquell, with Exhibits;
5. Defendants' Reply In Support of Motion to Compel.

KSB LITIGATION, P.S.
510 W. RIVERSIDE AVE., #300
SPOKANE, WASHINGTON 99201
PHONE (509) 624-8988

Being fully advised, the Court finds that, given the nature of Plaintiff's claims, Defendants are entitled to discovery regarding information and records pertaining to Plaintiff's medical treatment, condition and history. The Court further finds that exceptional circumstances exist to require the disclosure of unredacted healthcare records dating back to 2015 that pertain to psychological or physical evaluations and Social Security Administration proceedings related to Plaintiff's claimed disability. Plaintiff can comply with the outstanding requests by signing appropriate Releases to allow Defendants to retrieve relevant records.

BASED on the above findings, it is ORDERED, ADJUDGED AND DECREED that:

1. Defendants' Motion to Compel is GRANTED:

2. Plaintiff is ORDERED to provide full and complete answers to Defendants' Interrogatories Nos. 4 and 15 and Request for Production No. 7. Specifically,

    a. Plaintiff shall identify all healthcare providers and treatment received, if any, for injuries which Plaintiff alleges to have been proximately caused by Defendants' actions;

    b. Plaintiff shall identify healthcare providers and records concerning treatment and/or evaluation of Plaintiff's claimed disability since 2015, including providers and records associated with any disability determination made by the Social Security Administration;

    c. Plaintiff shall provide an unredacted copy of records from providers that Plaintiff identified in support of his claim or from providers that were identified in those records, including:

        i. Dr. Veronica Vasquez's Psychological Evaluation Report, dated 11/22/16;
        ii. Ph.D. Scott F. Kaper's report, dated 4/25/16;
        iii. Dr. David Bradburn evaluation report, dated 10/7/15;
        iv. Dr. David Gostnell's report, dated 11/24/15;
        v. Dr. John A. Green
        vi. Any other records from these providers in which Plaintiff's disability was evaluated, treated or otherwise addressed.

    d. Plaintiff shall provide an unredacted copy of records sent to or received from the Social Security Administration that pertain to his disability claim or any resulting disability determination;

3. Plaintiff may comply with this Order by signing appropriate Releases for Defendants' (through their agent, i.e., Sodemann) to obtain Plaintiff's medical records and Social Security Administration records. Such Releases shall be prepared by Defendants' counsel. Copies of all records retrieved shall be provided to Plaintiff at no charge.

4. All records retrieved shall be subject to a PROTECTIVE ORDER, to be filed separately, which will protect the material from being disclosed outside of the pending litigation. The Order shall also provide that Defendants' counsel shall not disclose the records to his clients apart from what may be necessary for submission at trial.

5. Plaintiff shall provide complete answers to the identified discovery requests and produce the unredacted records or sign the appropriate Releases within seven (7) days of this Order. Should Plaintiff fail to provide the information and records as ordered, Plaintiff's claims may be limited or precluded at trial.

6. The Parties' competing request for attorney fees is DENIED.

DATED this 3RD day of January, 2025.

Rachelle Anderson

Honorable Judge Rachelle Anderson

Presented by:

KSB LITIGATION, P.S.

Presented for Reg. Heard Ruling

Gerald Kobluk, WSBA #22994
Attorneys for Defendants

Approved as to form;

Notice of Presentment Waived:

Presented for Reg. Heard Ruling

Jacob Niederquell, *Pro Se*
Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of January 2024, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed as follows:

Jacob Niederquell	_____	U.S. MAIL
3722 E Ermina Ave	_____	OVERNIGHT MAIL
Spokane, WA 99217	_____	DELIVERED
jakeniederquell@outlook.com	_____	FACSIMILE
madscientist.tag@gmail.com	_____	E-MAIL

_____

COPY
Original Filed
JAN 0 2 2025
TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiffs,

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY,

Defendants.

No 23-2-04946-32

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES

REVISED - [PROPOSED BY PLAINTIFF, NIEDERQUELL]

Denied 1-2-25

This matter came before the Court on December 20, 2024, on Defendants' Motion to Compel Discovery Responses. The Court heard oral arguments and considered the pleadings and materials filed in this matter including:

1. Defendants' Motion to Compel Discovery Responses;
2. Declaration of Gerald Kobluk, with Exhibits;
3. Plaintiff's Opposition to Defendants' Motion to Compel Discovery Responses and Motion for Protective Order;
4. Declaration of Jacob Niederquell, with Exhibits;
5. Defendants' Reply In Support of Motion to Compel.

Being fully advised, the Court finds that, given the nature of Plaintiff's claims and statutory limits to discovery, Defendants are entitled to limited discovery of records pertaining to Plaintiff's medical treatment (if any) of injuries caused by the defendants and the most current diagnosis of a sensory condition requiring accommodation created prior to the first alleged incident in the case. The Court finds good cause to extend the time limit beyond two years because some of these documents were created in 2015 and 2016. The Court further finds that the best evidence rule requires full disclosure of unredacted copies of any records relied on by the plaintiff for meeting his burden and supporting his claims. The Court finds that medical opinions regarding Plaintiff's sensory disability that predate the plaintiff's most up-to-date official diagnosis are immaterial and irrelevant as such opinions have no bearing whatsoever on whether the plaintiff was in fact officially diagnosed with a condition requiring accommodation in this case.

The Court finds that Plaintiff's Social Security claim and related evaluations were based overwhelmingly on factors other than Plaintiff's sensory condition, that Plaintiff's sensory disability was only a minute factor related to that determination and to his autism diagnosis, and that the defendants' request for Plaintiff's entire Social Security claim records is too broad to be authorized under RCW 49.60.510. The Court has advised the plaintiff that Social Security records are not required to be disclosed to the defendants, however, no references to any such records will be permitted at trial without proper disclosure of those records.

RCW 49.60.510 does not require the plaintiff to supplement his discovery responses beyond providing full and unredacted copies of records already disclosed and reasonable explanations for records that are not included in his responses but does permit the plaintiff to disclose additional documents for use at trial.

BASED on the above findings, it is ORDERED, ADJUDGED AND DECREED that:

1. Defendants' Motion to Compel is GRANTED IN PART and DENIED IN PART:

2. Plaintiff is ORDERED to provide full and complete answers to Defendants' Interrogatories Nos. 4 and 15 and Request for Production No. 7. Specifically:

   a. Plaintiff shall identify all healthcare providers and treatment received, if any, for injuries which Plaintiff alleges to have been proximately caused by Defendants' actions, and if treatment has not been received due to financial limitations, shall supplement answers stating he could not afford treatment.

   b. Plaintiff shall provide full and unredacted copies of records already submitted in his discovery responses in compliance with the best evidence rule, including:

      i. Dr. Veronica Vasquez's Psychological Evaluation Report, dated 11/22/16;

      ii. Dr. David Gostnell's report, dated 11/24/15.

   c. Plaintiff shall supplement his discovery responses to clarify that Dr. Kaper never met with him, evaluated him, diagnosed him or treated him, and that Dr. Bradburn saw him only once for approximately 15 minutes prior to his being officially diagnosed.

   d. Plaintiff shall produce a full and unredacted copy of the decision of the administrative law judge that addresses the reliability of contrary medical opinions only if he wishes to rely on that evidence for trial.

   e. Plaintiff is not required to release his entire Social Security claim records to the defendants but only records narrowly pertaining to his most up-to-date diagnosis of a sensory condition requiring accommodation as compelling such excessive disclosure would violate statutory restrictions.

   f. Under the best evidence rule, the plaintiff is not required to disclose records containing contrary opinions that were later deemed unreliable by an administrative law judge, or contrary opinions that predate Plaintiff's current official diagnosis.

   g. Plaintiff shall highlight rather than redact any material he believes is too sensitive for disclosure in any full and unredacted copies of records disclosed, and the Court will conduct an in-camera review of that material if the defendants disagree.

3. Plaintiff *may* comply with this Order by signing appropriate Releases for Defendants (through their agent, i.e., Sodemann) to obtain Plaintiff's medical records and Social Security Administration records. Such Releases shall be prepared by Defendants' counsel. Copies of all records retrieved shall be provided to Plaintiff at no charge.

4. All medical records provided by the plaintiff shall be subject to a PROTECTIVE ORDER, to be filed separately, which will protect the material from being disclosed outside of the pending litigation. The Order shall also provide that Defendants' counsel shall not disclose any of the plaintiff's medical records to his clients but may confirm to his clients that the plaintiff has, in fact, been diagnosed with a sensory disability requiring accommodation since at least November 2015, if those records establish that fact.
5. Plaintiff shall provide compliant answers to the identified discovery requests and produce the unredacted records within fifteen (15) days of this Order, otherwise, Plaintiff's claims may be limited or precluded at trial.
6. The parties' competing requests for sanctions are DENIED.

DONE IN OPEN COURT this ____ day of January, 2025.

Denied 1.2.25
Honorable Judge Rachelle Anderson

Presented by:

KSB LITIGATION, P.S.

Gerald Kobluk, WSBA #22994
Attorneys for Defendants

Approved as to form;

Notice of Presentment Waived:

Jacob Niederquell, *Pro Se*
Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of January 2025, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed as follows:

Jacob Niederquell	_____	U.S. MAIL
3722 E Ermina Ave	_____	OVERNIGHT MAIL
Spokane, WA 99217	_____	DELIVERED
jakeniederquell@outlook.com	_____	FACSIMILE
madscientist.tag@gmail.com	_____	E-MAIL

_____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff, v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, Defendants.	)	SPOKANE COUNTY SUPERIOR COURT NO. 23-2-04946-32

THE HONORABLE RACHELLE ANDERSON
VERBATIM REPORT OF PROCEEDINGS
December 20, 2024

APPEARANCES:

FOR THE PLAINTIFF: JACOB NIEDERQUELL
Pro Se
3722 East Ermina Avenue
Spokane Valley, Washington 99017

FOR THE DEFENDANTS: KSB LITIGATION
By: Gerald Kobluk
Attorney at Law
510 West Riverside Avenue
Suite 300
Spokane, Washington 99201

Deborah G. Peck, CCR No. 2229
Official Court Reporter
1116 W. Broadway Avenue, Department No. 12
Spokane, Washington 99260

GENERAL INDEX

December 20, 2024

VERBATIM REPORT OF PROCEEDINGS

December 20, 2024

THE COURT: We are here this morning in the matter of *Jacob Niederquell versus the Fitness Center Incorporated, et al*, case number 23-2-04946-32. And we're here today on two motions that were both set for eleven o'clock this morning. It's 11:03 a.m. I will note for the record that I have Mr. Kobluk present on behalf of defendants. And I will note that I do not have the plaintiff, Mr. Niederquell, present in the courtroom. I waited for a few minutes to see if he would join us. It appears he is just now walking in the door.

Mr. Niederquell --

MR. NIEDERQUELL: What's up?

THE COURT: What's up is our hearing started at 11. Please have a seat.

MR. NIEDERQUELL: Really? Okay.

THE COURT: Yes, sir. We keep a prompt courtroom here. Now I just captioned the matter. I will reiterate that we're here on two motions; one is the motion filed by defendant with regard to discovery, one is a motion filed by the plaintiff with regard to what he's called an offer of proof.

We're going to do, Mr. Kobluk, your motion first. And then we'll address Mr. Niederquell's motion. You have ten minutes, go right ahead.

MR. KOBLUK: Thank you, Your Honor.

As you are aware, this is a disability discrimination claim. The plaintiff does not wear shoes and claims that anybody who requires him to wear shoes is discriminating against him. In his complaint he alleged that he suffered injuries and damages caused by the defendants far beyond, the quote is "far beyond only discrimination."

And specifically the complaint alleges, quote, Physical symptoms requiring medical intervention and ongoing treatment, end quote. He alleges specific diagnoses, including PTSD, anxiety, cardiac symptoms, and other physical and emotional injuries allegedly caused by the defendants for which he demands payment of his medical expenses.

So given these allegations, defendant's propounded written discovery regarding plaintiff's medical condition, as well as his alleged treatment, as well as his medical history. Earlier this year we had a 26(i) conference, we discussed a number of issues, and we were able to come to an agreement on a number of issues. This issue, however, was unresolved. In fact, the plaintiff adamantly rejected any request for any medical information, using an expletive that I will not repeat for the Court. Hence, this motion.

So in response, plaintiff -- or excuse me, there was an allegation of RCW 49.60.510. Under that statute, by requesting noneconomic damages a discrimination plaintiff does

not put his health at issue or waive the health care privilege. The problem with that argument is that plaintiff hasn't just alleged noneconomic damages but has specifically alleged ongoing treatment resulting in medical expenses. So the allegation includes economic damages.

But regardless, the statute itself provides the discrimination plaintiff does put his health at issue if he alleges a failure to accommodate or discrimination based on a disability. That's the exact claim we have here. Another subsection of that statute that it also doesn't apply if there's an allegation of a specific diagnosed physical or psychiatric injury. Again, we have that here. So by its own terms, the statute does apply to the situation at hand.

The one provision I do want to address is subsection (2), which provides that the waiver of subsection (1) is limited to two years unless the court finds exceptional circumstances. Again, the waiver provisions in the first subsection apply at noneconomic damages, so I don't think it actually applies anyway. But even if it did, I believe there are exceptional circumstances in our case.

For a discrimination claim, one of the elements the plaintiff has to prove is that he has a disability. He has submitted or provided five pages of heavily redacted medical records from 2015 and 2016, which include excerpts from a psychological evaluation in which the evaluator indicated that

plaintiff's autism may affect the way he perceives stimuli.

But that record also includes references to two other providers who conducted a disability determination and determined that the plaintiff's decision not to wear shoes was due to his preference and not a disability. So we know there are records out there that expressly address and evaluate the plaintiff's claim to disabilities and that contradict his allegations.

So exceptional circumstances I believe do exist in this case to require going back to records at least to that 2015, 2016 time frame, first, because plaintiff opened the door to that by submitting his own 2015 and '16 excerpts that he says prove his case. Again, those records also have contrary information that we would -- should be entitled to see.

So we're asking for plaintiff to identify his health care providers, to produce unredacted medical records, either treatment records for injuries that he's alleging occurred in this case, but also past medical records going back to 2015, including any psychological or psychiatric evaluations, and any disability determinations, including Social Security Administration records.

We've provided a release so we could get the records at our own expense. Plaintiff refused to sign that release. We've included in our materials the *Konda versus United*

Airlines case in which the court said that's a normal and standard way to get records. And in that case the court ordered the plaintiff to sign the medical releases to allow that to happen. So we would ask that to happen.

THE COURT: Thank you.

MR. KOBLUK: Thanks, Your Honor.

THE COURT: Mr. Niederquell, you've got ten minutes for your response. Then we'll address your motion with another ten minutes in a moment.

MR. NIEDERQUELL: Okay. The first thing I want to address before I get into my prepared argument here, I'm sorry I'm late. Got held up downstairs at the security desk. She was in front of me (indicating). They wanted to go through her bag before they would let me through. Otherwise I would have been up here on time.

THE COURT: I appreciate that.

MR. NIEDERQUELL: The next thing I'd like to address is the claim for damages in my complaint that requires ongoing treatment does not indicate that I am receiving that treatment. Because I can't afford it. And my state insurance doesn't pay for me to just go see any provider. So I need to be compensated so that I can get treatment for the PTSD that's associated with this issue.

Now for my statement. I question the Court's personal jurisdiction of me. Personal jurisdiction applies only to

persons. And this Court has consistently and persistently, since the outset of this case, deprived me of fundamental rights constitutionally guaranteed to all persons because of my autism, my fee waiver, and/or my non-lawyer pro se status. Therefore, before this Court can proceed with this straight of a hearing, it must first decide for the record whether my autism, my fee waiver, and/or my non-lawyer pro se status precludes me from personhood interview with the Court. If this Court rules that I am a person, then it must also rule that I'm entitled to the same rights as all other persons, regardless of my autism, my fee waiver, or my non-lawyer pro se status.

The Court must acknowledge on record that it has a nondiscretionary duty to faithfully and impartially apply the law without bias and without showing favoritism towards my opponents, their lawyers, and/or their multi-billion dollar benefactors for all matters brought before this Court.

The Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the Washington State Constitution unequivocally guarantee all persons the right to due process and equal protection of the laws. Due process is not merely a procedural formality, it is a fundamental right that requires this court to provide a fair process, the opportunity to present competent evidence, and the equal application and protection of the laws without bias,

discrimination, or favoritism. Due process and equal protection requires this Court to apply the controlling provisions of RCW 49.60.510 to the instant motion without bias, discrimination, or favoritism.

The statute clearly limits the scope of discovery to two years prior to the first incident occurring that gave rise to this action and limits the information that is discoverable to specific elements of my claim. I have already provided the defendants with all relevant discoverable information based on the narrow limitations set forth under the statute.

No cases from other jurisdictions which do not have any laws, like RCW 49.60.510, such as *Konda*, may be construed as persuasive authorities. And no cases decided in this state prior to the creation of the statute can have any bearing on this Court's interpretation and application of the statute because those cases cited by the defendants have been overruled by the legislature in the passing of the statute. There is no applicable case law involving the statute at issue; therefore, the plain text of the statute is binding on this Court's decision for defendant's motion.

RCW 49.60.510 provides that victims of discrimination create no waiver of privilege by seeking noneconomic damages in discrimination claims. If a plaintiff relies on medical testimony and evidence to prove economic damages, there is a limited waiver that only applies to that element of their

claim.

Additionally, in cases involving disability discrimination and failure to accommodate, such as this case, there is a limited waiver pertaining only to proving that a disability requirement accommodation was diagnosed when the discrimination occurred. In both cases where the limited waiver applies, discovery is explicitly restricted only to one or both of these two narrow exceptions, and it's authorized up to two years prior to the incident unless the court finds good cause.

In this case the Court does not need to find good cause to extend that two years limit. Because my medical documentation needed to prove that at the time of the incident I was diagnosed with a disability requiring accommodation, which I've already provided to the defendants and to the Court, is older than two years.

Furthermore, unless I am able to amend my witness list to make my primary care doctor a fact witness instead of an expert witness, I will not be able to rely on medical testimony for seeking damages, negating that exception in the statute.

If I am able to amend my witness list to make my primary care doctor a fact witness, then discovery will be limited only to documents in the possession of that provider. Since I established care with that provider after the

commencement of this action and have already provided all known documents in the possession of that provider to the defendants, I have already fulfilled my obligation under both exceptions under RCW 49.60.510.

The defendant's argument supporting their requests for unlimited access to my medical history is an egregious violation of my privacy and rights under ER 403, constituting a waste of the court's resources and a sanctionable abuse of discovery process. The provider's name in the defendant's motion, Bradburn, who saw me once for about 15 minutes, and Kaper, who never spoke with me or met me in any capacity, have already been determined unreliable by an administrative law judge who granted my disability claim in 2016.

I have provided the defendants with relevant documents from three highly qualified specialists who spent considerable time with me, who reviewed my education, employment, and medical history for making their comprehensive determinations and whose findings were determined reliable by an administrative law judge for granting my disability claim.

There is no legitimate relevant probative value for the defendants to obtain or present Dr. Bradburn's or Dr. Kapers' reports. The defendants merely seek to burden me for abusive discovery and to confuse, mislead, and prejudice the jury. Additionally, the records already provided are the most up-to-date records pertaining to my need for reasonable

accommodation in this case.

To comply with constitutional mandates of due process and equal protection, this Court must deny the defendant's motion in its entirety and issue sanctions against them for their abusive discovery practices. Anything less would show that I am in fact not a person entitled to fundamental rights in the view of this Court and would constitute a failure to uphold the legal principles that this Court is duty bound to respect and enforce.

THE COURT: Mr. Kobluk, brief rebuttal.

MR. KOBLUK: Real brief, Your Honor. The idea that he has already complied by sending redacted excerpts from records from 2015 and 2016, what is relevant isn't just what supports his case, it's everything. I don't know what the -- what the redactions and what the other opinions have been. Obviously we haven't been provided those records or anything else.

So to say that -- or for plaintiff to make the argument that I've provided everything that's relevant, no, he's provided what he believes supports his position. He hasn't provided everything that's relevant to the question because that would also include material that is contrary to his position.

He mentioned just now that he was granted the disability claim in 2016. This is the first I've heard of that, okay, because we don't have the records. We need to

know, and what is relevant to his civil claim today, is whether he has a disability and what is the nature and extent of that disability. And those are the specific records that would show that and prove that. And those are directly relevant to the claims he's making.

Plaintiff also talks about constitutional law, which has no bearing to this hearing, and asks for sanctions because somehow I've tried to represent my client and obtain information that's relevant to this case. I do believe sanctions are appropriate. CR 37 provides that parties that are required to file motions to obtain clearly relevant information are entitled to attorney fees. So we've asked for that in our motion.

THE COURT: All right. Thank you.

With regard to this motion first, I'm going to address Mr. Niederquell's very initial concerns, sir, that you believe that this Court is not recognizing your personhood status and that somehow the Court has not upheld its duty to ensure due process and upholding the Washington State Constitution.

With regard to jurisdiction over these proceedings, this Court, Superior Court of Spokane County, State of Washington, has jurisdiction over yourself because you chose to file your motion, your petition here in the State of Washington over acts alleged to have occurred in the State of Washington, specifically here in Spokane County.

My duty is to ensure that I apply the laws of the State of Washington, respecting the Washington State Constitution. But also keeping in mind the legislation that covers this area of law, I do apply that fairly to all parties. And I want to make sure that we're not confusing fairness with granting your request. Because this process is fair. I hold everyone to the same standard of requirements for filing your documents. There are requirements for service. There are requirements for how you respond to documents.

This particular motion deals with adherence to discovery rules. And they're under CR 26 through 37 of the State Civil Rules. I ensure that I apply those equally, whether you're represented or not.

I do understand that as a pro se litigant you are representing yourself and you don't have the benefit of years of experience as an attorney. I can't give preferential treatment either way, whether you are a pro se or whether you're an attorney. Everyone is held to the same standard in my courtroom.

I respect that if you feel that I've ruled against you, that I got that wrong. But the problem is, this Court makes the ruling, that's why I'm the Judge. Because there are matters that need court intervention, and you brought this to the Court. So with all due respect, just because my ruling

might not go in the favor you want it to, that doesn't mean that I'm not applying the law fairly. And I've certainly respected your due process rights by affording you the exact same ability to present your case, argue your case, and then I'm considering your argument.

With regard to then the matter at hand. Mr. Niederquell filed a complaint that is alleging discrimination of a public corporation, a public facility, and by alleging discrimination the first thing that Mr. Niederquell put into issue is the fact that he does qualify under RCW 49.60.010 as having a standing to bring this action.

And just to reiterate the purpose of this chapter of our statute, 49.60.010, this is the law against discrimination. And the legislature finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability are a matter of state concern. And such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundations of a free and democratic state.

Mr. Niederquell has presented a case where he's indicating that based on his presence of a sensory, mental, or

physical disability he's been discriminated against. That gets you in front of the court.

But that means, Mr. Niederquell, that you also have the duty to put forth evidence that will support your case.

And just to reiterate, the statute goes on to, as you've quoted, tell this Court what can and can't be disclosed. It isn't a process where one party gets to say this is the information I'm choosing to give you and that's all you get. It's an adversarial process where one side puts forth their claim. The other side, because they are being sued and brought into this litigation, have the right to discovery to see if there might be anything that they would have to point the judge to to disagree with your position. And that's why we have rules on what discovery can look like.

Under 49.60.510, the statute that deals with the Washington antidiscrimination statute, talks about if you're asking for noneconomic damages, you then do not have to put forth your doctors' records to show the damages that you've received. And what I'm hearing is that Mr. Niederquell is saying he's not been able to afford to go to the doctor.

So when we're talking about damages, if that's your answer, you are allowed to answer that. But that means that when it comes time to trial, you won't be able to then at that point give any sort of documents from a doctor's office saying here are my expenses that resulted from my discrimination from

The Fitness Center. Does that make sense?

MR. NIEDERQUELL: Uh-huh.

THE COURT: So if that's your position, that is a fine position and you may take that. But when it comes to the initial getting in the door of this kind of an action where you've said that you have a sensory issue and because of your sensory issue you've been discriminated against, you do have to put forth evidence that shows what that sensory issue is. And that does include necessary documentation from a provider that diagnosed you. You can't self-diagnose and say that I have a sensory issue, you have to have some basis for that.

To that end, on the interrogatories, I believe it was -- it was Interrogatory 415 in Request for Production 7, what's being asked for is verification of that underlying sensory condition. And there does need to be compliance with that request according to our civil rules on discovery.

The answer to Interrogatory No. 4, I believe it was, included as an attachment that has what's referenced at the top, Psychological Evaluation of Mr. Niederquell. And this was dated 10/3 of 2016. It says page 9 of 19. The next page when I turn says page 10 of 19.

It is imperative that the entire document be provided. And the reason for that is because, as Mr. Kobluk mentioned, you don't just get to pick and choose what pieces of this report you think are relevant. Discovery is entitled to allow

the opposing party fair access on issues that are pertinent and necessary for you to meet your claim so that they have the information that might lead to relevant information.

So while you might agree or you might think that some of the things in this report aren't relevant, they might lead to relevant information, such as the listing of the two doctors that had treated you in the past. Again, those two doctors, it would be appropriate for the defense to be able to reach out and depose those doctors.

The reason being, sir, again, it's because when you put something at issue, it's an adversarial process where one side says this is the truth, the other says this is the truth from our version, the court takes all that information or the jury takes that information and comes to a conclusion.

The rule of evidence requires that if we're going to consider information about a person's diagnosis, the entire document diagnosing that person is relevant. It's the best evidence rule. You don't get to choose bits and pieces. The entire document is required in order for it to be admissible at trial.

And if you want your case to proceed on the merits, it's your burden, Mr. Niederquell. So if you choose to do nothing and respond to nothing, I will tell you there isn't any information in this file that answers question number 1, and that is, by the evidence, not just your testimony, but the

evidence, what is your diagnosed condition that you are entitled to accommodation. You have that information in your possession, and that information has to be given to the opposing side. That's the process. And you, yourself, have put that at issue by filing this action.

So where I do think you were appropriate in coming to court asking for guidance in this discovery motion is that you are limited on what you have to put forward. You're incorrect on how you interpret the statute. Because the Court can and does find that in this particular case there are exceptional circumstances to order a longer period of time than just the two years.

The exceptional circumstances are that by the answers you've given to your discovery so far, it appears that your diagnosis dates back to about 2016. And again, it is a necessary portion of your case to establish that you do have some sort of a diagnosed, recognizable disability that needs to be accommodated. Because it goes back to 2016, those records from your psychological evaluation of 2016 are relevant and necessary. And I'm going to order that you must comply with giving Mr. Kobluk's office the entire 19 pages of unredacted evaluation that was done.

I will also, however, issue a protection order because I think that for your benefit, sir, and to ensure that you understand, I expect that those records are not to be shared

or disclosed outside of Mr. Kobluk's office.

That means, Mr. Kobluk, if you review those, your client needs to be in your office with you while you review those. They may not disclose any information outside of the courtroom that might have been gleaned in there. And I want to be clear that that protection order is to make sure there's no dissemination outside of this court process of that information. We will be discussing it in court. I think that's very clear that if it's an issue, we have to talk about those medical records here in court.

Anything that's in the court file can be protected with a cover sheet that indicates it's a sealed document. At this time I am not asking that any of those records be given to me because that's not how you do it.

MR. NIEDERQUELL: Your Honor --

THE COURT: It doesn't come to the Court.

No, you don't get to ask until I'm all done.

The medical records are to be given to Mr. Kobluk, not filed with the court, because I do not want these records in the court file. That is not appropriate. And our court rules also indicate medical records shall not be filed in a court file unless they're under seal.

With regard to the information that's been requested as to any treatment, medical treatment that has happened since the date of incident forward, if you have had any medical

treatment as a result of the alleged discrimination, that does need to be disclosed. And then those records also need to be forthcoming to Mr. Kobluk's office, again with the same protection order, not to be disseminated. If, sir, you haven't had any medical treatment because you can't afford it, that's fine, that would be your answer. So there would not be any documents expected at that point.

The other section of questions, though, that needs to be answered is with regard to the noneconomic damages, you still need to summarize what your symptoms are that you're seeking the noneconomic damages for. And I think you have maybe specifically answered that, anxiety, cardiac symptoms. If you don't have medical records associated with those, then the only evidence you'll be allowed to provide at trial will be your testimony about those or the lay witness testimony. So, again, you're limited if you don't comply. If you don't give the information, then the Court will limit what can be presented at trial. And it goes both ways.

There were two doctors who were disclosed, a Dr. Bradburn and a Dr. Caper. To the extent that you have any reports from those doctors, I will direct that either you need to sign releases with those doctors solely for the purpose of Mr. Kobluk's office getting copies of reports only associated with your alleged diagnosis; meaning, if they treated you for tonsillitis, that does not apply in this case. It's only as

to your claims of your sensory issues that require you to have accommodations. But any relevant diagnoses that these doctors treated you for, you do need to sign a release and counsel has access to depose those doctors.

If you don't disclose that, the Court will be putting forth some restrictions, again, on what can be presented at trial, because it's your obligation to have evidence to support what you're saying. So those are the pieces on those two questions. And I think that's it with this particular motion.

Before I hear from you, Mr. Niederquell, I want to know, Mr. Kobluk, do you have any questions about what I've ordered.

MR. KOBLUK: I was writing furiously. I think I got your ruling. And I have no objection to a protective order. We have no reason to be disclosing outside of the context of the litigation.

THE COURT: And I'm going to charge you with drafting the order and the protective order.

MR. KOBLUK: One single document or do you want two documents?

THE COURT: Two. Two separate documents.

MR. KOBLUK: Two documents. All right.

THE COURT: Mr. Niederquell, do you have a question?

MR. NIEDERQUELL: A couple of things. Number one, Dr.

Bradburn saw me before I had my autism diagnosis. He did not diagnose me with anything.

THE COURT: Then those are your answers.

MR. NIEDERQUELL: And he saw me for, like, 15 minutes.

THE COURT: Put that in a written answer form to the interrogatories.

MR. NIEDERQUELL: Okay. And Dr. Kaper never interacted with me at all. He reviewed the comprehensive reports for making a disability determination, which included a whole lot of information that's not related to the issues in this case.

THE COURT: Put that in your answer in a written form.

MR. NIEDERQUELL: Okay.

THE COURT: If there are further concerns about that, you can come back for a discovery motion. But you just need to answer that if that's your position.

MR. NIEDERQUELL: Okay.

THE COURT: Okay.

MR. NIEDERQUELL: And then, also, you say that I have to provide the full reports from Dr. Gostnell and Dr. Vasquez, which are basically excerpted in my discovery response.

THE COURT: Yes.

MR. NIEDERQUELL: The full reports cover a lot of highly sensitive information that has nothing to do with this case.

THE COURT: Sir, let me stop you for just a moment. This is a psychological evaluation, and a psychological evaluation will have a lot of information in it that's the basis of the doctor's diagnosis.

MR. NIEDERQUELL: Yes.

THE COURT: So whether you think it's relevant or not, you still have to disclose it. That doesn't necessarily mean that the court is ever going to see any of that. If it's not relevant it doesn't get presented in court. But discovery is an open process where the other side gets an opportunity to look at these things that you're relying on to say that you have a need for accommodation. So your assessment that it's not relevant, you don't get to make that assessment right now.

MR. NIEDERQUELL: Well, what I'm getting at is if I need to provide the full documents to defense counsel, I would ask that you amend that protective order so that those irrelevant portions are not shared with his clients.

THE COURT: Until I see them I won't know what those look like. So for now we're going to start with you giving that document to Mr. Kobluk. I will ask if you think there's something that is sensitive, don't redact it but highlight it so that you've brought it to Mr. Kobluk's attention.

Mr. Kobluk, I will direct that if there are sensitive areas of information that you all need to come back to me on, I'll do an in-camera review to determine whether or not I

think it's relevant or not.

MR. KOBLUK: And I'm happy to make a representation to the Court that the whole purpose of this exercise is to determine the basis of a legal claim. I don't see where my clients would have any input into that. So there would be no reason for me to be sharing that with them anyway.

THE COURT: Perfect.

MR. KOBLUK: So I can represent to the client that that won't happen.

THE COURT: Then we'll put that in the protective order as well. Sounds like you're agreeing.

Do you understand he's not going to share that with his client?

MR. NIEDERQUELL: (Nods head.)

THE COURT: If there's disagreement that you need me to look at it, I can do an in-camera. That means I look at it back in chambers. But I think with that caveat, Mr. Niederquell's concern at least for today is assuaged.

Anything else?

MR. NIEDERQUELL: No, not on that.

THE COURT: Okay.

MR. KOBLUK: One thing that was included are -- obviously there was an actual disability determination --

THE COURT: Yes.

MR. KOBLUK: -- with the Social Security

Administration. And we've asked for those records just because those would all -- those would be relevant to the very situation here. So I would ask that not just any -- the specific doctors or records that we've identified, but the Social Security Administration file that had to do with his disability determination, that that be produced.

THE COURT: So basically the claim and whatever administrative action came from that.

MR. KOBLUK: Right. And whatever evaluations and stuff were part of that.

THE COURT: All right.

MR. NIEDERQUELL: I believe that goes beyond the scope of RCW 49.60.510, Your Honor.

THE COURT: How so?

MR. NIEDERQUELL: Because it involves a whole lot of things that have nothing to do with this case, number one; and number two, it's the Social Security Administration, which is a federal jurisdiction.

THE COURT: Well, I will tell you, Mr. Niederquell, in your argument, though, what you said to me was that it's already been determined by an administrative proceeding that you have a disability.

MR. NIEDERQUELL: I don't have access to that hearing transcript.

THE COURT: You don't need a transcript. I'm certain

that there are some records of the process. And you do have access to your own records, so that's --

MR. NIEDERQUELL: No, I don't.

THE COURT: Sir, discovery is designed to be a process where you're sharing the information. I could order that you sign a release for the Social Security Administration, and then Mr. Kobluk could go get that information. But there's a much larger cost associated with that and a time burden.

And again, your Social Security determination that you're disabled very well might be relevant. I'm not sure how you can say today that it's not relevant. This is not a process where all this information is going to be given to the jury. A discovery is an open process that gives leave to collect information that might lead to discoverable evidence that is relevant. So again, your saying it's not relevant isn't what makes it so.

I am going to order that you do need to cooperate to the extent that you will be relying on any of your Social Security findings, like you did earlier in this argument when you said it's already been determined that you were subject to accommodations. You can't have it both ways. Either you refer to it and you give the information or the Court will preclude any comment at trial about Social Security findings whatsoever. That's the fair process. And that's what the rules allow.

So if you understand what I'm saying, I am going to allow Mr. Kobluk to put that in, but it's with the warning that if you don't give that information, the Court will have to preclude reference to that at trial. So weigh out whether or not you don't want to go down that road.

Anything else, Mr. Kobluk?

MR. KOBLUK: Nothing from me.

THE COURT: All right. Mr. Niederquell, we're going to move on to your motion at this point.

MR. NIEDERQUELL: Okay.

THE COURT: And your motion has been titled --

MR. KOBLUK: I'm sorry, Your Honor.

THE COURT: Yes, sir.

MR. KOBLUK: Before we move on, there was the request for fees. I don't know if you were going to address that.

THE COURT: Yes. I'm not going to order fees. Because again, the statute that Mr. Niederquell cited does have some limits. And I think he fairly brought it to the Court that there should be some limitation to that. So it did necessitate a hearing, so no fees on that.

Now, Mr. Niederquell's motion is titled, Motion for Offer of Proof. Mr. Niederquell, I've read your materials. Respectfully, sir, it does seem like you're asking for something I've already ruled on. I'm going to give you ten minutes, but I want you to address as part of that ten minutes

as to why you believe that the Court has the ability to readdress a matter it's already ruled on and specifically under what basis do you think I can readdress this.

MR. NIEDERQUELL: I've got that in here.

THE COURT: Go ahead. Ten minutes.

MR. NIEDERQUELL: Thank you, Your Honor. I do have that in here. On March 22nd a hearing was held in this court on my motion for preliminary injunction before Judge Bjelkengren. For that hearing the defendant's employees, including defendant Kinny, submitted five sworn declarations alleging aggressive, intimidating, and outrageous behavior on November 8th, 2023, which the untrained employees claimed warranted the termination of my gym membership on November 21st, 2023.

These allegations failed to meet the strict standards under RCW 49.60.215 and WAC 162-26-110. The declarations also included assertions that the dress code policy was for other members' safety. The police were called due to my behavior, and my disability was not a factor. The declarations also accused me of creating a public spectacle with defendant Kinny, with one employee saying she had to apologize to onlookers for the scene I allegedly created. The Fitness Center employees did not provide any objective evidence to support the subjective and vague declarations.

In response, I provided the Court with objective

evidence, including the responding deputy's report, the 911 call, and a recording of the entire interaction I had with defendant Kinny that day. I filed detailed instructions for submission provided by Judge Bjelkengren's judicial assistant for submitting the audio files.

At the hearing, the court ignored the evidence I provided and denied my injunction based on the subjective, unsupported testimony of defendant's employees, violating ethics rule and higher court precedence. The court also incorrectly imposed an obligation to engage in an interactive process for determining appropriate accommodations, which is required under Title I of the ADA, not Title III.

In *Floeting v Group Health Co-op*, 2019, the Washington Supreme Court held, quote, We treat employment discrimination claims differently from public accommodation discrimination claims because Washington law against discrimination treats them differently, unquote.

The court further deemed my request for accommodation an absolute exception to the dress code, the shoes requirement unreasonable, despite it being mandatory under Title III of the ADA and WAC 162-26-080.

Finally, the court found that the defendants' objection to the admissibility of my secret recording was meritorious and ruled my recording inadmissible under RCW 9.73.030, relying on *State v Gearheart* cited by the

defendants. Judge Bjelkengren did not explain *Gearheart* or why she thought it was a good fit for the matter before her. I have since read *Gearheart* and found that it involves a secret recording of an attempt to bribe a witness that was obviously done in private. The appellate court held in *Gearheart,* RCW 9.73.030(2)(b) did not provide an exception to consent because there was a promise of benefit rather than a threat of harm.

The only thing my recording has in common with *Gearheart* is that consent of the parties is not obtained. My recording is of an obviously public conversation. But even if the conversation were private, the defendant's threat to unlawfully summon law enforcement, placing me in significant fear for my safety, and the repeated nature of this abuse would both warrant exceptions to consent under RCW 9.73.030(2)(b) and (c). In this case it is not private, so RCW 9.73.030 and 050 are precluded. Judge Bjelkengren's entire decision showed bias, deprived me of basic civil rights, and writs to future proceedings in favor of defendants. All she saw was the defendant's objection and her mind was made up.

Although good cause exists to vacate the entire decision and grant my injunction, I'm merely asking the Court to reverse its decision on the admissibility of my recording to ensure fairness in what's left for the case. As the Court

is already aware from my submitted medical documents, I am diagnosed with autism, which significantly impacts my ability to communicate effectively, coherently, and concisely. It takes me many hours to draft, edit, and revise my pleadings to try to meet the court's standards and requirements. I have very limited training and no direct instruction.

The only guidance I have had throughout this process has recently been that provided by freely accessible artificial intelligence. I am severely disadvantaged and doing my best to navigate this process independently because nobody's sworn to help me fight deplorable acts, like those in this case, will do so.

The inherent difficulties associated with my condition have made it exceptionally challenging to present my case within the constraints of typical legal procedures. Despite these hurdles, I have made every attempt or every effort to diligently follow the rules as I've come to know and understand them, sometimes as I have seen them demonstrated by my opponents.

Although I inadvertently failed to explicitly mention CR 60 in my motion, the opposition indicates that CR 60 applies to these circumstances. The Court should not penalize me for pleading all the elements of CR 60 without explicitly referencing it in the motion.

The intent of CR 60 is to provide relief from unjust,

fraudulent, or mistaken judgments or orders, demonstrating flexibility to address various errors, including judicial and professional misconduct. CR 60(c) empowers the court to grant relief through independent actions to rectify significant injustices. The rule is not limited to final judgments but extends to any judgment, order, or proceeding allowing the court to address errors at any stage of the proceedings. This broad applicability is emphasized in the plain text of the rule. Despite an abundance of case law pertaining to post-judgment use of section (b), the plain text of section (c) permits its use in prejudgment circumstances, as in the instant matter.

Given the absence of case law specific to the circumstances before the Court, the Court must base its decision on the plain text of the rule, which also -- which is also acknowledged by the defendants in their opposition.

CR 60(b) states, quote, On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding from the following reasons: (4) fraud, misrepresentation or other misconduct of an adverse party; (11) any other reason justifying relief from the operation of the judgment.

Furthermore, CR 60 distinguishes from CR -- or CR 60(c) distinguishes from (b). This rule does not limit the

power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or set aside a judgment for fraud upon the court. There's no mention of finality necessarily under section (c).

The recording at issue itself is central to proving a non-private nature of the conversation. Judge Bjelkengren stated at the start of the hearing that she reviewed this document. The defendants have stated in their opposition at page 9 that, quote, At most, plaintiff alleges other members were in the gym, heard on the recording working out in the background, not at the front desk, unquote.

This is a clear misrepresentation of the facts and a violation of the Rules of Professional Conduct. The two-minute-and-25 second recording captures multiple instances of third-party presence and conversations at the front desk. At 11 seconds you can hear my scan my membership card for check in at the front desk. At 28 seconds I introduced myself to defendant Kinny at the front desk. At 57 seconds another unidentified member scans their key card for check in at the front desk. At 1 minute and 3 seconds the front desk employee clearly says, quote, How are you guys doing, unquote. Plural. Indicating he was addressing plural people at the front desk. A female voice is heard responding, though not clearly audible, at the front desk. At 1 minute and 15 seconds another unidentified member scans their key card, while the

conversation between the female member and the front desk employee continues in the background. At 1 minute and 24 seconds another beep from the scanner is heard, indicating another member just checked in or out at the front desk. The background conversation at the front desk continues, while my conversation with the defendant remains clear. At 1 minute 42 seconds the front desk employee's voice becomes louder and more distinguishable, indicating he moved closer to my conversation with defendant Kinney. The female member's voice also becomes clearer starting at this point. At 1 minute and 49 seconds the female member's voice is actually louder on the recording than defendant Kinny's. Indicating that the female member was physically closer than the defendant to the recording device in my hoodie pocket. At 2 minutes and 9 seconds the front desk employee is barely heard talking to someone new at the front desk, though his words are not audible. The microphone on the device was directed at defendant Kinny, who was approximately 6 feet away from me. For the female member's voice to be louder and more clear than the defendant's for about two seconds, she had to be closer to me than the defendant.

These details prove third parties were present at the front desk, contradicting the defendant's claims. The presence and audibility of third parties reinforce that the conversation was not private. Given these facts, I

respectfully request the Court's permission to play the recording to ensure accurate representation and consideration of the key evidence.

The bottom line, Your Honor, is the presence and audibility of third parties in the most public place in the entire publicly-accessible building involving a transaction between the defendant and me, a member of the public, cannot legally be deemed private. Especially when there was an available nearby private location and the defendant chose not to move the conversation there. Because these circumstances preclude a reasonable expectation of privacy.

The issue has already been thoroughly addressed and settled by higher courts, as indicated in my motion and reply to defendant's opposition. In their opposition the defendants ask this, quote, For purposes of preparing for trial, this Court should exclude both the illegal recording and testimony as to its contents, unquote.

I would instead ask this Court to recognize the clear legal distinctions and the compelling evidence presented. The recording is crucial for a fair trial, exposing false testimony and professional misconduct, which the Court also needs to properly address. Excluding the recording on the statutorily inadmissible grounds the defendants ask for requires this Court to knowingly defy established law, apparently as a favor, permitting the defendants, their

insurer, and/or other lawyers, your colleagues, to continue breaking the law.

The Fourteenth Amendment, Article 1, sections 29 and 32 of the Washington State Constitution and the fundamental principle of impartial justice together impose a duty on this Court to exercise its power under CR 60(c) to vacate the prior decision to exclude my recording, judge it admissible for all proceedings, including pretrial proceedings, and separately to address the serious misconduct of my adverse parties. Thank you for your fair consideration in this matter, Your Honor.

THE COURT: All right, thank you.

Brief rebuttal, Mr. Kobluk, or response I should say.

MR. KOBLUK: I don't know how I can be brief but I will try. Your Honor started by asking, you know, what is the basis to readdress the argument, I really didn't hear that.

But in any event, motion to vacate, as we provided in our opposition, are governed by CR 60. Plaintiff didn't cite that, let alone analyze it. This morning plaintiff is saying tat, well, I've said all of the stuff that was relevant to that. But that's not true.

First of all, just under the general legal requirements, an issue raised and argued for the first time in a reply brief is too late to warrant consideration because there's no opportunity to respond. That's the *Cowiche Canyon versus Bosley* case, 118 Wn.2d 801. And even if we look past

the precedent prohibiting new issues to be raised in a reply brief, a claim must be adequately supported. That's In re the Matter of *Rhem*, 188 Wn.2d 321.

So plaintiff now in his reply brief and then now today relies on Civil Rule 60, specifically (b)(4), 60(b)(11) and 60(c). But he provides no analysis of those subsections. And actually, the case law, and again because we didn't have the opportunity to brief we didn't provide this, but the case law is very clear that those sections don't apply.

Under subsection (4), that is a court may vacate a judgment for fraud, misrepresentation, or other misconduct. That has to be done. It has to be clear and convincing, number one. And the misconduct that is alleged must have prevented the adverse party from having a fair day in court. So it's the procurement of the ruling or the judgment that the fraud, misrepresentation, or other misconduct goes to.

There's no allegation of that here. Plaintiff was not precluded from having a fair trial. The example given in one of the cases is if opposing party says the hearing is a Tuesday at four o'clock, when in fact the hearing is Monday at one o'clock. And so you prevent the other side from actually having their day in court. And that's the *Lindgren versus Lindgren* matter, 58 Wn. App. 588.

It's necessary that the fraud, misrepresentation, or other misconduct be extrinsic or collateral to the underlying

claim. Something that prevents the unsuccessful party from having a fair submission of the controversy. Again, we don't have that here. There's not even an allegation of that.

As far as Civil Rule 60(b)(11), this is the catch-all for any other reason justifying relief. The courts have said, despite it's broad language, the use of 60(b)(11) should be reserved for situations involving extraordinary circumstances not covered by the other subsections of 60(b). Furthermore, those circumstances must relate to irregularities extraneous to the action of the court or the question concerning the regularity of the court's proceedings. Again, there is no allegation that plaintiff was not permitted his day in court earlier.

As far as 60(c), that just simply doesn't -- it has no application. 60(c) says the rule doesn't prevent an independent action. There is no independent action here. This is still the same cause of action and the same proceedings that we started under that Judge Bjelkengren made her ruling under. This is not an independent action. So even if we consider -- so under CR 60 and under the authorities applying CR 60 we just don't have a basis that's been alleged, let alone any evidence to support an allegation that the hearing -- or that the ruling should be reversed.

I do want to, and again, because we're up on time I want to be really brief, but the law regarding the privacy act

I think is very clear. The cases cited by plaintiff have to do with conversations with a stranger in a public place. They have no application. And in fact the Washington Supreme Court has specifically pointed to those cases and said those are different cases.

There are multiple facts here. Communication will be deemed private when there is a subjective intention that it be private and whether that expectation is reasonable. And the courts provide multiple factors that go into whether it is reasonable. And that includes the duration of the conversation, the subject matter of the conversation, its location, the presence or potential presence of third parties, the role of nonconsenting parties and the role of any interloper.

First of all, the general rules is the presence or absence of any single factor is not conclusive.

THE COURT: I'm going to stop you for a moment.

MR. KOBLUK: Yeah.

THE COURT: Because I'm going to skip ahead and do this. Let me have you take a seat.

MR. KOBLUK: Okay.

THE COURT: And then I'm going to let you all know where I'm going with this, and then I will ask for comment. Mr. Niederquell's motion, as I stated, was titled an Offer of Proof. And what it appears that Mr. Niederquell is asking is

that this Court go back and change Judge Bjelkengren's ruling from the injunction hearing.

What I will tell you is when I am reading through the motion, Mr. Niederquell is bringing up a point that I think deserves more briefing. And that is that when Judge Bjelkengren denied the injunction, that's just one part of this case. And so what I want to ensure is that I have the ability to have a motion in limine. It's a pretrial motion to rule on the admissibility of evidence for trial.

Judge Bjelkengren didn't consider the recording for reasons she stated on the record with regard to the injunction. And what I'm hearing is that perhaps this Court should still consider that recording as part of allowing evidence to be given to the jury.

So what I'm going to ask is that I do need more briefing on that. I'm not going to vacate her order because her order was about the injunction. And the ruling on the tape -- or the audio recording was as to whether or not she would give an injunction.

I don't want to take that ruling and have it somehow be convoluted to the trial where I haven't made a ruling on it, indicating that it can't be referenced. We do these things with a pretrial motion, where if there's some evidence that wants to be presented for trial, the Court would consider briefs on that. Because you started to go into the reasons.

MR. KOBLUK: Right.

THE COURT: I don't believe that was in your response, it might have been, but I'd like something a little more thorough with more time for us to focus on this.

So what I'm ruling today, Mr. Niederquell, is I'm not -- how do I put this. I'm denying your motion to set aside the injunction in Judge Bjelkengren's ruling. That was the injunction. I am going to grant a longer hearing with regard to the issue of this audiotape and whether or not it should be allowed to be presented at trial as evidence. So what that means is it needs to be given a court date in the next month. Tracy will work with us to give as a date.

Mr. Kobluk, I do want, if you could do a memorandum with regard to your position. Make sure you get that to Mr. Niederquell.

And then, Mr. Niederquell, a lot of what you put in here, again, is focusing on Judge Bjelkengren's ruling as to the injunction. I am not going to be considering necessarily her reasonings because this is a new order as to whether you can present it at trial. Does that make sense?

MR. NIEDERQUELL: Yes. I do have a question.

THE COURT: Yes.

MR. NIEDERQUELL: If my recording is admissible for use in the case and --

THE COURT: It's for use at trial. But you've got to

understand that there's -- at this point you haven't had a trial.

MR. NIEDERQUELL: Well, yes. But I am entitled to bring a motion for summary judgment on liability, as the recording's evidence is just that damning.

THE COURT: There has to be no genuine issue of material fact.

MR. NIEDERQUELL: On liability there isn't.

THE COURT: And if --

MR. NIEDERQUELL: On damages there is.

THE COURT: I understand. So yes, I will consider whether you can use your audiotape for purposes of a summary judgment motion. But I do need to have, I believe, a little more time with the law on this, and then I'll make a ruling. Do you want to add anything else to what you've already filed?

MR. NIEDERQUELL: If you're clear with what you need from me then I can -- I can give you whatever it is that you need.

THE COURT: Well, if you believe that you're --

MR. NIEDERQUELL: But I feel like I've covered the legality of the recording and its importance to the case pretty well in what I've filed, and as defense counsel's pointed out in virtually every pleading since the hearing occurred. So I think if the Court needs anything else, if you specifically tell me then I can get it to you.

THE COURT: All right. I'm going to start with this then, I'm going to take it under advisement. I'm not going to give you a new court date. I'm going to read through the materials I have with an eye towards that specific request. Then I make a ruling whether or not that information -- and really it is whether or not the audio recording would be admissible for trial. Because that's your evidence that you would then be bringing a motion for summary judgment on.

MR. NIEDERQUELL: Yeah. I don't have five witnesses that will all lie on my behalf. I have just a recording, police reports, 911 call, body cam footage.

THE COURT: All right. I'm going to take it under advisement. I'm going to read through what I have. If I find I need more information, I'll have Tracy reach out to both of you so you know what I'm asking for, if I need anything else. Otherwise I do appreciate the request as to the why. I don't think it falls under, though, the CR 60 relief from judgment, because again, Judge Bjelkengren's ruling was as to that injunction and her reasons why or why she didn't grant the injunction.

This now goes farther into whether or not it would be admissible for trial purposes, for summary judgment purposes. And I am going to do a little more research and read through reasons for and against. I'm also going to listen to the audiotape. And that's because this is a jury trial, so the

Court isn't going to be biased as a fact finder. I'm not going to be the finder of fact.

MR. KOBLUK: This is not a jury trial, Your Honor.

THE COURT: Oh, it's a bench?

MR. KOBLUK: There's been no jury demand, there's been no --

MR. NIEDERQUELL: That's not true. When we did our case scheduling hearing we checked off "jury trial."

THE COURT: Let me, sir, direct you up to court admin just to make sure that if your intention is to ask for a jury trial, you've done that properly. I can't help you with that. But if Mr. Kobluk is on the record saying he doesn't believe you've done it properly --

MR. KOBLUK: Case schedule order deadline came and gone months ago, there was no request for a jury. And under local rule that has to be done separately.

THE COURT: I'm going to let you talk to court admin. That issue, whether it is or isn't, it's coming up in front of me right now, it's not a motion. Please follow up upstairs to figure out whether you need to do something different, whether you need to acquiesce that this is not a jury trial. Or you can file a motion if we need to address extending something. But I'm going to direct you to court admin. If you don't get an answer from court admin, you might need to reach out to my judicial assistant by e-mail.

MR. NIEDERQUELL: Okay.

THE COURT: So bottom line, I'm not ordering any attorney's fees on this motion. Again, I think that some of these things are a little nebulous. I do need some more time on this. There won't be an order coming out of this until I write something.

MR. KOBLUK: Okay. I was going to ask, my understanding is that you've taken it under advisement.

THE COURT: Yes.

MR. KOBLUK: If you have what you need, you may give a ruling. If you need something more, I assume you would just reserve ruling pending a motion in limine or something, but you'll let us know.

THE COURT: Yes. I will let you know through my judicial assistant. And any correspondence will come to both of you, it's not one sided. You'll both get an e-mail. Do you have any questions?

MR. NIEDERQUELL: Yeah. I'm completely dumbfounded by the statement that it's not a jury trial.

THE COURT: Then you're either going to talk to court admin or talk to Tracy, I can't help you with that. It's not something the Court either grants or denies, it's a process issue. So you need to follow up with court admin.

MR. NIEDERQUELL: Yeah. We had a form. On the form it said, Are you requesting a jury. Both parties agreed, yes,

we want a jury.

THE COURT: Well, I don't think both parties necessarily have to agree. I'm going to let you follow up on that.

MR. NIEDERQUELL: Okay. So that's where I go from here today?

THE COURT: Yes, either check with Tracy or go to court admin. They're closed for lunch because it's after 12 noon. You might have to either call them or come back. I believe they open up again at one. Court admin is upstairs, third floor annex.

MR. NIEDERQUELL: Okay.

THE COURT: All right. Thank you.

MR. KOBLUK: Thank you, Your Honor.

THE CLERK: All rise.

(END OF PROCEEDINGS.)

C E R T I F I C A T E

I, DEBORAH G. PECK, do hereby certify:

That I am an Official Court Reporter for the Spokane County Superior Court, sitting in Department No.12, at Spokane, Washington;

That the foregoing proceedings were taken at the place as shown on the cover page hereto;

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me to the best of my ability or under my direction, including any changes, if any, made by the trial court.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings, and have no financial interest in the outcome of said proceedings.

DATED this 7th day of January 2025.

_____

DEBORAH G. PECK, CCR No. 2229
Official Court Reporter
Spokane County, Washington

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff,	)	
	)	SPOKANE COUNTY SUPERIOR
	)	COURT NO. 23-2-04946-32
v.	)	
	)	
THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, Defendants.	)	

THE HONORABLE RACHELLE ANDERSON
VERBATIM REPORT OF PROCEEDINGS
August 2, 2024

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VERBATIM REPORT OF PROCEEDINGS

August 2, 2024

THE COURT: Before we do anything else, I do need to caption our case. This is the matter of Jacob Niederquell versus The Fitness Center, Incorporated, versus various other defendants, M3K, LLC, Joseph and Alison Fenske, Gene Cavender, Kara and Eric Kinney, Fred and Trisha Lopez. And this is case number 23-2-04946-32.

For the record, I'm Judge Rachelle Anderson. And my JA just provided both counsel and Mr. Niederquell a copy of my Oath of Office. Those are kept in the Secretary of State's office. Took just a little bit of tracking down to get it here. We called Vicki Dalton with the Assessor's Office.

So you do have a copy of that, sir. Are you ready to proceed now?

MR. NIEDERQUELL: Well, I would like you to cite it on the record, Your Honor.

THE COURT: I can read it to the record, definitely. Doesn't really need to be but I will indulge. It says, I, Rachelle E. Anderson, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Washington. That I will faithfully and impartially discharge the duties of the office of judge for the Superior Court of Spokane County, State of Washington, to the best of my ability. It is dated 7th day of

January, 2021. And that is signed by Judge George Fearing from our Court of Appeals, who administered the oath on that day.

MR. NIEDERQUELL: Thank you, Your Honor.

THE COURT: You're welcome, sir.

We are here today on the defendant's motion with regard to some discovery requests, the motion for protective order. I have reviewed the motion, I've reviewed Mr. Niederquell's response, and then there was a reply declaration from defense counsel as well.

And I am actually going to leave the bench for just one moment. I have another matter that's the exact same type of motion, and I did not bring the right packet of materials out with me, so give me just one moment.

THE CLERK: All rise.

(Off the record.)

THE CLERK: All rise.

THE COURT: My apologies. Have a seat. I now have the correct packet.

And counsel, if I could go ahead and let you make your argument.

And just so that we're clear, Mr. Niederquell, you're representing yourself, yes?

MR. NIEDERQUELL: Yes, Your Honor.

THE COURT: So make sure you don't interrupt when I'm

hearing argument from Mr. Kobluk. I will give you an opportunity. And I'll ask him to give you that same courtesy. Okay?

MR. NIEDERQUELL: Okay.

THE COURT: All right.

Sir, go right ahead.

MR. KOBLUK: Thank you, Your Honor. May it please the Court. Gerry Kobluk on behalf of the defendants. Also at counsel table is Yvonne Leveque Kobluk, who is co-counsel.

This is, as the Court introduced, a motion for a protective order with regard to discovery. A little bit of context in this case. Because the case has been transferred to a judge, you don't have some of the background. So just in terms of context, this is a pro se plaintiff. He is a person who does not wear shoes. He signed up for a gym membership at The Fitness Center. Pursuant to the written membership agreement that he agreed to, members are required to wear shoes.

Plaintiff asserted that he has a sensitivity, and if the rule was enforced against him, it would be illegal discrimination for failing to accommodate him. And he demanded that he be allowed to go barefoot in all areas of the gym, the facilities. During these initial communications, the plaintiff also advised in an e-mail that he was prone to violent outbursts.

Subsequently, there were a couple of different confrontations. Staff felt uncomfortable and intimidated. The plaintiff was asked to leave. He refused. He was trespassed by police. And subsequently his membership was terminated. The plaintiff then sued the gym and various individual employees for discrimination.

With regard to the procedural aspects of the case, he filed a motion for preliminary injunction. That was heard by Judge Bjelkengren. Judge Bjelkengren denied that motion for a number of reasons, but basically the plaintiff could not show that his discrimination claim was likely to succeed on the merits, which is a standard for a preliminary injunction. There was also a motion for reconsideration. That was denied.

Since then, and frankly during those proceedings, he has accused the Judge, the court system, us as counsel, and the parties themselves of collusion, corruption, and illegal conduct. He has railed about the injustice being done to him, a continuation of a lifetime of abuse at the hands of businesses that discriminate against him, police that assault him and violate his rights, and now the court system for colluding against him. So that's the context of this motion. This motion, however, is relatively discrete as far as the issue that's in front of the Court.

The parties have engaged in written discovery. The defendants provided responses to interrogatories and requests

for production. They provided -- we provided information and documents relevant to the issues in question. All of, you know, all the information regarding his membership, interactions with staff, communications, witnesses, anything having to do with the events in question.

But in addition to the requests for relevant information regarding the discrimination claim, the plaintiff also asked for personal information about the individual defendants, including residences, marriages, divorces, children, rates of pay, salaries, raises, benefits, retirement contributions, bonuses received, charitable donations, things of that nature that are personal and that have nothing to do with the discrimination claim at issue.

In addition, he's also asked questions about friends and family members with disabilities, their health care providers, and information about other gym members who were not witnesses to any interaction between the plaintiff and defendants.

So we had a 26(i) conference back in June before this motion was continued a couple of three times. The plaintiff, during that 269i) conference the plaintiff could not explain how this personal information was relevant in any way to his claim or likely to lead to relevant or admissible evidence, nor did he even try. Rather, the plaintiff advised that, well, you asked me personal questions so I'm just doing the

same.

The problem with that, obviously, is there's a big difference between a plaintiff and a defendant. A plaintiff who is claiming damages puts his physical, emotional, and financial conditions at issue. The defendants do not and have not in this case.

What's concerning, however, and frankly, and admittedly the reason for this motion is just not the irrelevancy of the personal information being sought, but it's also being done in the context in which plaintiff has made repeated threats of violence. He has alleged a lifetime of abuse and discrimination. And when he doesn't get what he wants, he makes allegations of illegal criminal conduct and injustice that he claims is forcing him, using his words, to defend himself with violence. And he's -- I believe even in the response to this motion he's indicated that sentiment.

But more specifically, when recently the plaintiff consulted with an attorney, I believe in Issaquah, to represent him in this case, that attorney would not take the case. In response, the plaintiff wrote to him: Message received. Violence is the only answer for fighting this injustice.

That attorney, who I, again, that's an attorney on the other side of the state, not anybody that I've ever known or dealt with, apparently he found that threat concerning enough

and specific enough to contact my client to warn her that this threat had been made, even at the risk of divulging attorney-client communications. And this is in addition to other general threats that have been made from the start of this case, both to Judge Bjelkengren's court with regard to him, I guess, you're telling me I have to break the law e-mail, to other written messages, even threatening to kill someone, using his words.

So in response, the plaintiff alleges that those threats were hypothetical, they were an attempt to "troll" another or they were purely hypothetical. But we can't know that. And we can only take him at his word, at face value.

So the plaintiff himself has advised in his first communications with my client that he was prone to violent outbursts. So we know that from him directly. We also know the plaintiff has a criminal history. He disclosed in discovery separate arrests and charges for trespass, malicious mischief and harassment.

So plaintiff's response, kind of getting back to the motion itself, the response to the motion for protective order does not address why or how the personal and financial information of the defendants, their friends, family, or uninvolved club members in any way is relevant to the defamation claim. The grievances against court and against counsel and claims of corruption or illegal conduct, which now

are even directed at this Court in e-mails leading up to this hearing, are on one hand irrelevant, because they don't address the underlying issue, but on the other hand, they are illustrative of why a protective order is necessary in this case.

We're asking for three things. We're asking that the defendants not need to provide responses to the requests for personal information that have been identified in the pleadings; we're asking that the plaintiff be precluded from going near the defendants' residences or place of business; we're also asking that if the plaintiff is to contact any club employees or members, that that be done through counsel. I believe that's a pretty limited way to protect against the threats that have been made.

THE COURT: All right. Thank you.

MR. KOBLUK: Thank you.

THE COURT: Mr. Niederquell, let me just preface before I let you go ahead and let you make your argument. The history of the case, while it can be illustrative or helpful, really doesn't necessarily connect to today's motion; meaning, the motion is about the protective order and whether or not the Court should grant the request for protective order based on the argument that the information is somehow of a nature that would not lead to admissible evidence to the process of your trial.

I know that you would probably like to respond to the historical background that was given to me. So I'll give you a little bit of leeway to do that if you'd like. But I don't find that that is relevant to what I'm considering today. So to the extent, sir, that I know that you don't agree with how things have been put before me today, the description, it's not relevant to whether or not I'm going to issue the protective order or not. Basically just trying to tell you, you don't have to spend a lot of time trying to defend against some of those things that I know you do disagree with. But this is now your opportunity, so go right ahead.

MR. NIEDERQUELL: Okay. Thank you, Your Honor. So to briefly touch on that. I have a few points that are a little bit skewed on how that went. Number one, the contract that I signed on my first day, the terms that required footwear are pretty much irrelevant in this matter because federal law prohibits the use of contract terms to effectuate discrimination and also requires reasonable modification of policies, practices, and procedures to provide me with equal access.

Number two, my reference to violent outbursts in the e-mail that I sent on that first day was a reference to autistic meltdowns that I have. Because I am autistic. I am diagnosed with autism, level two diagnosis.

Number three, when the police were called on me to

trespass me prior to bringing this case, the deputies refused to trespass me and advised the employees of The Fitness Center that it was actually illegal for them to do so because their only complaint was that I did not wear shoes. And I'm covered by the ADA. And then, after that, they continued to harass me, which is why I brought the case. And then, after that, they retaliated by cancelling my membership. And skip ahead, here we are today.

There's been some -- he made some good arguments about my frustration with the corruption I've been going against over this issue. I've dealt with this issue in several states for many years. I've sought the assistance of lawyers in various jurisdictions to help me deal with it. And the consensus is basically there's not enough people in your situation for it to matter. Well, it really matters to me. So I went to paralegal school, I learned how to do some paperwork. And I decided that if I can't find somebody to help me, I'm going to do the best I can for myself. And so here we are.

And from the day that this case started I did everything right. I made sure that I gave everybody the information they needed to know about my situation and why I needed accommodation. I had no intentions of causing any trouble with anybody. I just wanted to go to the gym and improve my physical, mental, social, and spiritual health with

exercise in a structured and controlled manner.

And I was friendly when I came in. I was friendly with the guy at the front desk on every visit that I went to the north location. Most of my workouts were at the 24-hour location. And so I didn't intend for there to be any conflict here. And when conflict came my way, I used some of the stuff I was learning in school to make sure I did not do anything wrong should there need to be a case. And here we are.

And I need to end this discrimination in my life. Because while I've been going through all of this, I've been having to seek some treatment, you know, for a lot of the trauma that I've been recurringly dealing with. And I've been recognizing that my spiritual health has significantly declined since I've been living in this shithole town. And I know you don't like that language, but it's appropriate here.

And I don't want that. I have to pray to a human, a corrupt body of humans for relief from other people who think that they're entitled because of their wallets or their connections to abuse somebody, and then commit perjury to try to get away with it. Then they can get the courts to help them by excluding evidence that proves perjury or blocking access to discovery that helps prove perjury.

THE COURT: The discovery request today, that's what I want you to focus on.

MR. NIEDERQUELL: Everything that's in my discovery

request that the defense is objecting to and wants sealed and protected so that I can't have today, is related to me taking another avenue to proving that those five declarations that they served on that preliminary injunction were all lies and that there was incentive for those lies to be told. And that's evidence that a jury needs to see, and so I had to ask for that. The court improperly struck my secret recording that was obtained under the one-party or single party consent exception under statute, without reviewing that recording for its content to see if the content fit or didn't fit that exception. Just outright ruled against it because the court knew that the content of that recording also proved perjury. And the defense didn't have a leg to stand on if it was accepted. So now my discovery has had to be altered so that I can find another avenue to get that evidence to show to a jury.

I don't want to pray to you, ma'am. I don't want to pray to a human. I don't want to be suing people. This case is going on already. It needs to have the resolve that it was brought for. And having access to discovery will help me make my case.

THE COURT: Okay. Is there anything else you want to add as to why you believe that that's relevant information the Court shouldn't put some protective orders around? What's the connection, if you could tell me.

MR. NIEDERQUELL: So some of the stuff that I asked for was to name any public officials, officers, mayors, whatever, judges, whoever, that are acquaintances, friends with, especially people that have relationships with the defendants. I've wanted to know about the financial incentives that might be in evidence for why the five declarants might be incentivised to tell the lies that they told.

And the other thing was, I was looking to find if mainly defendant Kinny has a history of mistreatment or abuse or treating people, particularly on a neurodiversity spectrum, with disdain. So I might need to talk to some of her employees and former employees to find out if she's shown anything like that. I might have to talk to some people who know her to see if she's shown any type of that behavior and could testify on my behalf.

So there's a lot of investigation that I have to do and this discovery puts me there, which is the whole point of discovery. We're not here because there's any legitimate threat to the safety or well-being of the people that I'm up against here. It is absolutely absurd to suggest that me, somebody who needs a fee waiver just so I can come here and represent myself, has any of the connections and money that the defendants have to be able to knowingly and maliciously engage in a vicious discrimination, coercion, and other

intentional harms and believe that their money and their connections will get them away with it no matter how overt their wrongs. And I am supposed to pose a legitimate risk of harm to them? That's absurd.

THE COURT: All right.

MR. NIEDERQUELL: That's absurd. We're only here because I can't have the discovery to show that they don't have a defense, Your Honor.

THE COURT: All right. I understand. Thank you.

Mr. Kobluk, brief reply.

MR. KOBLUK: Very briefly, Your Honor. With regard to the idea that the court struck an illegal recording and that that somehow was wrong and that he needs another avenue to prove his case, I don't think that -- I don't think that's sufficient in terms of saying I don't have admissible evidence so I need to go fishing for something else.

And that brings me to my other main point is that what has just been described here is the classic fishing expedition. I don't have anything, I can't tell you why it's connected, I just need to look at all of this financial stuff because there might be something there. That is the black-letter law definition of a fishing expedition, which is not relevant and it's not appropriate for discovery.

THE COURT: All right. Thank you. Back to my initial comments that I started to make, after I heard from

Mr. Kobluk. I do understand from reviewing the file that I have before me that there have been some strained relations between Mr. Niederquell and defense as this case has gone through.

Before me today is not the issue of whether or not Mr. Niederquell has threatened people. There was a lot of information that I saw in the declaration and Mr. Niederquell's response where we talked about whether or not there were overt or direct threats. That does not factor into my review of this case today.

I think sometimes when people get caught up in litigation, they can feel frustrated, frustrated by the process, frustrated at responses that they get. And I'm not going to take what I see in this file, as far as bits and pieces of text messages or concerns, and have that color today's motion. Because today's motion isn't about threats. I agree with Mr. Niederquell on that.

The request for a protective order that I'm being asked to look at is really guided by CR 26 that talks about discovery and limits on discovery. And in general, a person is entitled to obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or the defense of the party seeking discovery.

Things that the Court would be looking for when I'm

determining whether or not discovery is appropriate is not whether or not there are threats made to get the discovery. I don't see threats here. What I see, though, is that we're really getting far afield from the original matter that's been pled in the complaint. And that is that Mr. Niederquell has a case he's filed against the various defendants with regard to discrimination and with regard to some potential actions that they took with regard to terminating his gym membership and how he was treated on that day.

I understand that as the case moves along, there can be some decisions that are made by judicial officers that Mr. Niederquell is not happy with. But discovery isn't designed to get information to prove that declarations were wrong. That's not something that is at issue in this case. The jury is not going to hear the matter with regard to whether or not declarations were correct or incorrect with discovery.

Discovery is meant to get to the heart of the matters that you're suing about, that being whether or not you were improperly vacated from the property, whether or not your treatment was based on discrimination and whether there was not a valid reason to end your gym membership. Those are the topics.

So when you're asking for discovery, it has to be related to your claim. And the claim has nothing to do with the personal relationship of the folks at the gym. I know

that the concern is that they may be being protected by law enforcement or the court system. But that's not your case that you claimed. You're claiming that they did something to wrong you. And their personal information, who their personal relationships are with, who their children are, who their ex spouses are, that is not reasonably related to the underlying action, nor can you make a rational explanation of how that would lead to information that's relevant.

With regard to financial incentive, again, when you're suing a defendant corporation or LLC, and an employee, the rate of pay for the employees has nothing to do with your cause of action. Any of their bonuses or raises have nothing to do with your cause of action. When you're asking that there be some maybe connection between what their financial incentive would be, you're asking for something that is beyond the realm of your particular case.

You're alleging in your argument, sir, that maybe somebody was giving them money or vice versa in order for them to lie. That isn't something that their pay is going to lead to information on, it's their rate of pay. It doesn't show, and it wouldn't lead to showing, whether or not they were being bribed by anyone.

So while I understand that you're responding to a lot of things that have happened in your case, I'm looking at whether or not your requests for discovery are narrow enough

to be relevant to your cause of action. And in this case those personal connections to, again, as I said, the family members, children, friends, that is not related to your action. The donations to various charities is not related to your action.

The request for the protection order is appropriate in order to protect against those things that could be designed to be, and I'm going to quote from my statute, it says that the court can make an order which requires a party to protect the party from annoyance, embarrassment, oppression, or undue burden or expense. It doesn't talk about it has to be based on a threat. But these topics that have been requested are far afield and would subject the defense to annoyance, embarrassment, oppression, and undue burden to submit to some of those questions that you asked.

I have attachments that in Exhibit A highlighted the interrogatories that were being objected to. Those included Interrogatory No. 1, section E through I; Interrogatory No. 3; interrogatory -- I'm sorry -- Request for Production No. 1; Interrogatory No. 5, Interrogatory No. 6; Interrogatory No. 10; Interrogatory No. 13; Interrogatory No. 14; Request for Production No. 9. Interrogatory No. 15 specifically has to do with Judge Bjelkengren. Which again, while I appreciate if you have a complaint about a decision she made prior, again has nothing to do with your cause of action. Interrogatory

No. 15 would also be precluded. Interrogatory No. 16. And I believe that was the extent that was provided in the attachment.

To the extent that I've missed anything, I am going to grant the protective order to indicate that there will be no responses to any of the interrogatories or requests that ask for personal information of either the defendants or their family members or their friends.

I'm also going to direct, Mr. Niederquell, that any further contact you have with the defendants does need to go through counsel. That is something that is expected in lawsuits that when folks are represented by counsel you don't interact with them directly but through their attorneys.

As for the request that I preclude Mr. Niederquell from going to any place of business, at this time that's not before the Court. There isn't a request for either a no-contact order or protections with regard to geography. I understood that there was a notice of trespass that might have already been issued by the fitness centers. But for today's hearing I'm not going to put any geographic restrictions because, again, I don't think that was properly noted. And obviously there's a procedure if you are asking for someone to stay away from a location, that's more akin to a civil protection order or an injunction, not a protective order with regard to discovery, which is what this focuses on.

Mr. Kobluk, I'll ask you to draft the order that reflects what I've just indicated. And I was specific in indicating those interrogatories and requests, if you could make sure to include that in the order.

MR. KOBLUK: Yes, Your Honor, the order we had I don't think listed them, so we'll go back and revise that and take out the reference to the residences and places of business. One question as far as contacting, obviously contacting the defendants would have to go through counsel, but we also had asked that contacting the other employees, the defendants' employees or club members also be done through counsel. I don't know if you wanted to address that.

THE COURT: Sir, do you have a reason to be contacting other folks that work at the gym?

MR. NIEDERQUELL: I do. But I don't have an objection to contacting through defense counsel.

THE COURT: Okay. I appreciate that you don't have an objection.

MR. NIEDERQUELL: As long as defense counsel will work with me when I ask to talk to somebody, you know, I'm totally fine with that.

THE COURT: Okay. And that would be the Court's expectation. We'll include that then in the order as well in case anyone forgets or if I need a reminder or if we have another judicial officer.

Since this case is assigned to me, we are going to proceed on your trial schedule. I do have a case scheduling order that's already in the file. So there are time frames for your exchange of witnesses, your discovery cutoff. So just be aware everything will go through this office. And there was reference to maybe e-mails that were coming to my office. I don't see those. E-mails that come directly to my judicial assistant, unless they are a part of your declaration, I don't see because that's not proper. I see what's filed. I see what we argue in court. So back and forth communication with my judicial assistant, just so everybody is aware, is not something that I see, it doesn't get in the court file.

And then, Mr. Niederquell, do you have any other questions?

MR. NIEDERQUELL: I have one that's not exactly related to this hearing, but since we're here, is it possible for me to orally ask for leave to amend the complaint? Because I've tried to file an amended complaint, and Mr. Kobluk brought it to my attention that I skipped a step.

THE COURT: You need to follow the court rules on how you ask to amend your complaint. You can get a date from my judicial assistant on arguing that, but you do need to follow the proper rules.

MR. NIEDERQUELL: Okay.

THE COURT: Sorry. I hold everybody to the same standard.

MR. NIEDERQUELL: That's fine.

THE COURT: Okay.

MR. NIEDERQUELL: I just didn't know if it was possible to do it orally in court.

THE COURT: I appreciate the ask. Some things you can. That's not one of those things that I would let happen just by an oral request.

MR. NIEDERQUELL: Okay.

THE COURT: All right. So from here, the process is, Mr. Kobluk, you're going to draft the order. I'm going to ask that you send the order to Mr. Niederquell.

Mr. Niederquell, if you don't think the order says what I said, what I'm going to ask you to do is send whatever your comments are directly as to the order to Mr. Kobluk and my judicial assistant.

MR. NIEDERQUELL: Okay.

THE COURT: At that time she is going to print out those e-mails. I get both the order and your e-mail comments. I read it, and if it reads how I believe I said, I will sign it. If it needs a couple changes, I will make those changes. I will then sign it. And then we'll return copies with my signature via e-mail to both parties, okay?

MR. NIEDERQUELL: Okay.

THE COURT: All right, thank you.

MR. NIEDERQUELL: Thank you.

MR. KOBLUK: Thank you, Your Honor.

THE CLERK: All rise, court is in recess.

(END OF PROCEEDINGS.)

C E R T I F I C A T E

I, DEBORAH G. PECK, do hereby certify:

That I am an Official Court Reporter for the Spokane County Superior Court, sitting in Department No.12, at Spokane, Washington;

That the foregoing proceedings were taken at the place as shown on the cover page hereto;

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me to the best of my ability or under my direction, including any changes, if any, made by the trial court.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings, and have no financial interest in the outcome of said proceedings.

DATED this 7th day of January 2025.

_____

DEBORAH G. PECK, CCR No. 2229
Official Court Reporter
Spokane County, Washington

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL
Plaintiff,

v.

THE FITNESS CERNTER, INC., d/b/a SPOKANE FITNESS CENTER, and M3K, LLC, and JOSEPH G and ALISON J FENSKE, and GENE CAVENDER and KARA S and ERIC W KINNEY, and FREDERAL R and TRISHA A LOPEZ,
Defendants.

No. 23-2-04946-32

HONORABLE CHARNELLE BJELKENGREN
VERBATIM REPORT OF PROCEEDINGS
MARCH 22, 2024

APPEARANCES:

FOR THE PLAINTIFF: Jacob Niederquell, Pro Se

FOR THE DEFENDANT: GERALD KOBLUK
Attorney at Law
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VERBATIM REPORT OF PROCEEDINGS

March 22, 2024

THE COURT: All right. I have two motions presented to me for this afternoon in the matter of Jacob Niederquell. And did I pronounce your name correctly?

MR. NIEDERQUELL: Niederquell, Your Honor.

THE COURT: Niederquell, versus the Fitness Center, Spokane Fitness Center, Alison Fenske, Gene Cavender, and Kara and Eric Kinney, Case No. 23-2-0494632.

And Mr. Kobluk is representing the defendants. Mr. Niederquell is representing himself.

I do want to make the parties aware that I am a member of The Fitness Center. I don't know anybody named. I have no relationship with any of the defendants other than simply being a member, and so I wanted to put that on the record in case anybody wanted to disqualify me from this matter. I can assure you that my membership would not affect my ability to be fair and impartial in this matter.

Do you have any concerns, Counsel?

MR. KOBLUK: I have none.

THE COURT: Do you have any concerns?

MR. NIEDERQUELL: Did you say you don't know anybody involved, any of the named parties?

THE COURT: I don't know anybody involved. I've just been there before, that's all.

01:35 Are you okay with me hearing the case, or do you want me disqualified? And it's no offense if you want me disqualified.

MR. NIEDERQUELL: I don't think that's necessary.

01:36 THE COURT: So you'd like to proceed?

MR. NIEDERQUELL: Yes, ma'am.

THE COURT: All right. And so the two motions that are presented are a motion to object to the substitution of counsel. Whitny Norton withdrew, and

01:36 Mr. Kobluk, am I pronouncing your name correct?

MR. KOBLUK: Kobluk.

THE COURT: Kobluk, thank you, has substituted. And there is an objection to that, and then there's a motion for a preliminary injunction. So

01:36 I'll hear the objection to the notice of withdrawal first. And so, Mr. Niederquell, when you're ready you can stand at the podium and present your objection.

MR. NIEDERQUELL: Okay. First, I would like to ask if the Court has had an opportunity to review the

01:37 documentation that I've provided, the physical evidence?

THE COURT: Yes, and I should have gone, actually, gone through that to begin with. So I have reviewed everything. First, I'll start with just the motion that you're going to -- your objection to the
01:37 withdrawal and substitution of counsel. I've reviewed the notice, the amended notice, the objection to motion to withdraw, and the declaration of Ms. Norton, of Mr. Kobluk, and there is -- just one moment, a response, I believe.

01:38 MR. NIEDERQUELL: And objection to the declaration of Ms. Norton.

THE COURT: Yes. Yes.

MR. NIEDERQUELL: I don't see her here, but --

01:38 THE COURT: And she wouldn't be here because she's already withdrawn from the case, but you can go ahead and present your argument.

MR. NIEDERQUELL: Well, I objected to her declaration at paragraph 5 because she declares under
01:38 penalty of perjury, quote: "I have at all times acted with the utmost integrity, professionalism in regard for the rules for professional conduct," unquote. And that struck me as quite dishonest, because we had some correspondence early on in November, early on in the
01:38 case, where I first pointed out some misconduct

involving a nonlawyer legal assistant providing legal advice to Spokane Fitness management, which resulted in further rights, depravation, and injuries and damages, and the production of a notice of trespass. It's improperly formatted and is missing some key things that are required by state law.

I don't believe that the attorney of record provided such an inadequate notice. I believe that it was the rookie, nonlawyer legal assistant who provided the advice for that notice. And so under RPC's, that's misconduct. That was the first point that I addressed in my objection.

The second point, or, well, the second point is kind of like the first point, in that the same nonlawyer legal assistant provided a letter to Spokane Fitness management that was also shared with Spokane County Sheriff's Office deputies when they were called to remove me on November 21st.

THE COURT: Okay. I'm going to stop you there, because some of what you're going to get into, I'm anticipating, is the actual motion for preliminary injunction.

Right now, I just want to hear why you are in disagreement with Ms. Norton withdrawing and Mr. Kobluk substituting as counsel.

Is there a legal basis that that can't happen?

MR. NIEDERQUELL: Well, I'm suspicious of the perjury that's in this particular case, that it came from Ms. Norton's office rather than from the staff at Spokane Fitness, specifically. I think I went over in my objections to their declarations, I believe I went over why I'm suspicious of that, and it has to do with the fact that a legal assistant at Ms. Norton's firm drafted those declarations that were signed by those staff, and there was some concerning verbiage that was consistent from declaration to declaration that was inconsistent with the facts of the case that was drafted by the same person, if that makes sense.

THE COURT: Do you have any response to the defendant's declarations regarding the basis for the substitution?

MR. NIEDERQUELL: I'm sorry?

THE COURT: There's --

MR. NIEDERQUELL: Oh, for the basis for Mr. Kobluk taking over?

THE COURT: Yes.

MR. NIEDERQUELL: Well, I don't really have an objection for that. The only -- the only thing that I'm concerned about is whether or not Spokane Fitness

had coverage for intentional acts and whether they declared the intentional act that caused this case to come into being when they contacted their insurer.

THE COURT: Okay. Thank you.

01:42 And I don't need to hear from counsel on this. I have reviewed your declaration and I am going to approve the withdrawal and substitution that have previously been filed for the reasons that are set out specifically in the declaration of Mr. Kobluk.

01:42 He has been retained by the insurance company, and so he is allowed to substitute pursuant to CR 71, and there's simply no legal basis that the court -- for the Court not to approve that based on what I've been presented. So I am going to deny the objection, I

01:43 guess, and I am going to allow Mr. Kobluk to represent the defendants in this matter, which brings us to the plaintiff's motion for preliminary injunction.

MR. KOBLUK: Did you want a quick order?

THE COURT: Yes.

01:43 MR. KOBLUK: I didn't see one in the file from previous counsel, but I've got one. I did have a signature line in there for Ms. Norton, but not knowing if she was going to be there or not.

THE COURT: Okay. The Court has signed the

01:44 order allowing withdrawal and substitution of counsel.

So next, moving to the plaintiff's motion for preliminary injunction. I have received that motion, as well as Mr. Niederquell's exhibits that he's attached to the motion, and defendant's opposition and
01:44 defendants have submitted a number of declarations and Mr. Niederquell has objected to the declarations, and he's provided an objection as to each individual. That's what I have. Just one moment. I need to double check something, so just thank you for your patience.
01:46 All right. Am I missing anything that you filed?

MR. NIEDERQUELL: Just the e-mail exhibits that were filed with the objection on the withdraw.

THE COURT: Okay. So we've moved on from
01:46 the objection to withdraw.

I did get some exhibits attached to your motion for preliminary injunction, and that did include a letter. And what e-mail are you referencing?

MR. NIEDERQUELL: The e-mails that I sent
01:46 Ms. Norton in February.

THE COURT: You want me to --

MR. NIEDERQUELL: Pertaining to the perjury and the declarations?

THE COURT: Do you want me to consider that
01:46 as part of your preliminary motion?

MR. NIEDERQUELL: Yes, Your Honor. I mean, it pertains directly to the declarations that were submitted in opposition to this motion.

THE COURT: Okay. I see that. You may
01:47 proceed with your motion, and so I will give each party 15 minutes. You can go ahead.

MR. NIEDERQUELL: Okay. I prepared what I want to say on this. So I'm not a lawyer, I'm doing the best I can to advocate for my rights in the absence of
01:47 someone trying to do this, and I have a lot to learn. I've probably already learned about as much about this process since the case started as I knew going into it, and I believe I will only get better in time.

Getting right to it, to be eligible for
01:47 preliminary injunction, the moving party must establish that he has -- A, that he has a clear legal or equitable right, B, that he has a well-grounded fear of immediate invasion of that right, and C, that the acts complained of are either resulting in or will result in actual or
01:48 substantial injury to him. This is from *Bellevue Square LLC v Whole Foods*, Washington Court of Appeals 2018.

THE COURT: Mr. Niederquell, you're doing pretty good but I just wanted to remind you that I have a court reporter in front of me, and she's taking down
01:48 every word that's said in the courtroom so just try to

go a little bit slower.

MR. NIEDERQUELL: Oh, okay.

THE COURT: Thank you.

MR. NIEDERQUELL: An injunction does not issue as an absolute right and is granted only on clear showing of necessity. But if the elements of necessity and irreparable injury are proven, it is the Court's duty to grant the injunction, *Holmes Harbor Water Company Inc. V Page,* Washington Court of Appeals 1973.

It is clear from the pleadings and from the legal authorities relied upon therein that I have a legal right being deprived of me in this case and that I have a well-grounded fear of immediate and continued invasion of that right based on the threats issued by the defendants, and that the acts I'm complaining of in this motion have already resulted in and are continuing to result in actual substantial injuries for me.

Namely, I have constitutional rights to be free from discrimination in places of public accommodation to the full enjoyment of, quote, "all goods, services, benefits, privileges, accommodations and facilities of places of public accommodation, and to exercise personal liberty to choose which businesses I will transact with to meet my personal needs or wants."

Under the 14th Amendment to the US

constitution, and under Article 1, section 12 of the constitution of the state of Washington, I have the right to equal protection of the laws, which includes the protections guaranteed to me under chapter 49.60 RCW and Title 3 of the ADA.

01:49

The acts of the defendants have created irreparable harm to me because they have deprived me of these constitutionally secured rights without due process and because such assaults on my personal dignity cannot be remedied simply with money damages. See *Floeting vs. Group Health Coop*, Washington Supreme Court, 2019. Preliminary injunctions are most commonly used to protect and preserve the constitutional rights of parties because violations of constitutions protections are inherently injurious beyond the scope of remedy of monitory damages.

01:50

01:50

A preliminary injunction is one of the most powerful tools of the courts to ensure fairness and equity throughout the litigation process. The primary purpose of preliminary injunctions used in civil cases is to restore and/or preserve status quo, the last peaceable state preceding a controversy during the litigation of the matter.

01:50

In this case, status quo, the last peaceable state preceding the controversy was the period between

November 1st, 2023, and November 7th, 2023, when I made daily use of Spokane Fitness Center facilities without being subject to discrimination, harassment, or other abuses.

01:51 On November 7th, when an employee passed along a message from the manager to me to the effect of a refusal to accommodate my medical needs, in violation of WAC 162-26-080, and especially on November 8th when the manager stated clearly and concisely on record, 01:51 quote, "If you can't wear anything on your feet, we will just have to cancel your membership," unquote. Stated that she knowingly and intentionally was breaking the law and violating my rights, quote, "for your safety," unquote. Challenged me to hold her and her company 01:51 accountable for knowing and intentional lawbreaking, and then violated RCW 4.24.345 by unlawfully summoning law enforcement to aid with that fulfilling purpose.

THE COURT: Mr. Niederquell.

MR. NIEDERQUELL: That's when this 01:52 controversy began.

THE COURT: I do have a question for you. So you indicated that you were told that you were going to be -- there was a refusal to accommodate your medical needs. And so I'm asking if there's anything that you 01:52 can point to in the e-mails or the letters that indicate

you engaged in an interactive process with the Fitness Center requesting an accommodation.

MR. NIEDERQUELL: So my Exhibit A in this case is a copy of the e-mail that I sent the general manager on the day that I opened up my membership, which was November 1st. I know that in Kara Kinney's declaration she also included a copy of that as an exhibit.

THE COURT: Okay. I see this is the e-mail on November 1st sent at 4:13 p.m.

MR. NIEDERQUELL: Correct.

THE COURT: And can you point me to whatever in this e-mail that you're specifically asking for an accommodation?

MR. NIEDERQUELL: Well, the content of the entire e-mail collectively is, well, I guess the first page and part of the second, because most of it is just legal authorities highlighted. But on the first page and the first paragraph of the second, it generally goes over my disability, the need for reasonable accommodation, and the nature of my disability requiring accommodation.

I was told by the guy that helped me set up my membership, Brayden Smith, before I left after setting up my membership that his manager sent him a

text saying that she was concerned about any increased liability if I didn't have shoes on. And so I asked for her e-mail address, and he provided that for me, and then I sent this e-mail so that she would know that there was no -- no issue of liability to be concerned about.

THE COURT: What is your response to their declarations indicating that they provided an accommodation to another individual with your same or similar medical needs by providing them this person areas in the Fitness Center where they could go without shoes and other areas where they needed to use some sort of a loafer or sandal?

MR. NIEDERQUELL: Okay. Well, in the ADA, and I referenced it in one of my objections to those declarations. In the ADA it specifically says that the accommodations that are provided basically have to be custom tailored to the needs of the individual with the disability. And although they may speculate that the person they've accommodated before or a similar or same condition, I would present that their needs were different than mine and my needs are what they're supposed to accommodate with an accommodation that suits my individual needs rather than with a blanket-type of accommodation that suits whoever.

THE COURT: Thank you. You can proceed.

MR. NIEDERQUELL: Okay. Let's see, where was I. Okay. So I opened up on status quo, and then okay. So the complaint also indicates that November 8th
01:55 was when the controversy began. And it was filed and served on Spokane Fitness Center on November 17th, 2023.

The defendant substantially altered status quo on November 21st, four days after filing in service, after summons and complaint were filed and served on
01:56 Spokane Fitness Center, by canceling my membership and issuing an invalid and improperly formatted trespass notice to me in the presence of law enforcement with intent to coerce, refraining my lawful right to access and use the facilities. Therefore, to restore and
01:56 preserve status quo in this case, the Court must order a mandatory injunction requiring the defendants to reinstate my membership, and the Court must order a prohibitory injunction requiring defendants to refrain from any act or practice, quote "which directly or
01:56 indirectly results in any distinction, restriction, or discrimination, or refusing or withholding from me the admission, patronage, custom, presence or frequenting," of Spokane Fitness Center facilities. I'd just like to say this is my first time being in this position, in
01:56 this spot, I'm a little nervous so bare with me.

THE COURT: You're doing fine. I have to remind the attorneys frequently, we all talk fast, but it's my responsibility to make sure we get a good record.

01:57 MR. NIEDERQUELL: Thank you. Courts may only grant preliminary injunctions upon a showing that the moving party is likely to prevail on the merits of his claim.

My complaint, which requires amendment after 01:57 the events which have transpired since it was filed, substantially asserts claims of discrimination, harassment, unlawful summoning of law enforcement, and other intentional and/or negligent torts.

On the issue of discrimination in 01:57 Washington, strict liability applies to all employers whose employees commit acts, quote, "which directly or indirectly results in any distinction, restriction or discrimination, or the refusing or withholding from me the admission, patronage, custom, presence or 01:57 frequenting," unquote, of Washington businesses.

Additionally, it is unlawful discrimination for employees to make me feel, quote, "unwelcomed, unsolicited, or desired," unquote, because I have a constitutional right to the full enjoyment of places of 01:58 public accommodation.

Courts have a duty to determine whether discrimination actually occurred rather than whether anyone intended to discriminate. And if discrimination occurred, strict liability applies for the employer, see *Floeting v Group Health Coop*, Washington Supreme Court, 2019.

In this case there is no question whether discrimination actually occurred. I had a legal obligation to inform the manager of Spokane Fitness Center, A, that I had a disability requiring reasonable accommodation; B, what the accommodation was that I needed; and C, the nature of my disability requiring accommodation.

I fulfilled this duty in a discrete, civil, and reasonable manner on November 1st, 2023, when I sent Ms. Kinney my e-mail requesting reasonable accommodation, Exhibit A.

After receiving that e-mail, including all of the relevant and pertinent information that it contained, which information served to fulfill my obligation under the circumstances, Spokane Fitness Center and Kara Kinney then had a legal obligation to provide me with the requested accommodation because it was, quote, readily available -- or achievable -- I'm sorry, "readily achievable," unquote. And therefore,

legally reasonable.

A refusal to accommodate the reasonable needs of a person covered under chapter 162-26, Washington Administrative Code, and under chapter 49.60 RCW constitutes unlawful discrimination, and employers are strictly liable for that cause of action when employees refuse to accommodate for the needs of customers. Upon introducing herself to me on November 8, 2023, defendant Kinney stated on record, quote, "If you can't wear anything on your feet, we will just have to cancel your membership," unquote, to which I replied, quote, "you can't do that, that's against the law," unquote.

Kinney went on to explain that the rule existed for my safety and that she wanted me to follow Spokane Fitness policy to keep me safe.

Defendant Kinney clearly had not received adequate training on the ADA and Washington law against discrimination sufficient from knowing that, quote, "Risk to the person with a disability is not a reason to deny service," unquote.

When she made that statement on record, Washington Administrative Code 26-100, after I filed this motion, defendants responded and included five declarations sworn to, signed, and submitted by Spokane

Fitness staff, which declarations all contain perjury.

I have provided the Court with evidence for its consideration to determine that all five declarations contain perjury, including a copy of the police report authored by Deputy Hansmann which substantially contradicts numerous statements made by Spokane Fitness staff in their declarations.

Namely, Spokane Fitness staff make numerous assertions that I behave myself, quote, "aggressively," or quote, "intimidating," on November 8th, 2023, when Kinney first knowingly and intentionally summoned law enforcement unlawfully.

They also stated falsely in their declarations that subsequent confrontations resulted in aggressive behavior, that law enforcement were summoned because of my behavior, etcetera.

THE COURT: You have one minute left.

MR. NIEDERQUELL: I'm almost done. Spokane Fitness has dramatically and repeatedly changed its story for why they refused to accommodate my medical needs. First, they refused to accommodate out of a concern for some unspecified potential increase of liability. Then they refused to accommodate out of concern for my own safety. Then they changed it to unsubstantiated and unprovable claims that being

barefoot created immediate and likely risk of substantial harm to others, all before settling on the clearly false and misleading claims that my behavior was aggressive or even inappropriate without evidence to
02:02 support that claim and despite evidence that refutes it.

It is common for defendants in discrimination cases to raise pretextual defenses to the allegations, and when they do it is common for those defendants to change their explanations multiple times
02:02 while looking for something, or anything, to stick, as defendants in this case have clearly also done.

I have provided the Court with digital evidence for its consideration which proves conclusively that Spokane Fitness Center and staff engaged in
02:02 numerous acts, quote, "which directly or indirectly results in any distinction, restriction or discrimination, or refusing or withholding from me the admission, patronage, custom presence or frequency," unquote, or which made me feel unwelcome, unsolicited or
02:03 undesired, that they engaged in those acts knowingly and intentionally, depriving of me of my constitutional rights and that they committed serious criminal offenses in an attempt to get away with all that knowing and intentional lawbreaking.

02:03 The Supreme Court in Washington held in

Floeting v Group Health Coop in 2019, that "The denial or depravation of services on the basis of ones' protected class is an affront to personal dignity," unquote.

02:03 And then quote, "The fundamental object of laws banning discrimination and public accommodations is to vindicate the deprecation of personal dignity that surely accompanies denials of equal access to public establishments." There is no question that the 02:03 defendants committed affronts to my personal dignity, that defendants substantially altered status quo by canceling my membership on November 21st, 2023, in fulfillment of their unlawful threat made on November 8th, 2023, and in retaliation for my filing and serving 02:04 this action on November 17th, 2023, and that I am likely to prevail on the merits of my discrimination claim.

Also, because the rights being assaulted are rights guaranteed by the constitutions of the United States and the State of Washington, and at least some of 02:04 those injuries sustained by the defendant's fundamental alteration of status quo are injuries to my personal dignity, reputation, and/or standing in the community, and because I have the well-grounded fear that such injuries and damages will continue without an injunction 02:04 from the court ordering them to abate, I believe the

Supreme Court of Washington has decreed that this court may have a duty to grant my motion at this time. Thank you.

THE COURT: Thank you.

02:04 MR. KOBLUK: Thank you, Your Honor. Jerry Kobluk on behalf of the defendants.

As an initial matter, a party who chooses to proceed without counsel is accorded no special deference and will be held to the same procedural and substantive

02:05 requirements as a party represented by counsel. It's just black-letter law. There are both procedural and substantive reasons to deny the plaintiff's request for an injunction in this case.

First, with regard to the procedural.

02:05 Plaintiff's motion for an injunction is supported solely by argument of the plaintiff. It's not supported by any competent admissible evidence.

As Your Honor noted, he attaches to his brief some exhibits, but there is no foundation for

02:05 those exhibits. There's no declaration. There's no affidavits. They're not made under oath.

There's nothing with regard to the statute itself. RCW 7.40.060 indicates that affidavits can be considered in an injunction motion, but without

02:06 submitting any evidence under oath and without any

proper foundation, it's not admissible.

Plaintiff relies heavily on a recording. He indicates statements on the record. There is no record. Plaintiff indicates that he provided digital evidence to prove his case. Again, nothing provided under oath.

And the recording that was provided was a recording that was made that did not have the consent of the parties being recorded. It was a secret recording, and as such, it violates RCW 9.73.030, and is therefore illegal and inadmissible in all courts pursuant to 9.73.050.

In some of the written materials that plaintiff cites to an exception in that statute that certain unlawful requests or demands can be recorded without advising the other party, that's not what that exception says. The exception actually says it's for conversation, it's -- quote, "which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands."

And Washington Supreme Court, and then recently Division 3 have interpreted that phrase "unlawful requests or demands" to mean that it must be strictly construed and limited only to acts of a similar nature to a threat for extortion, blackmail, or bodily injury. So this interpretation that the exception is

broad enough to relate to any unlawful acts is simply incorrect, and it's been actually rejected by the court, and that's *State v Hearhard*, 13 Washington Appellate 2d 554.

02:08 So procedurally, the plaintiff's motion for an injunction is not supported by any competent admissible evidence. There's nothing under oath. There's no declarations. There's no foundation for any of the evidence that he's asked you to consider. But 02:08 substantively, there's no legal or factual basis for an injunction, in any event.

For an injunction to issue, plaintiff correctly outlined the three requirements; there be a clear, equitable right, a well-grounded fear, and the 02:08 immediate violation of right, and acts resulting in or that will result in an actual and substantial injury.

The plaintiff bears the burden to show a likelihood of success on the merits. An injunction will not issue in a doubtful case, and further, an injunction 02:09 will not issue if there is an adequate remedy at law.

I'll address some of these factors. First of all, the injunction in this case is based on the allegation of discrimination due to a disability. Plaintiff alleges a sensory issue that he doesn't wear 02:09 shoes because of a tactile hypersensitivity, is how he

put it in his materials. For a discrimination claim, the plaintiff must prove four different elements: Disability, a place of public accommodation; those two elements we're not contesting or those aren't at issue.

02:09 But the third and fourth element, the third element is the defendant was discriminated against by the plaintiff by failing to provide services comparable to the services provided to individuals without a disability.

02:09 And then the fourth element, that the disability was a substantial factor in causing the discrimination.

With regard to that third element, comparable services, the plaintiff signed and agreed to

02:10 the same membership agreement that applies to all members. It includes rules that the plaintiff agreed to and that if not followed could result in termination of his membership.

Those rules include: Clean athletic shoes

02:10 must be worn at all times, no open-toed shoes, and that members must be respectful to other members, guests, and staff.

With regards to the shoes requirement, this is not a dress code. I know in his letter he describes

02:10 it as a dress code. It's not a dress code as

characterized by the plaintiff, it's to address health and safety concerns, everything from athletes foot, fungus, plantar warts, and other pathogens related to the feet. There are numerous health studies and articles, and these were provided to the plaintiff in Ms. Kinney's declaration, Exhibit C, there's a letter from counsel which actually included a number of these health studies and articles.

THE COURT: Counsel, so if the defendant doesn't provide, essentially, an accommodation, is it really satisfying this requirement that there be comparable services? Because he doesn't have the option to use the facilities if he has to wear shoes as required by the agreement.

MR. KOBLUK: But I don't know that we ever got to that point. And Your Honor had a question for the plaintiffs on that same issue, is that the accommodation, it must be a reasonable accommodation. And specifically, the response from the plaintiff was "I want a reasonable accommodation," but never says what that accommodation is other than a demand that you cannot keep me from being barefoot.

And so, you know, as you pointed out in the declarations, the Fitness Center employees have specifically addressed disabilities before, but one in

particular of somebody with this exact same issue, it's not a blanket --

MR. NIEDERQUELL: I object.

MR. KOBLUK: -- accommodation. It's the exact same issue. It's somebody who said they couldn't wear shoes and needed to be accommodated because of issues with their feet, and they were -- and they worked that out and they were allowed to do that.

In this case, the problem here is the plaintiffs would not engage or even allow any discussion of a reasonable accommodation. Rather, the plaintiff simply said you can't discriminate against me, you can't keep me from not wearing shoes, and so there was no interaction. There was no discussion.

According to the court in the *Hartleben versus University of Washington* case, which is cited in the briefing, the parties must work in good faith to exchange information in order to determine what reasonable accommodation best suits the plaintiff's disability, and that never happened here. Ultimatums and demands for capitulation on the other side do not constitute good faith exchange of information.

The bottom line, the plaintiff was provided services comparable to what was provided to members without disabilities. They were certainly willing to

work with him to reasonably accommodate, if he needed to be, you know, there are some areas obviously where shoes wouldn't be an issue, like the pool deck or the sauna or things like that. But other areas, the gym, the cardio
02:14 room, places where the health issues are prevalent, they were willing to work with him, but plaintiff was not willing to engage in any discussion of what the accommodation would be.

And then the fourth element, the necessary
02:14 element, the substantial factor element. Again, the plaintiff bears the burden to show that his disability was a substantial factor for causing termination of his membership, and that's completely lacking here.

The Fitness Center acted to enforce a
02:14 facially neutral rule and a policy. It exists for the health and safety of its members and staff. And as provided in the declarations, again, which are not contested with any contrary declarations or statements under oath, the plaintiff was not terminated because of
02:14 his alleged sensory issues, he was terminated because he was disrespectful towards staff which they interpreted as being aggressive and intimidating.

He admitted his propensity on day one when he sent the e-mail to the general manager, he admitted
02:15 in that e-mail that he had a propensity for violent

outbursts. There were repeated business disruptions in which he claimed: You can't keep me from going barefoot.

And that behavior is what led to the police having to be called on two separate occasions, and there was a complete disregard for health and safety --

MR. NIEDERQUELL: Object to that too.

MR. KOBLUK: -- and policy and written rules that he had already agreed to. So the tactile hypersensitivity was not the reason for his termination, and that's confirmed by the undisputed declarations in the file.

And finally, for an injunction to issue there must be no adequate remedy at law. An injunction is to prevent the occurrence of a substantial, irreparable injury. It's not to remedy a completed wrong that's already happened.

Similarly, and as acknowledged by the plaintiff, an injunction is to preserve the status quo. The status quo in this case is the plaintiff's membership has been terminated and he has been trespassed from the facility.

And if those actions are wrong, he has a legal remedy, and he has exercised that remedy by filing a lawsuit for money damages.

There is no basis for an order that the Fitness Center reinstate his membership; therefore, putting him back in a position of conflict, or allowing the plaintiff to use the facilities and equipment without regard to membership rules governing health, safety, or behavior.

Certainly, there's no basis for enjoining the police, or enjoining the defendant from ever calling the police if the circumstance is warranted in the future. So for both procedural and substantive reasons, there's no legal or factual basis for a preliminary injunction to issue at this time.

THE COURT: Thank you very much.

MR. NIEDERQUELL: Can I respond?

THE COURT: Yes, you can respond. Just one moment. Okay.

MR. NIEDERQUELL: My turn?

THE COURT: Yes.

MR. NIEDERQUELL: Okay. First, I want to address the procedural issue that Mr. Kobluk raised here. It sounds like he's saying that there's no evidence to support my position on this motion. I did attach a declaration that contained three exhibits, Exhibits B, C and D, and at the end of each of those exhibits I did certify under penalty of perjury and the

laws of the state of Washington that the foregoing document entitled Exhibit B, C or D is a true and correct copy of the same document, and I did certify that they are evidence. There's -- they should absolutely be accepted as evidence, each of my exhibits that I filed on this.

I've provided with -- I provided the Court with the digital evidence, the recording that I attached to an e-mail that I sent Ms. Norton prior to Mr. Kobluk's taking over of the case. And in that e-mail there was a recording that was lawfully obtained under the exception that he referenced in the statute that shows that Ms. Kinney knew that what she was doing was unlawful, that she was depriving me of my rights intentionally, and that she was challenging me to attempt to hold her accountable.

Ms. Kinney started her declaration talking about how I paid for my gym membership, and I am almost certain, and I know this is speculative, but I'm almost certain this had something to do with her brazen approach on November 8th when she expressed knowingly and intentionally violating my rights and challenged me to hold her responsible, because lawsuits are expensive, and attorneys' fees are even more expensive. And so I think it's improper for Mr. Kobluk to assert that the

police were called because of behavior, especially on November 8th. When you've reviewed the recording, you can see that there's no sign of behavior warranting a refusal of service, much less a call to emergency services.

And if you review Deputy Hansmann report that he filed in his official report from that call, he says explicitly that the only reason they wanted me removed was because I don't wear shoes. And so I would ask the Court to strongly consider the pretextual nature of any claims of behavior or any such arising substantially from that point or especially related to that point by the defense.

And I'm having a little bit of a confusion moment here, bear with me. Oh, also, I am diagnosed with autism spectrum disorder, without intellectual or language impairment, requiring substantial support. It is level 2 ASD diagnosis, and under the statutes of the state of Washington, I am considered a vulnerable adult. Therefore, the defendant's actions are absolutely deplorable and abusive, and the purpose, according to the Supreme Court of Washington, for the existence of laws that ban discrimination in place of public accommodation is, quote, "to vindicate" the injuries to personal dignity that surely accompany not being allowed

the same access that other people have.

The defense has said that I was treated substantially the same as anyone else was treated, but I didn't see anyone else being confronted by staff while they were doing their workouts, or anything like that, and being harassed about their appearances or anything of that nature.

I didn't see other people being told that they would have police called on them, you know, and being -- having a scene created in front of other members, I didn't see that happening for anybody but me. I'm the only person being treated that way. I opened up the opportunity for Spokane Fitness management to communicate with me discretely, appropriately, and in writing through e-mail on November 1st.

Spokane Fitness management decided that they would rather embarrass me and harass me in front of other members by causing a scene, and they caused a scene on at least two occasions when they unlawfully summoned law enforcement to hurt me and to deprive me of my rights.

When Kara Kinney, on November 21st, informed me that she was canceling my membership, she leaned forward into my face and smiled the biggest smile to tell me she was canceling my membership.

THE COURT: Did you include that in a declaration?

MR. NIEDERQUELL: I have not. I would like to amend my complaint to include what happened on that day, because that happened after I filed and served this case on Spokane Fitness Center. My membership was not canceled until four days after I filed and served Spokane Fitness Center with this lawsuit. I was still a member of Spokane Fitness Center when I filed and served this lawsuit.

THE COURT: Continue.

MR. NIEDERQUELL: He brought up a lot of points, and I'm trying to remember them.

THE COURT: Okay. And so I guess one of the questions I have based on hearing your argument and Mr. Kobluk's argument is, I do see your letter where you open the discussion regarding your tactile hypersensitivity, but then did you make any proposal as to how you could be accommodated or have any conversation with the Fitness Center regarding a reasonable accommodation?

MR. NIEDERQUELL: So the accommodation that I was asking for, and I believe it's pretty explicit in this e-mail that I sent.

THE COURT: Can you point me --

MR. NIEDERQUELL: To the dress code?

THE COURT: Excuse me?

MR. NIEDERQUELL: I was asking for a simple exception to the dress code, because it costs no money, it costs no time, it costs no manpower, it doesn't cost anything, and it's readily achievable. The ADA defines it as quote/unquote "reasonable." And so I did not think that there would have to be a back and forth, but if there was, I asked on two separate occasions, on the 7th and on the 8th, I asked if -- first of all, I didn't know that the manager hadn't received my e-mail because she never responded. And so I asked if she had received my e-mail. And Brayden told me on the 7th that she had and that she had told him that I would still have to have something.

And then on the 8th is when I met her, and I asked her if she had read my e-mail and she said that she had. She never responded.

And one more important thing that I would like to address that I also addressed in the documents here, I believe, it's if you look at my Exhibit B -- or no, my Exhibit C is the letter that Ms. Norton's office provided, Spokane Fitness Center, with, and also provided me with, making some of those claims that he was saying about the health and safety issue. And

Exhibit D is my response to that, and there's a substantial portion of Exhibit D where I address the inadequacy of the studies that were provided in that letter.

02:26 And the main theme in the inadequacy of those studies is that all of those discuss the health and safety concerns that are for the person who is barefoot, not for other people around them. And furthermore, almost all of those studies showed that the 02:26 greatest risk of transmitting plantar warts, athletes foot, etcetera, comes from being barefoot in a locker room, and then especially from putting sweaty shoes back on and going and sweating after you've walked around in a moist area that other people are walking around in.

02:27 And so Spokane Fitness does not enforce their shoe policy in the sections of their facility that have the absolute highest risk of transmitting the same conditions that they purport to be concerned with, and so I think that that's a pretextual claim entirely.

02:27 THE COURT: Well, I think they also mentioned that in certain areas, such as I thought it was the weight room, but I could be wrong, but in certain areas people are on their hands. So where other members have shoes on, they have their hands on the 02:27 floor, and so that would be a way to transmit these

diseases.

MR. NIEDERQUELL: Okay. So Spokane Fitness hasn't done any diligence on comparing this alleged barefoot disease spreading concept with the known concentration of pathogens on shoes, which is substantially greater. I think it's a factor of 3 greater on people's shoes and in people's shoes than on someone's bare feet.

Furthermore, they have done no research whatsoever the difference between someone like me and perhaps someone like you. No offense, I understand you probably wear shoes most of the time. Your feet are cramped in a sweaty and hot environment, and so you're more prone to contract those types of conditions, which are not significant, they're not serious conditions.

And athletes foot, has a gym ever been sued for athletes foot transmission? I don't believe so. But nonetheless, somebody who does not wear shoes, whose feet are open to the open air, sunlight, and other such things that are studies that have show this, especially in places like India and Africa where it's common for people to not have shoes on, that those types of pathogens simply don't grow.

So the likelihood of me transmitting plantar warts or athletes foot are substantially lower than

someone who wears shoes and happens to be barefoot in that section of the facility.

THE COURT: Okay. Thank you. Can you wrap up your argument, then.

02:29 MR. NIEDERQUELL: I think I covered everything. I'm not entirely sure, but I'll go ahead and wrap it up.

THE COURT: Well, you can look at your notes. I want to make sure you have said everything you

02:29 need to say.

MR. NIEDERQUELL: Well, what bothers me is when you review the recording that was lawfully obtained because it has substantial evidence, number one, of perjury in the declarations. But number two, that

02:29 Ms. Kinney was attempting or actually trying to use the call to law enforcement to coerce me into surrendering rights, which is a crime under RCW 9A.36.070, it's the crime of coercion, and that this was a type of harassment that occurred of a repeat nature. And so

02:30 those are two of the three exceptions that are in the statute. I was the only one who was under obligation to consent as one party to the conversation, and you get a real authentic perspective on what was going through the mind of the defendant at that time.

02:30 She wanted to use police to coerce me. She

didn't think that I could hold her accountable, and apparently now with all of the perjury and behavior claims and all of that, she thought she could simply lie to the court to get away with it.

02:30 And in that recording she explicitly said that the reason why that particular rule exists was for my safety. And she said that twice, she reiterated that.

If the rule exists for my safety, or for the 02:31 safety of other people who come in and it's for their safety that they need to have shoes on, which is what she very clearly said, then under WAC 162-26-110, that is not a reason to deny me access.

THE COURT: Thank you.

02:31 MR. NIEDERQUELL: Thank you, Judge.

THE COURT: Just quickly, Mr. Kobluk. Mr. Niederquell said only one party needs to consent. I'm looking at 9.73.030, it appears as though all persons need to consent. What is your --

02:31 MR. KOBLUK: Yeah, Washington is one of the strongest statutes in the country in that regard. It's a two-party consent; everybody. Otherwise, it wouldn't exist.

THE COURT: Thank you.

02:32 MR. NIEDERQUELL: Your Honor?

MR. KOBLUK: And I think, sorry to interrupt.

MR. NIEDERQUELL: Under subsection 2 --

THE COURT: Just wait.

02:32 MR. KOBLUK: I think there is language in that statute talking about that even if it's obvious, if you're like pulling out your phone where somebody sees it, or something like that, or a news person or something, if you're going to use it, you have to state 02:32 on the record that it's being recorded, or has to be on the recording itself that there's a consent to the recording, so it confirms it's a two-party consent.

THE COURT: Thank you.

MR. NIEDERQUELL: Can I respond?

02:32 THE COURT: Quickly.

MR. NIEDERQUELL: RCW 9.73.030 provides exceptions to the requirement to obtain consent prior to recording. Those exceptions are in subsection 2, notwithstanding -- quote: Notwithstanding subsection 02:33 one of this section, live communications or conversation, A, of an emergency nature such as the reporting of a fire, medical emergency, crime, disaster; or B, which convey threats of extortion, blackmail, bodily harm, or other unlawful requests, or demands; or 02:33 C, which occur anonymously or repeatedly or at an

extremely inconvenient hour; or D, which relate to communications by hostage, barricaded person -- which doesn't fit here -- whether or not the conversation ensues. Okay. These conversations under this exception may be recorded with the consent of one party to the conversation, i.e. mine.

THE COURT: Thank you. I just need a couple of minutes here. All right. Thank you for your patience. The Court has in mind the briefing of the parties, the attached declarations, including the exhibits of Mr. Niederquell, Exhibits A, B, C, and D, and I have considered those as well.

And you referenced an e-mail that was attached to your corresponding motion. To begin with, the standard in this matter for a preliminary injunction, both parties set out the standard in their briefing, and an injunction is considered extraordinary relief and is meant to prevent irreparable injury. In order to obtain an injunction, it must be established that there's a clear legal or equitable right. And in that regard, the Court looks at whether or not the petitioning party is likely to prevail on the merits of their claim. So I'll get to that in a moment.

But additionally, there has to be a well-grounded fear of immediate invasion of that right,

and also that the acts complained of will result in actual or substantial injury.

So with respect to the law that applies in this case, I have to look at whether Mr. Niederquell is likely to prevail on the merits of this matter. And again, I'm just giving a sort of preliminary ruling. This is not my ultimate ruling in the matter. This matter is scheduled for trial in March of next year, which is quite away's out, and that's why Mr. Niederquell is bringing his motion at this time. But I'm only making a ruling based on the limited evidence I have before me, and I agree with Mr. Kobluk that there is not a lot of evidence presented by Mr. Niederquell at this point. He is making substantial objections to the declarations that were presented by the Fitness Center, and he did provide those exhibits, which I have considered, but other than that I anticipate that at trial he'll have more substantial evidence to present.

But based on what I've been presented at this time, I'm going to go through the law that applies. And in order to establish discrimination in a place of public accommodation, RCW 49.60 applies, and there must be a showing that the person has a disability and that the defendant is a place of public accommodation.

Defendants are, for purposes of this motion, conceding that. So I'm just going to skip to factors 3 and 4 that have to be established, and that is that the defendant discriminated against the plaintiff by failing to provide services comparable to the services provided to individuals without disabilities, and also that the disability was a substantial factor in causing the discrimination.

And I think that's where this case fails in in relation to an injunction, that Mr. Niederquell has not established the disability was a substantial factor in causing the discrimination.

I think subsection or number 3 is a little more of a closer call. And so again, he has to establish that Spokane Fitness Center discriminated against him by failing to provide services comparable to the services provided to individuals without disabilities. He did provide a clear request to the Fitness Center on or about November 1st, and there is a declaration of Ms. Kinney, who is the general manager, and she indicates that she did have a conversation with Mr. Niederquell. The conversation was essentially that he had to wear shoes.

So on one hand I think Spokane Fitness Center expected Mr. Niederquell to engage in an

interactive conversation or process to find a reasonable accommodation. On the other hand, I think Mr. Niederquell reasonably expected Spokane Fitness Center to begin that conversation. But what he was clearly requesting was nothing short of sort of a change.

So Spokane Fitness Center has indicated that with other individuals they have made an accommodation so that an individual could not wear shoes in certain parts of the facility. Mr. Niederquell was asking for an absolute exception to the policy to wear shoes, and Ms. Kinney states in her declaration: "We've worked with other people to grant reasonable accommodations and have been able to have easy discussions to reach a solution. Based on my interaction with Jacob, we would not be able to work toward any solution because he insisted he get what he wants and would not discuss anything other than what he demanded."

So that's ultimately where this court finds that the defendants do prevail on that subsection, or excuse me, section 3 of those requirements, in that Mr. Niederquell wasn't open, or available, or willing to discuss or engage in the interactive discussion or interactive conversation about what would be a reasonable accommodation.

He was set on wanting an absolute exception to the policy. But even if I found that Spokane Fitness discriminated against him by failing to provide services, ultimately, his disability was not a substantial factor in this situation. The reason he was terminated from Spokane Fitness Center was because of his aggressive interactions with multiple staff, and so I have a number of individuals indicating in these declarations that they were concerned, they were fearful, and in fact --

MR. NIEDERQUELL: Oh, really?

THE COURT: So I'll just ask you to listen closely.

MR. NIEDERQUELL: I am.

THE COURT: Try to control yourself. I understand you might not agree with these statements or my ruling.

MR. NIEDERQUELL: Can I interject something, Your Honor?

THE COURT: No, not yet. Just listen, please.

He stated, Mr. Niederquell stated to staff that he was prone to violent outbursts, and that, I believe, was in the letter that he initially had indicated to Ms. Kinney. Mr. Smith states in his

declaration that Mr. Niederquell raised his voice at Ms. Kinney; he was aggressive. Ms. Gerald states in her declaration that she actually felt as an employee she had to focus her attention on her own safety. So this --

MR. NIEDERQUELL: She's lying.

THE COURT: I understand you don't agree. I'm asking you just don't interrupt, okay, while I'm giving my ruling.

She had to focus her attention on her own safety when Mr. Niederquell was in the facility. She said that he seemed like a ticking time bomb. She states, quote: "I have never seen this kind of contempt, upheaval, and discord in the gym for 17 years. Every time Jacob came around the gym, there was discord and a scene. It was disruptive and he puts a strain on the employees."

So ultimately, law enforcement was called. Mr. Niederquell was removed, and it was because of his behaviors, in violation of the contract, and just in violation of basic expectations of human interactions in public that Mr. Niederquell's membership was terminated. And so that is the reason for the termination, it's not because of discrimination, at least that was not the substantial factor.

Again, this is only the Court's ruling on preliminary injunction. I anticipate I'll hear more evidence at a later stage of the proceeding, but also as Mr. Kobluk points out, in order for the Court to issue a preliminary injunction there has to be no adequate remedy at law. And really, what Mr. Niederquell is asking for is damages. I think he's indicating emotional damages, and so there is an adequate remedy in the form of monetary damages that he could receive if he prevails on appeal, but the Court finds that he's not likely to prevail, at least based on what I've been presented at this point.

And then I do want to comment on the evidence that he submitted in the form of a recording, and Mr. Kobluk has argued that RCW 9.73.030 prohibits this recording. It's an unlawful recording and the Court shouldn't consider it, and I have not considered it, as it was not agreed to by the individuals who are recorded. And this does require that a private conversation have the consent of all persons engaged in the conversation, and it appears to be admitted that not everybody agreed to be recorded. There are exceptions. Those exceptions do not apply here, and I do adopt the reasoning of the Division 3 case that Mr. Kobluk cited to with regard to a strict adherence to applying

subsection 2 of that provision. An exception would be, for example, a threat of extorsion, blackmail, bodily harm, or --

MR. NIEDERQUELL: Coercion.

02:49 THE COURT: Or other unlawful requests. Division 3 has indicated other unlawful requests would have to be a similar nature of extorsion, blackmail, that sort of thing, so I don't find that this would fall within that provision. The Court hasn't considered

02:50 that, and I believe that addresses everything.

So at this time I'm not going to hear any new arguments, but are there any questions?

MR. KOBLUK: As far as the form of the order.

02:50 THE COURT: Do you have a proposed order?

MR. KOBLUK: I do. It doesn't have, obviously, your findings or the discussion you had. So basically it just lists the evidence, at least that I understood that was in front of the Court or that had

02:50 been filed, and then just that the evidence does not support the need for a preliminary injunction at this time.

THE COURT: Okay.

MR. KOBLUK: So I didn't include anything,

02:50 any specifics, but --

THE COURT: All right. Thank you. Mr. Niederquell, you have the right to have, I think it's five days under court rule, to review the order, or I can enter it today. It's very basic. If you want to look at it and sign it, I'll enter it.

MR. NIEDERQUELL: I did have a question.

THE COURT: Yes.

MR. NIEDERQUELL: Where does Deputy Hansmann's official report play into everything you considered for your ruling?

THE COURT: I'm not going to go into my ruling anymore. I have another hearing, a number of people are waiting to --

MR. NIEDERQUELL: So Deputy Hansmann's sworn statement has no bearing?

THE COURT: Would you like to sign the order now or would you like me to set a presentment hearing where you prepare your own order and I consider what order best reflects my decision?

MR. NIEDERQUELL: Well, I don't know what my rights are at this moment, but I think I want to appeal it.

THE COURT: Okay. So would you want to prepare an order, I guess is the question.

MR. NIEDERQUELL: I guess I can see what you

come up with.

THE COURT: He just gave you what he came up with.

MR. KOBLUK: I just gave it to you. The order would have to be entered before it would be appealed.

MR. NIEDERQUELL: This one?

MR. KOBLUK: Yeah.

MR. NIEDERQUELL: So what does signing this mean?

MR. KOBLUK: It indicates it's only approved as to form, it just means you agree that that's what the order was, not that you agree to the substantive.

MR. NIEDERQUELL: Yeah, that's basically what she said.

THE COURT: I'll just indicate my oral ruling is incorporated, in the event that it is appealed then the transcript would be incorporated.

MR. KOBLUK: And I don't know if that reflects the materials that -- frankly, I did not see a declaration from the plaintiff so I don't know, it doesn't reflect the declaration because I was not provided with that.

THE COURT: I'm going to indicate plaintiff's motion for preliminary injunction and

exhibits.

MR. KOBLUK: And materials with it, yeah, that makes sense. Should that, I'm thinking out loud, should that say exhibits excluding the recording? You said you did not consider the recording, or does it matter? I don't know it matters to you.

THE COURT: That is in my ruling, but I think it's pretty clear for the sake of the record. But I'll add in that the court did not consider the recording.

MR. NIEDERQUELL: Right.

THE COURT: Okay. And I do want to thank you both for your briefing, and Mr. Niederquell, I appreciated your, especially appreciated, your briefing that you provided to the court, so thank you.

(Proceedings adjourned.)

C E R T I F I C A T E

I, HOLLY M. DRAPER, do hereby certify:

That I am an Official Court Reporter for the Spokane County Superior Court, sitting in Department No. 2, at Spokane, Washington;

That the foregoing proceedings were taken on the date and place as shown on the cover page hereto;

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction, including any changes made by the trial court pursuant to Spokane County LCR 80(e).

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 29th day of July, 2024.

S/ Holly M. Draper
_____

HOLLY M. DRAPER, RPR, CCR No. 1976
Official Court Reporter
1116 W. Broadway, Department No. 2
Spokane, Washington 99260
(509) 477-4417
HDraper@SpokaneCounty.org

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff, v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ, Defendants.	.	SPOKANE COUNTY SUPERIOR COURT Case No. 23-2-04946-32

TRANSCRIPT OF 911 CALL
PRODUCED BY JACOB NIEDERQUELL
November 8, 2023

Filename: 2310168316_1
Duration: 4 minutes, 45 seconds
Location: Spokane Fitness Center North - Front Desk
110 West Price Avenue
Spokane, WA 99208

Transcription Service: CMTranscription, LLC
By: Christine Jenkins
8490 92nd Terrace
Seminole, FL 33777
(732) 930-8737
Electronically Sound Recorded

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

SPOKANE FITNESS CENTER NORTH - FOYER/FRONT DESK

NOVEMBER 8, 2023, 11:37 A.M.

AUTOMATED VOICE: Wednesday, November 8, 2023, 11:37 and 46 seconds.

OPERATOR: 911. What is the location of your emergency?

MS. KINNEY: Hi. It's not a big emergency. I'm calling from the Spokane Fitness Center. I have a gentleman that will not leave the premises. We've told him a couple of times, at least five different times -- sorry -- that he cannot be in our facility without wearing proper shoes and --

OPERATOR: Okay. Just to confirm, I have the address of the Spokane Fitness Center at 110 West Price Avenue; is that correct?

MS. KINNEY: Yes.

OPERATOR: And your best callback number, 509-467-3488?

MS. KINNEY: Yes.

OPERATOR: Okay.

MS. KINNEY: He just won't leave, and we've told him those are our policies. He needs to wear shoes. He refuses to and he said he will not leave.

OPERATOR: And is there any weapons there?

MS. KINNEY: No.

OPERATOR: Are you wanting him formally trespassed or

just moved along?

MS. KINNEY: Yeah. I would like that trespass, yes.

OPERATOR: All right. Just updating this for our dispatchers. Where is he at on the property?

MS. KINNEY: He is now in our locker room, the men's locker room.

OPERATOR: Does he appear to be high or intoxicated?

MS. KINNEY: No.

OPERATOR: Okay. Is he a White male, Black male, Hispanic, Asian?

MS. KINNEY: White male.

OPERATOR: Twenties, thirties, forties for age?

MS. KINNEY: 37.

OPERATOR: Thank you. And do you know his name?

MS. KINNEY: It's Jacob -- I don't know if he goes by Jake or Jacob --

OPERATOR: Okay.

MS. KINNEY: Yeah.

OPERATOR: Do you know his last name by chance?

MS. KINNEY: I do. I'm seeing if he checked in here real quick. Jacob -- and I don't know how to exactly -- so it's Niederquell, I believe. Niederquell. N-i-e-d-e-r-q-u-e-l-l.

OPERATOR: Thank you. Do you have his middle initial or date of birth?

MS. KINNEY: One second. Date of birth is January 31st. And did you ask me something else? Sorry.

OPERATOR: Do you have his middle initial by chance or the year that he was born?

MS. KINNEY: 1986, and I don't have his middle initial.

OPERATOR: No problem. And he's a member there, correct?

MS. KINNEY: Yes.

OPERATOR: And can I get your first and last name?

MS. KINNEY: My name is Kara, K-a-r-a, Kinney, K-i-n-n-e-y, but unfortunately I have somewhere I need to be so I have a --

OPERATOR: That's okay.

MS. KINNEY: -- someone else here. Okay. Okay. Good.

OPERATOR: Okay. Who is going to be there to speak to law enforcement?

MS. KINNEY: Brandon -- or, excuse me. Gosh. His name is Brayden. Brayden Smith.

OPERATOR: And what's his middle initial and date of birth?

MS. KINNEY: I'm not sure. I don't know if I can find that.

OPERATOR: That's okay.

MS. KINNEY: Hang on one -- I know his birthday is October 2, 2002, I believe.

OPERATOR: All right. I'm just getting it all updated since they're going to want to speak to an employee so we can get him formally trespassed.

MS. KINNEY: Okay. Yeah. That would be --

OPERATOR: All right. Just to confirm, I have them coming to 110 West Price Avenue at the Spokane Fitness Center.

MS. KINNEY: Yes.

OPERATOR: All right. I have that request in for you. If anything escalates or changes, feel free to call us back.

MS. KINNEY: Okay. I will. Thank you so much.

OPERATOR: Thank you. Bye.

MS. KINNEY: Mm-hm. Bye.

AUTOMATED VOICE: Wednesday, November 8, 2023, 11:42 and 11 seconds.

(Whereupon, at 11:42 a.m. the recording was concluded.)

Certificate

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Plaintiff;

3. This transcript is a true and correct record of the recordings to the best of my ability;

4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

5. I have no financial interest in the litigation.

/s/ Christine Jenkins October 16, 2024

Christine Jenkins

Seminole, FL

CET #1050

SPOKANE COUNTY SHERIFF

FIELD CASE REPORT

CASE# 2023-10168316

REPORTING DISTRICT: SC13

EVENT

REPORTED DATE/TIME	OCCURRED INCIDENT TYPE	LOCATION OF OCCURRENCE
11/8/2023 11:37	Trespass	Spokane Fitness Center 110 W PRICE AVE Spokane, WA
OCCURRED FROM DATE/TIME	**OCCURRED THRU DATE/TIME**	
11/08/2023 11:30	11/08/202311:30	

OFFENSES

	STATUTE/DESCRIPTION	COUNTS	ATTEMPT/COMMIT

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)					NON-DISCLOSURE
Adult	Complainant	KINNEY, KARA SUE					N
DOB	**AGE or AGE RANGE**	**ADDRESS (STREET, CITY, STATE, ZIP)**					
09/13/1965	58	110 W PRICE AVE Spokane, WA					
RACE		**SEX**	**HEIGHT or RANGE**	**WEIGHT or RANGE**	**HAIR**	**EYE**	
White		Female	5'5"	112	Blonde	Blue	
DL NUMBER/STATE		**PRIMARY PHONE**	**PHONE #2**		**PHONE #3**		
43G [redacted]	WA	(509)467-3488 Work					

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)					NON-DISCLOSURE
Adult	Person	NIEDERQUELL, JACOB					N
DOB	**AGE or AGE RANGE**	**ADDRESS (STREET, CITY, STATE, ZIP)**					
01/31/1986	37	3722 E ERMINA AVE Spokane, WA 99217					
RACE		**SEX**	**HEIGHT or RANGE**	**WEIGHT or RANGE**	**HAIR**	**EYE**	
White		Male	5'11"	230	Brown	Hazel	
DL NUMBER/STATE		**PRIMARY PHONE**	**PHONE #2**		**PHONE #3**		
43G [redacted]	WA	(541)659-4785 Cellular Phone - Person					

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)					NON-DISCLOSURE
Adult	Person	BAGBY, CHRISTINE M					N
DOB	**AGE or AGE RANGE**	**ADDRESS (STREET, CITY, STATE, ZIP)**					
05/16/1968	55	3722 E ERMINA AVE Spokane, WA 99217					
RACE		**SEX**	**HEIGHT or RANGE**	**WEIGHT or RANGE**	**HAIR**	**EYE**	
White		Female					
DL NUMBER/STATE		**PRIMARY PHONE**	**PHONE #2**		**PHONE #3**		
		(509)655-7753 Cellular Phone - Person					

ASSOCIATED CASES

2023- 2023- 2023-
2023- 2023- 2023-

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth E	11/08/2023

SPOKANE COUNTY SHERIFF

CASE# 2023-10168316

FIELD CASE REPORT

ADDITIONAL SUBJECTS

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE
Adult Person	SMITH, BRAYDEN A	N

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)
10/02/2002	21	110 W PRICE AVE Spokane, WA 99208

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE
White	Male				

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3
	Work (509)467-3488		

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

NARRATIVE

On 11-8-2023, at approximately 1230 hours, I responded to the Spokane Fitness center, 110 W Price Ave for a possible trespassing issue. The complainant, Kara Kinney, was reporting she wanted a male in the facility trespassed for not wearing shoes after being asked to put shoes on and he refused.

Prior to arrival, I read through the call note which stated Jacob Niederquell, the subject in question, often says he has a disability to avoid wearing shoes in private businesses reference SPD case #2023-20202485. In this call, Lt Kendall references RCW 49.60.215 and in this RCW, it clearly states a person with a sensory condition is a protected person. It also states the following:

"That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice."

In reviewing the Americans with Disabilities Act, it says every structure shall be modified, if applicable, its structure to accommodate persons with disabilities. Whereas a structure out of compliance shall make any area reasonably accessible to those individuals with disabilities.

Upon arrival, I contacted Jacob and his partner, Christine Bagby, in the lobby of the fitness center. Jacob said he had a sensory condition in which he was unable to wear shoes. He started to recite several RCW's and WAC codes stating this was an illegal act and in fact, it was a criminal offense for them to even call the police to have him removed. I told him it would only be illegal if I removed him without proper cause and only then, his recourse would be to civilly sue the establishment for violating his rights. I told him my job was to protect both his rights as a citizen and the rights of a business owner. After listening to Jacobs side of what was going on and the RCW's I reviewed, I found no grounds to remove him from the facility other than he was not wearing shoes when asked to do so.

I contacted Brayden Smith, who was acting on behalf of the complainant, Kara Kinney. I asked if there was anything else besides Jacob not wearing shoes as the reason, they wanted him trespassed. He said he did not know but would call his manager. She said it was their policy for all patrons to wear shoes while in the fitness center. RCW 49.60.215 also states if a place can show the accommodation would endanger the health and safety of other patrons, they can refuse entry. I found there was no such restriction in the fact the only accommodation which would be needed is to allow Jacob to not wear shoes therefore, this exemption does not apply. The only reason the fitness center wanted Jacob trespassed was because he refused to wear shoes. I advised Brayden I would not be able to trespass Jacob today as the only reason was, he would not wear shoes. I told them what they decided to do after this was up to them but if they chose to revoke his membership, he could sue them. I told him he might want to speak to management about it prior to do this as it would open them up to civil suit. I relayed the information I told Brayden to Jacob, and I would not be trespassing him today.

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

NARRATIVE (continuation)

Based on my investigation, I found no reasonable, or legal grounds, to trespass Jacob and this was a civil issue between both parties. This report is for informational purposes only.

Case settled by report.

D. A. Hansmann #59-2222

All statements in this investigation are paraphrased by the investigating Officers. Paraphrased statements do not contain the entire statements. If there is any doubt about the content of the paraphrased statements, reviewers are encouraged to review the video recording of the investigation (BWC).

I certify under the penalty of perjury under the laws of the State of Washington that all statements made herein are true and accurate and that I have entered my authorized user ID and password to authenticate it. Place Signed: Spokane County WA.

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

11/08/2023 : 16:21:06 galactic\DHANSMANN Narrative: based on my investigation, there is no legal grounds to trespass jacob as it would violate rcw and the americans with disabilities act. info report completed.
11/08/2023 : 12:35:53 dasha.davis Narrative: jacob sprs: 454993
11/08/2023 : 12:35:43 dasha.davis Narrative: Subject claims that due to a disability, he has the right to enter places of business in violation of their customer expectations of required footwear.
Unlike with service dogs, which is clearly part of Washingtons Law Against Discrimination (WLAD), Chapter 49.60 RCW is silent about whether places of public accommodation must allow persons claiming a disability to go barefoot. However, RCW 49.60.215 allows businesses to refuse service to persons whose behavior or actions constitute a risk to property or other persons. This is a determination made by the proprietor in setting customer expectations, and it is not an unfair practice as long as the condition is reasonable, serves the interests of public health and safety, and applies to all persons regardless of who they are or their protected class status.
Lt Kendall - 2023-20204285

11/08/2023 : 12:35:29 dasha.davis Narrative: jacob stat -0-, [redacted]
11/08/2023 : 11:42:25 Kali.Young Narrative: CR281
11/08/2023 : 11:42:23 Kali.Young Narrative: comp wants them formally trespassed
11/08/2023 : 11:41:51 Kali.Young Narrative: comp is leaving, can speak with: Smith, Braden 100202
11/08/2023 : 11:40:41 Kali.Young Narrative: is a member but refused to wear shoes so told to leave
11/08/2023 : 11:40:26 Kali.Young Narrative: male is in locker room, male: Niederquell, Jacob umi 013186 WM
11/08/2023 : 11:38:34 Kali.Young Narrative: comp is employee, male refusing to leave, no weapons

From:	Rayfield, Tracy
To:	Jake Niederquell
Subject:	RE: 23-2-04946-32
Date:	Thursday, October 17, 2024 2:54:52 PM

You need to drop off physical bench copies.

Thanks!
Tracy

Appearing for hearing(s) by Zoom:
Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

PHYSICAL BENCH COPIES ARE REQUIRED –Physical Bench copies are due to the court at the time of filing pursuant to LCR 40(12).

Due to those with chemical sensitivities and allergies, use of *fragrances* (perfume, after shave, cologne) *is discouraged* in Courtroom *204*.

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Wednesday, October 16, 2024 4:48 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Hello Tracy,

Please find attached a copy of my Motion to Refer Witnesses and Officials for Prosecution for Perjury and Other Crimes (Show Cause), my Declaration, and attached exhibits, for Judge Anderson's review.

Thank you,
Jake Niederquell

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Wednesday, October 16, 2024 8:56 AM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Subject: RE: 23-2-04946-32

I can't give you a date until Judge Anderson reviews your Motion to Show Cause.

Thanks!
Tracy

Appearing for hearing(s) by Zoom:
Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

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From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Wednesday, October 16, 2024 8:54 AM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Hello Tracy,

The "good cause" is embedded in the motion and supported with numerous exhibits, mostly taken from the case record with relevant portions highlighted. I've done some research on this issue. So to clarify, now that I have drafted my motion and attached pertinent documentation in a declaration, my next step is to provide Judge Anderson with a copy of the motion, including all the supporting documentation, and to ask for an ex parte hearing to obtain an order of show cause, then, once the order is obtained, I file the motion and supporting declaration with attached exhibits with the clerk and serve the adverse parties with their copy, is that correct? I recognize that the process is a little bit different from the process on a typical motion where I would normally file first and then serve copies for the court and the adverse parties.

Right now, I am waiting on delivery of three (3) transcripts which are cited as exhibits in the motion. I am expecting to learn something later today regarding the ETA for those transcripts. Is it possible to schedule the ex parte hearing for obtaining an order of show cause for some time next week or should we discuss scheduling after I actually receive those transcripts that I'm waiting for?

Thank you for your timely response and for your attention to this matter,
Jake Niederquell

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Wednesday, October 16, 2024 8:37 AM
To: Jake Niederquell <JakeNiederquell@outlook.com>

Subject: RE: 23-2-04946-32

A motion for contempt needs a show cause signed by Judge Anderson. You will need to email it to me for her review.

Thanks!
Tracy

Appearing for hearing(s) by Zoom:
Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
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From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Tuesday, October 15, 2024 8:32 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Thank you for getting back to me, Tracy.

I have a motion for a contempt order pursuant to RCW 9.72.090 that I need to set for hearing as well. Should that be noted for the same day and time?

Thanks,
Jake Niederquell

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Tuesday, October 15, 2024 5:13 PM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Subject: RE: 23-2-04946-32

12/6 @ 10 am.

Thanks!
Tracy

Appearing for hearing(s) by Zoom:

Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

PHYSICAL BENCH COPIES ARE REQUIRED –Physical Bench copies are due to the court at the time of filing pursuant to LCR 40(12).

Due to those with chemical sensitivities and allergies, use of *fragrances* (perfume, after shave, cologne) *is discouraged* in Courtroom *204*.

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Monday, October 14, 2024 12:22 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Hello Tracy,

I still need a hearing date and time for my motion for a discretionary order pursuant to RCW 2.28.010.

Thanks,
Jake Niederquell

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Friday, October 11, 2024 4:01 PM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Subject: RE: 23-2-04946-32

I am more than happy to give you a hearing date and time once you tell me what type of motion you want set other than “non-dispositive.”

Thanks!
Tracy

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Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

PHYSICAL BENCH COPIES ARE REQUIRED –Physical Bench copies are due to the court at the time of filing pursuant to LCR 40(12).

Due to those with chemical sensitivities and allergies, use of *fragrances* (perfume, after shave, cologne) *is discouraged* in Courtroom *204*.

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Friday, October 11, 2024 3:52 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Yeah, that's an issue that needs to also be addressed but that's not what this NON-DISPOSITIVE motion is regarding. Are you unwilling to provide me with a hearing date?

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Friday, October 11, 2024 3:48 PM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Subject: RE: 23-2-04946-32

There's a CSO issued for the case which addresses timelines.

Thanks!
Tracy

Appearing for hearing(s) by Zoom:
Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

PHYSICAL BENCH COPIES ARE REQUIRED –Physical Bench copies are due to the court at the time of filing pursuant to LCR 40(12).

Due to those with chemical sensitivities and allergies, use of *fragrances* (perfume, after shave, cologne) *is discouraged* in Courtroom *204*.

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Friday, October 11, 2024 3:44 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

It is a NON-DISPOSITIVE motion, requesting the court to issue a discretionary order to manage the case proceedings.

From: Rayfield, Tracy <dept12@spokanecounty.org>
Sent: Friday, October 11, 2024 3:36 PM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Subject: RE: 23-2-04946-32

What kind of dispositive motion?

Thanks!
Tracy

Appearing for hearing(s) by Zoom:
Judge Rachelle Anderson
https://us06web.zoom.us/j/9381379727
Zoom ID #938 137 9727 – No password required Zoom Phone #253-215-8782

PHYSICAL BENCH COPIES ARE REQUIRED –Physical Bench copies are due to the court at the time of filing pursuant to LCR 40(12).

Due to those with chemical sensitivities and allergies, use of *fragrances* (perfume, after shave, cologne) *is discouraged* in Courtroom *204*.

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Friday, October 11, 2024 3:23 PM
To: Rayfield, Tracy <dept12@spokanecounty.org>
Subject: RE: 23-2-04946-32

Hello Tracy,

I need a hearing date for a non-dispositive motion.

Thanks,
Jake NIederquell

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY. Defendants.	Case No. 23-2-04946-32 **MOTION TO REFER WITNESSES AND OFFICIALS FOR PROSECUTION FOR PERJURY AND OTHER CRIMES**

PLAINTIFF, Jacob Niederquell, *pro se*, respectfully moves this Honorable Court to refer Brayden Smith, Ethan Jahn, Rod Walker, Jennifer Jerald, Kara Kinney, Whitny Norton, Gerald Kobluk, and Charnelle Bjelkengren each to the appropriate criminal prosecuting authorities for prosecution for perjury and other crimes pursuant to RCW 9A.72.020, RCW 9A.72.080, RCW 9A.80.010, RCW 9A.72.150, RCW 9A.76.080, RCW 9A.28.040 and RCW 9.72.090, which is an extraordinary request necessitated by the extraordinary facts and circumstances set forth as follows:

I. INTRODUCTION

1.1 On November 17, 2023, the plaintiff filed summons and complaint for this case. **S/N:2**. Judge Charnelle Bjelkengren was first assigned to the case. **S/N:5**. On that same day, Judge Charnelle Bjelkengren knew that due to a conflict of interest she had a duty under the Code of

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541-659-4785

Judicial Conduct to disqualify, immediately, being a member of the defendant gym. ***Id***.; *See* **Exhibit 1 pg. 3**. Judge Bjelkengren failed to recuse showing intent to interfere with the administration of justice and to advance a private interest with the case. On November 21, 2023, the defendants retaliated by canceling the plaintiff's gym membership. **S/N:6 pg. 4**. On November 27, 2023, the plaintiff filed a motion for preliminary injunction asking the court to order reinstatement of his membership and to issue an order prohibiting any further acts of invidious discrimination. **S/N:7, 17**.

1.2 On January 5, 2024, the defendants, by and through their attorney, Whitny Norton, filed opposition to the motion for preliminary injunction alleging numerous "facts" and allegations known to be false, that were also based exclusively on the attached sworn declarations of five (5) Fitness Center employees submitted as official testimony for the court. *See* **S/N:11-16**; *see also* **Exhibits 2 – 6**. Neither the defendants nor their declarants provided objective evidence to support their subjective statements. ***Id***. After preserving minimal documentation that did not support the allegations in the declarations, Fitness Center surveillance records were "overwritten" (destroyed) on a 14-day loop upon advice, or lack thereof, from Whitny Norton. *See* **Exhibit 7**.

1.3 On February 14 and on February 15, 2024, after receiving records from Spokane County Sheriff's Office, the plaintiff emailed Whitny Norton to illuminate her clients' employees' perjury in the declarations. *See* **S/N:37 pp. 10 – 12**. On February 15, 2024, the plaintiff attached objective evidence that contradicted numerous claims in the declarations – a copy of the 911 call from November 8, 2023, a copy of the deputy's official report submitted on November 8, 2023, and a clip from a recording the plaintiff made of his conversation with Defendant Kinney at the front desk of the gym on November 8, 2023. ***Id.* pg. 11**. Based on that evidence, it was unmistakable that numerous material statements sworn to by the defendants' employees were false and were submitted with intent to mislead and deceive the court.

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1.4 On February 22, 2024, the plaintiff emailed Whitny Norton again to criticize her failure to act in compliance with RPC 3.3. *See* **S/N:37 pg. 13**. Whitny Norton knew that her clients' declarations were false and were submitted intentionally to mislead and deceive the court. Whitny Norton knew that she had a duty as an officer of the court to cure the issue of perjury pursuant to RPC 3.3 but failed to do so, demonstrating that she was complicit in the crimes in progress.

1.5 On February 28, 2024, instead of doing her due diligence as an officer of the court, Whitny Norton filed a motion for withdrawal and substitution of counsel to allow Gerald Kobluk to take over with the issue of perjury still uncured. **S/N:36**. On February 29, 2024, the plaintiff filed an opposition to that withdrawal alleging several counts of professional misconduct and stating that the substitution was a strategic move calculated to shield Whitny Norton from accountability for subornation of perjury and spoliation of evidence. **S/N:37 pp. 1 – 8**. The plaintiff attached as evidence to the opposition copies of his emails to Whitny Norton on February 14 and February 15, including their attachments. **S/N:37 pp. 10 – 12**. On March 8, 2024, the plaintiff filed written objections to each of the declarations of the defendants' employees with request that the court consider and rule on those objections at the hearing scheduled for March 22. *See* **S/N:44 – 48**; *see also* **Exhibits 8 – 12**.

1.6 On March 22, 2024, the hearing began with Judge Bjelkengren declaring the conflict of interest that required her to disqualify on November 17, 2023, and at all times prior to the hearing. *See* **Exhibit 1 pg. 3**. The hearing was for the plaintiff's opposition to withdrawal and motion for injunction – two urgent and pressing matters affecting the plaintiff's legal rights. **Exhibit 1 pg. 4.** Judge Bjelkengren failed to perform her duties to disclose her conflict of interests and to disqualify prior to the hearing as a malicious tactic intended to make the plaintiff choose between waiting indefinitely to have the injunction heard or waiving conflict under duress at the hearing. ***Id***. After the plaintiff waived conflict under the duress of having to wait indefinitely to have the injunction heard, Judge Bjelkengren first addressed the opposition to withdrawal and substitution of counsel.

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Id. The plaintiff asked Judge Bjelkengren if she had reviewed the evidence he provided and she affirmed, acknowledging and affirming that she had personal knowledge of the felony crimes in progress. *See* **Exhibit 1 pp. 4 – 5**. Judge Bjelkengren also failed to report or address the perjury before the hearing in defiance of her ethical duties demonstrating her own complicity in the crimes in progress.

1.7 The plaintiff's Opposition was focused on the issues of Whitny Norton's misconduct, yet Judge Bjelkengren redirected the plaintiff away from the subject of misconduct during oral arguments while knowing the declarations were perjurious and that the attorneys made no effort to cure, further identifying Judge Bjelkengren as an accomplice in the crimes. *See* **Exhibit 1 pp. 5 – 7.** Judge Bjelkengren then deprived the plaintiff of his right to have his concerns regarding misconduct heard and considered by the court before ruling in favor of the defendants on that motion, showing bias and intent to aid, abet and conceal Whitny Norton's subornation of perjury. *See* **Exhibit 1 pg. 8.**

1.8 Judge Bjelkengren attached evidence from the opposition to withdrawal to the motion for injunction, including the 911 call recording, the deputy's official report and the plaintiff's recording, at the outset of hearing that motion. **Exhibit 1 pp. 9 – 10**. Gerald Kobluk raised an objection to the use of Plaintiff's recording for deciding the injunction due to a lack of consent from the parties recorded, indicating that Gerald Kobluk had reviewed the evidence and that he had personal knowledge of its contents, including the unequivocal evidence of perjury it contained, which he also failed to cure. **RPC 3.3**; *see* **Exhibit 1 pg. 24**.

1.9 Gerald Kobluk also knew the recording was that of a non-private conversation that occurred in public with other persons immediately present who were not party to the conversation, which was obvious in the audio and declared by his clients' employees, therefore he knew that his clients had no reasonable expectation of privacy and that his objection was without merit and lacked a lawful basis, yet he made the objection seeking the Court's aid and blessing in

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committing the crimes, violating RPC 8.4 and RCW 9A.28.040. *See* **Exhibit 2 ¶6, ¶10, ¶15**; *see* **Exhibit 5 ¶3, ¶6**; *see* **Exhibit 6** ¶7. Gerald Kobluk's objection was motivated by his personal knowledge that the recording conclusively proved the declarations to be perjurious, demonstrating his own complicity in the felony crimes and gross violation of RPC 3.3, 8.4 and RCW 9A.28.040. *See* **Exhibit 1 pp. 29 – 30**.

1.10 Judge Bjelkengren, acting in collusion with Gerald Kobluk and with intent to commit a crime, then attempted to conceal what she knew to be evidence of perjury by ruling that the non-private conversation was subject to consent requirements under the Privacy Act in defiance of Washington Supreme Court precedent. **Exhibit 1 pp. 39 – 40**, **42 – 43, 46 – 48**. Judge Bjelkengren had personal knowledge that the recording was that of a non-private conversation occurring in public and in the immediate presence of persons not party to the conversation because she reviewed the recording prior to the hearing and this fact was obvious in the audio, and because the defendants' employees also said so in their declarations. *See* **Exhibit 2 ¶6, ¶10, ¶15**; *see* **Exhibit 5 ¶3, ¶6**; *see* **Exhibit 6** ¶7.

1.11 Three (3) out of five (5) declarants stated that the interaction transpired at the front desk in front of other members of the gym, precluding any lawful finding that the recording was subject to consent under the Privacy Act. Judge Bjelkengren's error was not merely an oversight or mistake, but instead was calculated to interfere with the administration of justice. Being aware of the plaintiff's limited training and experience with litigation, and of his difficulties with finding a lawyer to assist with the case in any capacity, Judge Bjelkengren saw an opportunity to take advantage and seized it.

1.12 Then, having personal knowledge of perjury, and while acting under color of Washington State law, Judge Bjelkengren ignored all of the plaintiff's evidence – the 911 call, the deputy's official report, the plaintiff's recording, and the plaintiff's numerous objections to the declarations filed on March 8 – and relied exclusively on the perjurious defense declarations to "justify"

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deprivation of the plaintiff's rights to due process, to equal protection of the laws, to equal access to goods and services in places of public accommodation and to reasonable accommodation for his diagnosed disability. *See* **Exhibit 1 pp. 11 – 13, 19 – 21, 29 – 30, 32 – 34, 39 – 40, 43, and 46 – 48**. Judge Bjelkengren also relied on subjective statements of speculative risk despite there being a complete lack of objective evidence of any actual risk ever posed by the plaintiff – which is legally necessary to warrant nonservice – in defiance of RCW 49.60.215, WAC 162-26-110 and related case law. *See* **Exhibit 1 pg. 46 – 47**.

1.13 During her confirmation hearing with the United States Senate on January 25, 2023, Judge Bjelkengren stated under oath:

> In my 12 years as assistant attorney general, and in my nine (9) years serving as a judge… we are the highest trial court in Washington State so I'm frequently faced with issues that I'm not familiar with, and **I thoroughly review the law**, our research, and **apply the law to the facts presented to me.** (emphasis added)
> **S.Hrg. 118-29 – Confirmation Hearing on Federal Appointments, 118th Congress, January 25, 2023.**

If this statement provided to the U.S. Senate were true, then, when considering the totality of these circumstances, there is no chance Judge Bjelkengren was unaware of the requirements under WAC 162-26-110 for warranting nonservice or of well-established Washington law pertaining to the differences between private and non-private conversations, both of which she ignored and overruled. Judge Bjelkengren had a duty to refer the offending witnesses for prosecution for perjury, and to refer their attorney, Whitny Norton, to the Washington State Bar for professional misconduct as soon as she reviewed all the materials for the motions but failed to fulfill that duty indicating that her entire decision entered on March 22, 2024, was deliberate misconduct. Therefore, Judge Bjelkengren, acting in conspiracy with the defendants and their lawyers, did knowingly and deliberately abuse the office of Superior Court Judge to interfere with the administration of justice, to advance a private interest, and to aid, abet, and conceal felony perjury and other offenses, to which she was accomplice, on March 22, 2024.

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1.14 Neither Whitny Norton nor Gerald Kobluk have made any attempt to cure the issue of perjury before or since the hearing on March 22, 2024, despite the plaintiff's numerous allegations supported with evidence in pleadings and exhibits on other matters. *See* **S/N:56, 61, 69, 84, 87, 91**. Spokane Superior Court perpetuates Judge Bjelkengren's misconduct by continuing to aid, abet, and conceal, behind a veil of civil procedure, the commission of the herein alleged crimes to the clear benefit of the defendants and their lawyers, necessitating Plaintiff's bringing of this motion.

1.15 On September 24, 2024, Gerald Kobluk filed the defendants' opposition to the plaintiff's motion for leave to amend the complaint. *See* **S/N:89**. Paragraphs 10 and 11 in Kobluk's Opposition indicated that he had reviewed the contents of a recording that was obtained on November 8, 2023, implied that the recording was objective evidence of the events of that day, disclosed that the allegations in the Complaint matched that evidence, and then pleaded it wouldn't be fair to require his clients to have to admit to the facts derived from that excluded evidence. The fact that the evidence proves beyond a reasonable doubt that his clients' employees committed perjury, plus the fact he admitted to having personal knowledge of that evidence, equals an admission of guilt as to his ongoing complicity in the commission of perjury and related offenses.

1.16 RPC 3.3 provides: "A lawyer shall not knowingly offer evidence that the lawyer knows to be false." Gerald Kobluk's involvement in the conspiracy to commit perjury and related offenses is well-established. It appears he was assigned to the case to fight this specific issue. His criminal conduct has been knowing and willful the whole time. It would create a severe miscarriage of justice for this Court to allow the witnesses and their accomplices to continue to advance a criminal approach to defending this action, therefore it is appropriate for the Court to refer the witnesses and their accomplices for prosecution and to enter an order of contempt.

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II. EVIDENCE

2.1 Brayden Smith testified, "[h]e did not give me a reason for his request, ask for an accommodation, or disclose a disability," and "I called him back to the front desk and explained that I had contacted management and confirmed he had to wear shoes as it was the gym policy for health and safety reasons." **Exhibit 2 ¶3**. This statement is false because it contradicts Kinney's declaration and the email she attached as Exhibit A in it, and it is unsupported by the destroyed Fitness Center surveillance records. *See* **Exhibit 6 ¶5, pg. 9 para. 2**; *see also* **Exhibit 8 ¶3**.

2.2 Brayden Smith testified, "I complied by giving him my manager's email address. After that, he went to the locker room, and I didn't see him workout that day. I was shocked and worried about what was going to happen. Confrontations like that are not normal at the gym. It was surprising to see someone act like that." **Exhibit 2 ¶4**. This is a complete fabrication because:

> When I was about to leave the North location, after activating my new membership, the young man who helped me set up the membership informed me that he had received a text message from you stating that I would not be allowed to access the facilities due to a conflict between a dress code policy and my need for reasonable accommodation on account of my documented sensory issues (i.e., I don't wear shoes). He indicated the concern is that modifying your policy might create additional liability for your company.
> **Exhibit 6 pg. 9 para. 2**.

2.3 Brayden Smith testified, "Kara approached him and requested that he wear shoes, pursuant to the gym policies in place for the health and safety of all members." **Exhibit 2 ¶6**. This is false testimony contradicted by **Plaintiff's audio recording**. *See* **Exhibit 13**. Kinney stated, "if you can't wear something on your feet, we will have to just cancel your membership," and when informed that the company would be sued for that she said, "[t]hat's fine, go ahead. Because we do have our own policies and that is our policy to keep **YOU** safe." (emphasis preserved) When asked by the plaintiff, "So what you're saying is you intend to break the law, violate my rights, intentionally, after being informed what the law is and what the circumstances of this case are?"

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"Kara" reiterated, "Yes! The owners would like us to—like you to follow our policy to keep **you** safe." (emphasis preserved)

2.4 Brayden Smith testified, "Because Jacob outright refused to engage in a civil conversation, yelled, and resisted Kara's efforts to de-escalate the situation, she asked him to leave. He refused." This is false testimony intended to mislead and deceive the court and is contradicted by the **audio recording,** by the **911 call from November 8, 2023,** and by the responding deputy's **official report.** *See* **Exhibit 13;** *see* **Exhibit 14;** *see* **Exhibit 15.** Plaintiff's behavior, including tone, is audibly appropriate and civil while Kinney is heard being unreasonable and threatening in the audio. The plaintiff did not yell at "Kara" at any point in the interaction. Kinney attempted to coerce the plaintiff by threatening to call the police and the plaintiff calmly informed her that she could be personally sued for punitive damages pursuant to RCW 4.24.345 if she did, and that's when Kinney asked the plaintiff to leave. Deputy Hansmann also documented, "the only reason the fitness center wanted Jacob trespassed was because he refused to wear shoes." ***Id***.

2.5 Kinney testified, "I informed him that his membership was terminated. His membership was terminated because of his self-proclaimed proclivity to violent outbursts coupled with his outrageous and threatening behavior during our previous interaction." **Exhibit 6 ¶12**. The **audio recording** proves conclusively that the plaintiff did not engage in any "outrageous and threatening behavior during our previous interaction," indicating that Kinney's assertion at ¶12 is false and intended to mislead and deceive the court. During "our previous interaction" Kinney did say, "if you can't wear something on your feet, we will have to just cancel your membership," indicating that plaintiff's membership was cancelled expressly due to his lack of footwear attributed to diagnosed sensory disturbances. Additionally, the **911 call audio from November 21, 2023**, indicates that the plaintiff's membership was cancelled upon advice from Whitny Norton. *See* **Exhibit 16**.

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2.6 Brayden Smith, Ethan Jahn, Jennifer Jerald and Kara Kinney all stated that the plaintiff, "raised his voice" and was behaving aggressively after Kinney informed him that his membership was canceled, and that the police had to be called because of that behavior. **Exhibit 2 ¶12; Exhibit 3 ¶4 – 5; Exhibit 4 ¶6; Exhibit 6 ¶13**. The **911 call audio from November 21, 2023**, indicates those were all lies intended to mislead the court. *See* **Exhibit 16**. On the 911 call, the dispatcher asked Kinney twice if the plaintiff was yelling and behaving aggressively, Kinney said, "No," and then explained that the plaintiff's membership was cancelled because her lawyer – Whitny Norton – told her she could cancel his membership. ***Id***.

2.7 Brayden Smith, Ethan Jahn, Jennifer Jerald and Kara Kinney each vaguely allege repeatedly that the plaintiff behaved aggressively. **Exhibit 2 ¶4, ¶6 – 7, ¶11 – 12, ¶14**; **Exhibit 3 ¶3 – 5, ¶8; Exhibit 4 ¶3, ¶6 – 8, ¶12, ¶14; Exhibit 6 ¶8, ¶12 – 13, ¶16, ¶19, ¶21, ¶23**. Yet, they each fail to articulate any specific acts that pose any risk to anybody. Additionally, none of the preserved surveillance records show any signs of aggressive behavior. The Fitness Center destroyed the surveillance records of most of the plaintiff's visits. Had the plaintiff actually behaved in any aggressive manner, those records would have been preserved. The defendants destroyed the surveillance records specifically because they couldn't be used to support the subjective claims in the declarations but could be used by the plaintiff to impeach the declarants. The issue of spoliation was properly brought before the court on March 8, 2024, yet has gone unaddressed ever since. *See* **Exhibit 8 ¶6, ¶12, pg. 6 para. 2**; *see* **Exhibit 9 ¶3, ¶5, pg. 5 para. 2**; *see* **Exhibit 10 ¶12**; *see* **Exhibit 11 ¶14**; *see* **Exhibit 12 ¶13, ¶22, pg. 8 para. 1**; *see also* **Exhibit 7**.

2.8 Kinney testified, "if any member acted in the threatening, aggressive, and intimidating manner Jacob did our reaction would have been the same…our actions were in no way motivated by his alleged sensory issues." **Exhibit 6 ¶23**. This is obviously false testimony intended to mislead the court. Each declaration identifies Plaintiff's bare feet as the main point of contention

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and indicates that the plaintiff was repeatedly confronted by staff about the issue. *See* **Exhibit 2 ¶3 – 4, ¶6;** *see* **Exhibit 3 ¶3, ¶9;** *see* **Exhibit 4 ¶3, ¶10, ¶12 – 13;** *see* **Exhibit 5 ¶3 – 4, ¶7, ¶14;** *see* **Exhibit 6 ¶5 – 8, ¶12, ¶18 – 21, ¶23**. Kinney knew the plaintiff did not wear shoes due to sensory issues. **Exhibit 6 ¶5, ¶8, ¶16 – 17, pg. 9 para. 2, 5**. The plaintiff responded to each instance of harassment by citing statutes and administrative codes intended by the legislature to protect him. *See* **Exhibit 2 ¶4, ¶6, ¶8, ¶12;** *see* **Exhibit 3 ¶5;** *see* **Exhibit 5 ¶3 – 5, ¶10, ¶14;** *see* **Exhibit 6 ¶5, ¶8, pg. 10 – 12**; *see also* **Exhibit 13**. Each declaration subjectively alleges Plaintiff was aggressive, intimidating, outrageous, etc., without articulation of specific acts that are objectively those things and/or without objective evidence to support those allegations. *See* **Exhibit 2 ¶6 – 7, ¶11 – 12, ¶14;** *see* **Exhibit 3 ¶3 – 5, ¶8;** *see* **Exhibit 4 ¶3, ¶6 – 8, ¶12;** *see* **Exhibit 5 ¶14;** *see* **Exhibit 6 ¶8, ¶12 – 13, ¶16, ¶19, ¶21, ¶23**. Jerald indicated that the plaintiff responded to each confrontation from staff in the same manner. *See* **Exhibit 4 ¶7**. Kinney and Smith both testified that the plaintiff responded aggressively and outrageously on November 8, 2023. *See* **Exhibit 2 ¶6 – 7, ¶11;** *see* **Exhibit 6 ¶8, ¶12, ¶16, ¶19, ¶21**. Plaintiff's recording proves conclusively that his behavior was appropriate, calm, non-threatening and reasonable when confronted by staff, when citing legal authorities in response, and when opposing discrimination and harassment. *See also* **Exhibit 13**. Smith testified that the plaintiff yelled at Kinney. **Exhibit 2 ¶7**. Plaintiff's recording proves conclusively that the plaintiff did not yell at anyone. When asked by dispatchers if the plaintiff was "yelling" or otherwise behaving violently/aggressive, Kinney denied both times on November 8, 2023, and November 21, 2023. *See* **Exhibit 14**; *see* **Exhibit 16**. Kinney indicated to emergency services and law enforcement that the only reason she wanted the plaintiff trespassed was because of his sensory issues, without raising any allegations of "threatening, aggressive and intimidating" behavior. *See* **Exhibit 14;** *see* **Exhibit 15**. When the deputies refused to trespass the plaintiff on November 8, they advised the gym not to cancel Plaintiff's membership due to his lack of footwear without consulting with

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their lawyers. *See* **Exhibit 15**. Kinney stated on November 21 that she cancelled Plaintiff's membership because her lawyer said she could. *See* **Exhibit 16**.

2.9 Plaintiff's audio recording from November 8, in conjunction with the corresponding 911 call audio and the responding deputy's report, objectively proves: **1)** the plaintiff's behavior was appropriate, calm, civil, non-threatening, rational and reasonable when confronted by staff regarding his bare feet; **2)** that the shoes issue was pressed for the plaintiff's own safety; **3)** that the defendants' actions were entirely motivated by intolerance for plaintiff's sensory condition; **4)** that the defendants' acted knowingly, maliciously and deliberately unlawfully to harm the plaintiff; and **5)** that the declarations are littered with false material statements knowingly provided with intent to mislead and deceive the court throughout. Additionally, no objective evidence exists to support any of the subjective, vague and remote/speculative claims of the declarants, but objective evidence does exist to unequivocally disprove those claims. *See* **Exhibit 13;** *see* **Exhibit 14;** *see* **Exhibit 15.**

2.10 Jennifer Jerald made several ambiguous, speculative, subjective, unclear, unqualified and vague statements in her declaration, unsupported with objective evidence and contradicted by objective evidence brought before the court, or by statements of the other declarants, indicating that she did not know what she was talking about and that her declaration was intentionally false, inflammatory and specifically intended to defame the plaintiff. *See* **Exhibit 4 ¶3 – 5, ¶7 – 8, ¶10, ¶12 – 14**; *see also* **Exhibit 10 ¶1, ¶3 – 8, ¶12 – 14, pp. 7 – 8**. Despite the overwhelmingly speculative and subjective nature of Jerald's declaration, the complete lack of objective evidence to support Jerald's claims, the contradictions between Jerald's statements and objective evidence submitted to the court, the contradictions between Jerald's statements and those of other declarants, and the plaintiff's numerous objections, Judge Bjelkengren primarily relied upon Jerald's declaration for determining, "Mr. Niederquell was removed, and it was because of his behaviors, in violation of the contract, and just in violation of basic expectations of human

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interactions in public, that Mr. Nierderquell's membership was terminated." **Exhibit 1 pg. 47**. Judge Bjelkengren made this determination based entirely on subjective claims that were conclusively disproven by the objective evidence of the 911 call audio, Deputy Hansmann's official report, and the plaintiff's audio recording, and were unsupported by any objective evidence produced by the declarants. Judge Bjelkengren's conduct appears to be hate motivated.

IV. LEGAL STANDARD

RCW 9A.72.080 provides: "Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false."

RCW 9A.72.020 provides: "A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law."

RCW 9A.72.150 provides:

> A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she destroys, mutilates, **conceals,** removes, or alters physical evidence **with intent to impair its** appearance, character, or **availability** in such pending or prospective official proceeding. (emphasis added)

RCW 9A.76.080 provides:

> "A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who **has committed** or is being sought for **a class B** or class C **felony** or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision." (emphasis added)

RCW 9A.76.050 provides:

> A person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she **knows** has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she: (emphasis added)
>
> (3) Provides such person with money, transportation, disguise, or **other means of avoiding discovery or apprehension**; or (emphasis added)
>
> (4) Prevents or obstructs, by use of force, **deception,** or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or (emphasis added)

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> (5) **Conceals**, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person. (emphasis added)

RCW 9A.80.010 provides: "A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege he or she intentionally commits an unauthorized act under color of law, or he or she intentionally refrains from performing a duty imposed upon him or her by law."

RCW 9A.28.040 provides: "A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement."

RCW 9.72.090 provides:

> Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney.

V. CONCLUSION

Based on the foregoing facts, evidence and applicable law, it is clear that: 1) the declarants submitted declarations containing numerous materially false statements specifically intended to mislead and deceive the Court; 2) that Whitny Norton and Gerald Kobluk knew about the perjury; 3) that spoliation of evidence did occur; 4) that Whitny Norton is responsible for the destruction of evidence; 5) that Whitny Norton, Gerald Kobluk and Charnelle Bjelkengren each had an ethical duty and legal obligation to cure perjury and spoliation; 6) that the actors acted in concert to interfere with the administration of justice, to advance a private interest, and to commit perjury and related offenses; and 7) that this Court should grant this motion and refer Brayden Smith,

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Ethan Jahn, Rod Walker, Jennifer Jerald, Kara Kinney, Whitny Norton, Gerald Kobluk and Charnelle Bjelkengren for prosecution for perjury and related offenses, and should issue the appropriate orders for contempt.

DATED THIS ___Day of October, 2024.

JACOB NIEDERQUELL
Plaintiff
541-659-4785

JACOB NIEDERQUELL
3722 E. Ermina Ave.
Spokane, WA 99217
541-659-4785

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY. Defendants.	Case No. 23-2-04946-32 DECLARATION OF JACOB NIEDERQUELL

I, JACOB NIEDERQUELL, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify to the matters contained herein.

2. I am the plaintiff in the above-entitled action.

3. Attached herein are the exhibits cited in Plaintiff's Motion to Refer Witnesses and Officials for Prosecution for Perjury and Other Crimes.

4. Attached hereto as Exhibit 1 is a true and correct copy of the transcript from the hearing on March 22, 2024, with Judge Bjelkengren presiding. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

JACOB NIEDERQUELL
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Spokane, WA 99217
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5. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Brayden Smith filed on January 5, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

6. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of Ethan Jahn filed on January 5, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

7. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of Jennifer Jerald filed on January 5, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

8. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration of Rod Walker filed on January 5, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

9. Attached hereto as Exhibit 6 is a true and correct copy of the Declaration of Kara Kinney filed on January 5, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

10. Attached hereto as Exhibit 7 is a true and correct copy of Defendant Cavender's supplemental answers and responses to Plaintiff's first set of interrogatories and requests for production of documents tendered to Defendant Cavender. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

11. Attached hereto as Exhibit 8 is a true and correct copy of Plaintiff's Objection to the Declaration of Brayden Smith filed on March 8, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

JACOB NIEDERQUELL
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Spokane, WA 99217
541-659-4785

12. Attached hereto as Exhibit 9 is a true and correct copy of Plaintiff's Objection to the Declaration of Ethan Jahn filed on March 8, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

13. Attached hereto as Exhibit 10 is a true and correct copy of Plaintiff's Objection to the Declaration of Jennifer Jerald filed March 8, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

14. Attached hereto as Exhibit 11 is a true and correct copy of Plaintiff's Objection to the Declaration of Rod Walker filed March 8, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

15. Attached hereto as Exhibit 12 is a true and correct copy of Plaintiff's Objection to the Declaration of Kara Kinney filed March 8, 2024. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

16. Attached hereto as Exhibit 13 is a true and correct transcript of the audio recording submitted as evidence for Judge Bjelkengren's consideration at the hearing held March 22, 2024. The transcript contains the full and unedited interaction between the plaintiff and Defendant Kinney on November 8, 2023. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

17. Attached hereto as Exhibit 14 is a true and correct transcript of the 911 call audio from Defendant Kinney's call to emergency services on November 8, 2023, submitted as evidence for Judge Bjelkengren's consideration at the hearing held March 22, 2024. The transcript contains the full and unedited interaction between Defendant Kinney and the

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911 call operator on November 8, 2023. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

18. Attached hereto as Exhibit 15 is a true and correct copy of Deputy Hansmann's official report submitted by Deputy Hansmann on November 8, 2023, after he concluded his investigation and cleared the scene in response to Defendant Kinney's call to emergency services, which was submitted as evidence for Judge Bjelkengren's consideration at the hearing held March 22, 2024. The exhibit contains the full narrative and report provided by Deputy Hansmann and sworn under oath at the time of his filing the report. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

19. Attached hereto as Exhibit 16 is a true and correct transcript of Defendant Kinney's call to emergency services on November 21, 2023. The transcript contains the full and unedited interaction between Defendant Kinney and the 911 call operator on November 21, 2023. Portions relevant to Plaintiff's motion are highlighted for the Court's consideration.

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

DATED this _____ Day of October, 2024

_____
JACOB NIEDERQUELL
PLAINTIFF

JACOB NIEDERQUELL
3722 E. Ermina Ave.
Spokane, WA 99217
541-659-4785

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL
Plaintiff,

v.

THE FITNESS CERNTER, INC., d/b/a SPOKANE FITNESS CENTER, and M3K, LLC, and JOSEPH G and ALISON J FENSKE, and GENE CAVENDER and KARA S and ERIC W KINNEY, and FREDERAL R and TRISHA A LOPEZ,
Defendants.

No. 23-2-04946-32

HONORABLE CHARNELLE BJELKENGREN
VERBATIM REPORT OF PROCEEDINGS
MARCH 22, 2024

APPEARANCES:

FOR THE PLAINTIFF: Jacob Niederquell, Pro Se

FOR THE DEFENDANT: GERALD KOBLUK
Attorney at Law
510 W. Riverside Ave, #300
Spokane, WA 99201

Holly M. Draper, CCR No. 1976
Official Court Reporter
1116 W. Broadway, Department No. 2
Spokane, Washington 99260

VERBATIM REPORT OF PROCEEDINGS

March 22, 2024

THE COURT: All right. I have two motions presented to me for this afternoon in the matter of Jacob Niederquell. And did I pronounce your name correctly?

MR. NIEDERQUELL: Niederquell, Your Honor.

THE COURT: Niederquell, versus the Fitness Center, Spokane Fitness Center, Alison Fenske, Gene Cavender, and Kara and Eric Kinney, Case No. 23-2-0494632.

And Mr. Kobluk is representing the defendants. Mr. Niederquell is representing himself.

I do want to make the parties aware that I am a member of The Fitness Center. I don't know anybody named. I have no relationship with any of the defendants other than simply being a member, and so I wanted to put that on the record in case anybody wanted to disqualify me from this matter. I can assure you that my membership would not affect my ability to be fair and impartial in this matter.

Do you have any concerns, Counsel?

MR. KOBLUK: I have none.

THE COURT: Do you have any concerns?

MR. NIEDERQUELL: Did you say you don't know anybody involved, any of the named parties?

THE COURT: I don't know anybody involved. I've just been there before, that's all.

01:35 Are you okay with me hearing the case, or do you want me disqualified? And it's no offense if you want me disqualified.

MR. NIEDERQUELL: I don't think that's necessary.

01:36 THE COURT: So you'd like to proceed?

MR. NIEDERQUELL: Yes, ma'am.

THE COURT: All right. And so the two motions that are presented are a motion to object to the substitution of counsel. Whitny Norton withdrew, and

01:36 Mr. Kobluk, am I pronouncing your name correct?

MR. KOBLUK: Kobluk.

THE COURT: Kobluk, thank you, has substituted. And there is an objection to that, and then there's a motion for a preliminary injunction. So

01:36 I'll hear the objection to the notice of withdrawal first. And so, Mr. Niederquell, when you're ready you can stand at the podium and present your objection.

MR. NIEDERQUELL: Okay. First, I would like to ask if the Court has had an opportunity to review the

01:37 documentation that I've provided, the physical evidence?

THE COURT: Yes, and I should have gone, actually, gone through that to begin with. So I have reviewed everything. First, I'll start with just the motion that you're going to -- your objection to the
01:37 withdrawal and substitution of counsel. I've reviewed the notice, the amended notice, the objection to motion to withdraw, and the declaration of Ms. Norton, of Mr. Kobluk, and there is -- just one moment, a response, I believe.

01:38 MR. NIEDERQUELL: And objection to the declaration of Ms. Norton.

THE COURT: Yes. Yes.

MR. NIEDERQUELL: I don't see her here, but --

01:38 THE COURT: And she wouldn't be here because she's already withdrawn from the case, but you can go ahead and present your argument.

MR. NIEDERQUELL: Well, I objected to her declaration at paragraph 5 because she declares under
01:38 penalty of perjury, quote: "I have at all times acted with the utmost integrity, professionalism in regard for the rules for professional conduct," unquote. And that struck me as quite dishonest, because we had some correspondence early on in November, early on in the
01:38 case, where I first pointed out some misconduct

involving a nonlawyer legal assistant providing legal advice to Spokane Fitness management, which resulted in further rights, depravation, and injuries and damages, and the production of a notice of trespass. It's improperly formatted and is missing some key things that are required by state law.

I don't believe that the attorney of record provided such an inadequate notice. I believe that it was the rookie, nonlawyer legal assistant who provided the advice for that notice. And so under RPC's, that's misconduct. That was the first point that I addressed in my objection.

The second point, or, well, the second point is kind of like the first point, in that the same nonlawyer legal assistant provided a letter to Spokane Fitness management that was also shared with Spokane County Sheriff's Office deputies when they were called to remove me on November 21st.

THE COURT: Okay. I'm going to stop you there, because some of what you're going to get into, I'm anticipating, is the actual motion for preliminary injunction.

Right now, I just want to hear why you are in disagreement with Ms. Norton withdrawing and Mr. Kobluk substituting as counsel.

Is there a legal basis that that can't happen?

MR. NIEDERQUELL: Well, I'm suspicious of the perjury that's in this particular case, that it came from Ms. Norton's office rather than from the staff at Spokane Fitness, specifically. I think I went over in my objections to their declarations, I believe I went over why I'm suspicious of that, and it has to do with the fact that a legal assistant at Ms. Norton's firm drafted those declarations that were signed by those staff, and there was some concerning verbiage that was consistent from declaration to declaration that was inconsistent with the facts of the case that was drafted by the same person, if that makes sense.

THE COURT: Do you have any response to the defendant's declarations regarding the basis for the substitution?

MR. NIEDERQUELL: I'm sorry?

THE COURT: There's --

MR. NIEDERQUELL: Oh, for the basis for Mr. Kobluk taking over?

THE COURT: Yes.

MR. NIEDERQUELL: Well, I don't really have an objection for that. The only -- the only thing that I'm concerned about is whether or not Spokane Fitness

had coverage for intentional acts and whether they declared the intentional act that caused this case to come into being when they contacted their insurer.

THE COURT: Okay. Thank you.

01:42 And I don't need to hear from counsel on this. I have reviewed your declaration and I am going to approve the withdrawal and substitution that have previously been filed for the reasons that are set out specifically in the declaration of Mr. Kobluk.

01:42 He has been retained by the insurance company, and so he is allowed to substitute pursuant to CR 71, and there's simply no legal basis that the court -- for the Court not to approve that based on what I've been presented. So I am going to deny the objection, I

01:43 guess, and I am going to allow Mr. Kobluk to represent the defendants in this matter, which brings us to the plaintiff's motion for preliminary injunction.

MR. KOBLUK: Did you want a quick order?

THE COURT: Yes.

01:43 MR. KOBLUK: I didn't see one in the file from previous counsel, but I've got one. I did have a signature line in there for Ms. Norton, but not knowing if she was going to be there or not.

THE COURT: Okay. The Court has signed the

01:44 order allowing withdrawal and substitution of counsel.

So next, moving to the plaintiff's motion for preliminary injunction. I have received that motion, as well as Mr. Niederquell's exhibits that he's attached to the motion, and defendant's opposition and
01:44 defendants have submitted a number of declarations and Mr. Niederquell has objected to the declarations, and he's provided an objection as to each individual. That's what I have. Just one moment. I need to double check something, so just thank you for your patience.
01:46 All right. Am I missing anything that you filed?

MR. NIEDERQUELL: Just the e-mail exhibits that were filed with the objection on the withdraw.

THE COURT: Okay. So we've moved on from
01:46 the objection to withdraw.

I did get some exhibits attached to your motion for preliminary injunction, and that did include a letter. And what e-mail are you referencing?

MR. NIEDERQUELL: The e-mails that I sent
01:46 Ms. Norton in February.

THE COURT: You want me to --

MR. NIEDERQUELL: Pertaining to the perjury and the declarations?

THE COURT: Do you want me to consider that
01:46 as part of your preliminary motion?

MR. NIEDERQUELL: Yes, Your Honor. I mean, it pertains directly to the declarations that were submitted in opposition to this motion.

THE COURT: Okay. I see that. You may proceed with your motion, and so I will give each party 15 minutes. You can go ahead.

MR. NIEDERQUELL: Okay. I prepared what I want to say on this. So I'm not a lawyer, I'm doing the best I can to advocate for my rights in the absence of someone trying to do this, and I have a lot to learn. I've probably already learned about as much about this process since the case started as I knew going into it, and I believe I will only get better in time.

Getting right to it, to be eligible for preliminary injunction, the moving party must establish that he has -- A, that he has a clear legal or equitable right, B, that he has a well-grounded fear of immediate invasion of that right, and C, that the acts complained of are either resulting in or will result in actual or substantial injury to him. This is from *Bellevue Square LLC v Whole Foods*, Washington Court of Appeals 2018.

THE COURT: Mr. Niederquell, you're doing pretty good but I just wanted to remind you that I have a court reporter in front of me, and she's taking down every word that's said in the courtroom so just try to

go a little bit slower.

MR. NIEDERQUELL: Oh, okay.

THE COURT: Thank you.

MR. NIEDERQUELL: An injunction does not issue as an absolute right and is granted only on clear showing of necessity. But if the elements of necessity and irreparable injury are proven, it is the Court's duty to grant the injunction, *Holmes Harbor Water Company Inc. V Page,* Washington Court of Appeals 1973.

It is clear from the pleadings and from the legal authorities relied upon therein that I have a legal right being deprived of me in this case and that I have a well-grounded fear of immediate and continued invasion of that right based on the threats issued by the defendants, and that the acts I'm complaining of in this motion have already resulted in and are continuing to result in actual substantial injuries for me.

Namely, I have constitutional rights to be free from discrimination in places of public accommodation to the full enjoyment of, quote, "all goods, services, benefits, privileges, accommodations and facilities of places of public accommodation, and to exercise personal liberty to choose which businesses I will transact with to meet my personal needs or wants."

Under the 14th Amendment to the US

constitution, and under Article 1, section 12 of the constitution of the state of Washington, I have the right to equal protection of the laws, which includes the protections guaranteed to me under chapter 49.60 RCW and Title 3 of the ADA.

The acts of the defendants have created irreparable harm to me because they have deprived me of these constitutionally secured rights without due process and because such assaults on my personal dignity cannot be remedied simply with money damages. See *Floeting vs. Group Health Coop*, Washington Supreme Court, 2019. Preliminary injunctions are most commonly used to protect and preserve the constitutional rights of parties because violations of constitutions protections are inherently injurious beyond the scope of remedy of monitory damages.

A preliminary injunction is one of the most powerful tools of the courts to ensure fairness and equity throughout the litigation process. The primary purpose of preliminary injunctions used in civil cases is to restore and/or preserve status quo, the last peaceable state preceding a controversy during the litigation of the matter.

In this case, status quo, the last peaceable state preceding the controversy was the period between

November 1st, 2023, and November 7th, 2023, when I made daily use of Spokane Fitness Center facilities without being subject to discrimination, harassment, or other abuses.

01:51 On November 7th, when an employee passed along a message from the manager to me to the effect of a refusal to accommodate my medical needs, in violation of WAC 162-26-080, and especially on November 8th when the manager stated clearly and concisely on record, 01:51 quote, "If you can't wear anything on your feet, we will just have to cancel your membership," unquote. Stated that she knowingly and intentionally was breaking the law and violating my rights, quote, "for your safety," unquote. Challenged me to hold her and her company 01:51 accountable for knowing and intentional lawbreaking, and then violated RCW 4.24.345 by unlawfully summoning law enforcement to aid with that fulfilling purpose.

THE COURT: Mr. Niederquell.

MR. NIEDERQUELL: That's when this 01:52 controversy began.

THE COURT: I do have a question for you. So you indicated that you were told that you were going to be -- there was a refusal to accommodate your medical needs. And so I'm asking if there's anything that you 01:52 can point to in the e-mails or the letters that indicate

legally reasonable.

A refusal to accommodate the reasonable needs of a person covered under chapter 162-26, Washington Administrative Code, and under chapter 49.60 RCW constitutes unlawful discrimination, and employers are strictly liable for that cause of action when employees refuse to accommodate for the needs of customers. Upon introducing herself to me on November 8, 2023, defendant Kinney stated on record, quote, "If you can't wear anything on your feet, we will just have to cancel your membership," unquote, to which I replied, quote, "you can't do that, that's against the law," unquote.

Kinney went on to explain that the rule existed for my safety and that she wanted me to follow Spokane Fitness policy to keep me safe.

Defendant Kinney clearly had not received adequate training on the ADA and Washington law against discrimination sufficient from knowing that, quote, "Risk to the person with a disability is not a reason to deny service," unquote.

When she made that statement on record, Washington Administrative Code 26-100, after I filed this motion, defendants responded and included five declarations sworn to, signed, and submitted by Spokane

Fitness staff, which declarations all contain perjury.

I have provided the Court with evidence for its consideration to determine that all five declarations contain perjury, including a copy of the police report authored by Deputy Hansmann which substantially contradicts numerous statements made by Spokane Fitness staff in their declarations.

Namely, Spokane Fitness staff make numerous assertions that I behave myself, quote, "aggressively," or quote, "intimidating," on November 8th, 2023, when Kinney first knowingly and intentionally summoned law enforcement unlawfully.

They also stated falsely in their declarations that subsequent confrontations resulted in aggressive behavior, that law enforcement were summoned because of my behavior, etcetera.

THE COURT: You have one minute left.

MR. NIEDERQUELL: I'm almost done. Spokane Fitness has dramatically and repeatedly changed its story for why they refused to accommodate my medical needs. First, they refused to accommodate out of a concern for some unspecified potential increase of liability. Then they refused to accommodate out of concern for my own safety. Then they changed it to unsubstantiated and unprovable claims that being

barefoot created immediate and likely risk of substantial harm to others, all before settling on the clearly false and misleading claims that my behavior was aggressive or even inappropriate without evidence to support that claim and despite evidence that refutes it.

It is common for defendants in discrimination cases to raise pretextual defenses to the allegations, and when they do it is common for those defendants to change their explanations multiple times while looking for something, or anything, to stick, as defendants in this case have clearly also done.

I have provided the Court with digital evidence for its consideration which proves conclusively that Spokane Fitness Center and staff engaged in numerous acts, quote, "which directly or indirectly results in any distinction, restriction or discrimination, or refusing or withholding from me the admission, patronage, custom presence or frequency," unquote, or which made me feel unwelcome, unsolicited or undesired, that they engaged in those acts knowingly and intentionally, depriving of me of my constitutional rights and that they committed serious criminal offenses in an attempt to get away with all that knowing and intentional lawbreaking.

The Supreme Court in Washington held in

proper foundation, it's not admissible.

Plaintiff relies heavily on a recording. He indicates statements on the record. There is no record. Plaintiff indicates that he provided digital evidence to prove his case. Again, nothing provided under oath.

And the recording that was provided was a recording that was made that did not have the consent of the parties being recorded. It was a secret recording, and as such, it violates RCW 9.73.030, and is therefore illegal and inadmissible in all courts pursuant to 9.73.050.

In some of the written materials that plaintiff cites to an exception in that statute that certain unlawful requests or demands can be recorded without advising the other party, that's not what that exception says. The exception actually says it's for conversation, it's -- quote, "which convey threats of extorsion, blackmail, bodily harm, or other unlawful requests or demands."

And Washington Supreme Court, and then recently Division 3 have interpreted that phrase "unlawful requests or demands" to mean that it must be strictly construed and limited only to acts of a similar nature to a threat for extorsion, blackmail, or bodily injury. So this interpretation that the exception is

work with him to reasonably accommodate, if he needed to be, you know, there are some areas obviously where shoes wouldn't be an issue, like the pool deck or the sauna or things like that. But other areas, the gym, the cardio room, places where the health issues are prevalent, they were willing to work with him, but plaintiff was not willing to engage in any discussion of what the accommodation would be.

And then the fourth element, the necessary element, the substantial factor element. Again, the plaintiff bears the burden to show that his disability was a substantial factor for causing termination of his membership, and that's completely lacking here.

The Fitness Center acted to enforce a facially neutral rule and a policy. It exists for the health and safety of its members and staff. And as provided in the declarations, again, which are not contested with any contrary declarations or statements under oath, the plaintiff was not terminated because of his alleged sensory issues, he was terminated because he was disrespectful towards staff which they interpreted as being aggressive and intimidating.

He admitted his propensity on day one when he sent the e-mail to the general manager, he admitted in that e-mail that he had a propensity for violent

outbursts. There were repeated business disruptions in which he claimed: You can't keep me from going barefoot.

And that behavior is what led to the police having to be called on two separate occasions, and there was a complete disregard for health and safety --

MR. NIEDERQUELL: Object to that too.

MR. KOBLUK: -- and policy and written rules that he had already agreed to. So the tactile hypersensitivity was not the reason for his termination, and that's confirmed by the undisputed declarations in the file.

And finally, for an injunction to issue there must be no adequate remedy at law. An injunction is to prevent the occurrence of a substantial, irreparable injury. It's not to remedy a completed wrong that's already happened.

Similarly, and as acknowledged by the plaintiff, an injunction is to preserve the status quo. The status quo in this case is the plaintiff's membership has been terminated and he has been trespassed from the facility.

And if those actions are wrong, he has a legal remedy, and he has exercised that remedy by filing a lawsuit for money damages.

laws of the state of Washington that the foregoing document entitled Exhibit B, C or D is a true and correct copy of the same document, and I did certify that they are evidence. There's -- they should absolutely be accepted as evidence, each of my exhibits that I filed on this.

I've provided with -- I provided the Court with the digital evidence, the recording that I attached to an e-mail that I sent Ms. Norton prior to Mr. Kobluk's taking over of the case. And in that e-mail there was a recording that was lawfully obtained under the exception that he referenced in the statute that shows that Ms. Kinney knew that what she was doing was unlawful, that she was depriving me of my rights intentionally, and that she was challenging me to attempt to hold her accountable.

Ms. Kinney started her declaration talking about how I paid for my gym membership, and I am almost certain, and I know this is speculative, but I'm almost certain this had something to do with her brazen approach on November 8th when she expressed knowingly and intentionally violating my rights and challenged me to hold her responsible, because lawsuits are expensive, and attorneys' fees are even more expensive. And so I think it's improper for Mr. Kobluk to assert that the

police were called because of behavior, especially on November 8th. When you've reviewed the recording, you can see that there's no sign of behavior warranting a refusal of service, much less a call to emergency services.

And if you review Deputy Hansmann report that he filed in his official report from that call, he says explicitly that the only reason they wanted me removed was because I don't wear shoes. And so I would ask the Court to strongly consider the pretextual nature of any claims of behavior or any such arising substantially from that point or especially related to that point by the defense.

And I'm having a little bit of a confusion moment here, bear with me. Oh, also, I am diagnosed with autism spectrum disorder, without intellectual or language impairment, requiring substantial support. It is level 2 ASD diagnosis, and under the statutes of the state of Washington, I am considered a vulnerable adult. Therefore, the defendant's actions are absolutely deplorable and abusive, and the purpose, according to the Supreme Court of Washington, for the existence of laws that ban discrimination in place of public accommodation is, quote, "to vindicate" the injuries to personal dignity that surely accompany not being allowed

the same access that other people have.

The defense has said that I was treated substantially the same as anyone else was treated, but I didn't see anyone else being confronted by staff while they were doing their workouts, or anything like that, and being harassed about their appearances or anything of that nature.

I didn't see other people being told that they would have police called on them, you know, and being -- having a scene created in front of other members, I didn't see that happening for anybody but me. I'm the only person being treated that way. I opened up the opportunity for Spokane Fitness management to communicate with me discretely, appropriately, and in writing through e-mail on November 1st.

Spokane Fitness management decided that they would rather embarrass me and harass me in front of other members by causing a scene, and they caused a scene on at least two occasions when they unlawfully summoned law enforcement to hurt me and to deprive me of my rights.

When Kara Kinney, on November 21st, informed me that she was canceling my membership, she leaned forward into my face and smiled the biggest smile to tell me she was canceling my membership.

someone who wears shoes and happens to be barefoot in that section of the facility.

THE COURT: Okay. Thank you. Can you wrap up your argument, then.

02:29 MR. NIEDERQUELL: I think I covered everything. I'm not entirely sure, but I'll go ahead and wrap it up.

THE COURT: Well, you can look at your notes. I want to make sure you have said everything you

02:29 need to say.

MR. NIEDERQUELL: Well, what bothers me is when you review the recording that was lawfully obtained because it has substantial evidence, number one, of perjury in the declarations. But number two, that

02:29 Ms. Kinney was attempting or actually trying to use the call to law enforcement to coerce me into surrendering rights, which is a crime under RCW 9A.36.070, it's the crime of coercion, and that this was a type of harassment that occurred of a repeat nature. And so

02:30 those are two of the three exceptions that are in the statute. I was the only one who was under obligation to consent as one party to the conversation, and you get a real authentic perspective on what was going through the mind of the defendant at that time.

02:30 She wanted to use police to coerce me. She

didn't think that I could hold her accountable, and apparently now with all of the perjury and behavior claims and all of that, she thought she could simply lie to the court to get away with it.

02:30 And in that recording she explicitly said that the reason why that particular rule exists was for my safety. And she said that twice, she reiterated that.

If the rule exists for my safety, or for the 02:31 safety of other people who come in and it's for their safety that they need to have shoes on, which is what she very clearly said, then under WAC 162-26-110, that is not a reason to deny me access.

THE COURT: Thank you.

02:31 MR. NIEDERQUELL: Thank you, Judge.

THE COURT: Just quickly, Mr. Kobluk. Mr. Niederquell said only one party needs to consent. I'm looking at 9.73.030, it appears as though all persons need to consent. What is your --

02:31 MR. KOBLUK: Yeah, Washington is one of the strongest statutes in the country in that regard. It's a two-party consent; everybody. Otherwise, it wouldn't exist.

THE COURT: Thank you.

02:32 MR. NIEDERQUELL: Your Honor?

extremely inconvenient hour; or D, which relate to communications by hostage, barricaded person -- which doesn't fit here -- whether or not the conversation ensues. Okay. These conversations under this exception may be recorded with the consent of one party to the conversation, i.e. mine.

THE COURT: Thank you. I just need a couple of minutes here. All right. Thank you for your patience. The Court has in mind the briefing of the parties, the attached declarations, including the exhibits of Mr. Niederquell, Exhibits A, B, C, and D, and I have considered those as well.

And you referenced an e-mail that was attached to your corresponding motion. To begin with, the standard in this matter for a preliminary injunction, both parties set out the standard in their briefing, and an injunction is considered extraordinary relief and is meant to prevent irreparable injury. In order to obtain an injunction, it must be established that there's a clear legal or equitable right. And in that regard, the Court looks at whether or not the petitioning party is likely to prevail on the merits of their claim. So I'll get to that in a moment.

But additionally, there has to be a well-grounded fear of immediate invasion of that right,

and also that the acts complained of will result in actual or substantial injury.

So with respect to the law that applies in this case, I have to look at whether Mr. Niederquell is likely to prevail on the merits of this matter. And again, I'm just giving a sort of preliminary ruling. This is not my ultimate ruling in the matter. This matter is scheduled for trial in March of next year, which is quite away's out, and that's why Mr. Niederquell is bringing his motion at this time. But I'm only making a ruling based on the limited evidence I have before me, and I agree with Mr. Kobluk that there is not a lot of evidence presented by Mr. Niederquell at this point. He is making substantial objections to the declarations that were presented by the Fitness Center, and he did provide those exhibits, which I have considered, but other than that I anticipate that at trial he'll have more substantial evidence to present.

But based on what I've been presented at this time, I'm going to go through the law that applies. And in order to establish discrimination in a place of public accommodation, RCW 49.60 applies, and there must be a showing that the person has a disability and that the defendant is a place of public accommodation.

He was set on wanting an absolute exception to the policy. But even if I found that Spokane Fitness discriminated against him by failing to provide services, ultimately, his disability was not a substantial factor in this situation. The reason he was terminated from Spokane Fitness Center was because of his aggressive interactions with multiple staff, and so I have a number of individuals indicating in these declarations that they were concerned, they were fearful, and in fact --

MR. NIEDERQUELL: Oh, really?

THE COURT: So I'll just ask you to listen closely.

MR. NIEDERQUELL: I am.

THE COURT: Try to control yourself. I understand you might not agree with these statements or my ruling.

MR. NIEDERQUELL: Can I interject something, Your Honor?

THE COURT: No, not yet. Just listen, please.

He stated, Mr. Niederquell stated to staff that he was prone to violent outbursts, and that, I believe, was in the letter that he initially had indicated to Ms. Kinney. Mr. Smith states in his

declaration that Mr. Niederquell raised his voice at Ms. Kinney; he was aggressive. Ms. Gerald states in her declaration that she actually felt as an employee she had to focus her attention on her own safety. So this --

MR. NIEDERQUELL: She's lying.

THE COURT: I understand you don't agree. I'm asking you just don't interrupt, okay, while I'm giving my ruling.

She had to focus her attention on her own safety when Mr. Niederquell was in the facility. She said that he seemed like a ticking time bomb. She states, quote: "I have never seen this kind of contempt, upheaval, and discord in the gym for 17 years. Every time Jacob came around the gym, there was discord and a scene. It was disruptive and he puts a strain on the employees."

So ultimately, law enforcement was called. Mr. Niederquell was removed, and it was because of his behaviors, in violation of the contract, and just in violation of basic expectations of human interactions in public that Mr. Niederquell's membership was terminated. And so that is the reason for the termination, it's not because of discrimination, at least that was not the substantial factor.

Again, this is only the Court's ruling on preliminary injunction. I anticipate I'll hear more evidence at a later stage of the proceeding, but also as Mr. Kobluk points out, in order for the Court to issue a preliminary injunction there has to be no adequate remedy at law. And really, what Mr. Niederquell is asking for is damages. I think he's indicating emotional damages, and so there is an adequate remedy in the form of monetary damages that he could receive if he prevails on appeal, but the Court finds that he's not likely to prevail, at least based on what I've been presented at this point.

And then I do want to comment on the evidence that he submitted in the form of a recording, and Mr. Kobluk has argued that RCW 9.73.030 prohibits this recording. It's an unlawful recording and the Court shouldn't consider it, and I have not considered it, as it was not agreed to by the individuals who are recorded. And this does require that a private conversation have the consent of all persons engaged in the conversation, and it appears to be admitted that not everybody agreed to be recorded. There are exceptions. Those exceptions do not apply here, and I do adopt the reasoning of the Division 3 case that Mr. Kobluk cited to with regard to a strict adherence to applying

EXHIBIT 2

FILED

2024 JAN -5 P 2:55

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiff;

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ.

Defendant.

NO. 23-2-04946-32

DECLARATION OF BRAYDEN SMITH

I, BRAYDEN SMITH, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify with regard to the matters contained herein.

2. I am a sales associate at Spokane Fitness Center and have been for three years.

3. My first interaction with Jacob Niederquell was November 1, 2023, when I signed him up for a membership at the gym. Jacob asked me if there would be a problem with him not wearing shoes. He did not give me a reason for his request, ask for an accommodation, or disclose a disability. I told him that he had to wear shoes in the gym

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per our gym policy, but that we had worked with a member who requested to be barefoot the past. I told him I would check with my manager to see what if I could let him go barefoot. I texted my manager, Kara, to ask. It was a pretty regular interaction until he walked away, and I saw he wasn't wearing shoes. Right at that moment, Kara texted me that we could not allow him to be barefoot in the gym. I called him back to the front desk and explained that I had contacted management and confirmed he had to wear shoes as it was the gym policy for health and safety reasons.

4. Jacob responded as though we were in a heated argument. He asserted he did not need to wear shoes, asked to speak to my manager, and quoted RCWs at me. I complied by giving him my manager's email address. After that, he went to the locker room, and I didn't see him workout that day. I was shocked and worried about what was going to happen. Confrontations like that are not normal at the gym. It was surprising to see someone act like that

5. The next time I saw Jacob, I was with my manager, Kara, at the front desk. We saw him coming in, and I told her that he was the member who wanted to be barefoot.

6. Kara approached him and requested that he wear shoes, pursuant to the gym policies in place for the health and safety of all members. Jacob raised his voice at her and condescendingly quoted the RCWs to her. He single-mindedly asserted he had a right to be barefoot. Throughout the altercation, he made his way in front of the check in desk. He blocked others from checking into the gym as he stood there berating Kara for enforcing neutral gym policy.

7. Because Jacob outright refused to engage in a civil conversation, yelled, and resisted Kara's efforts to de-escalate the situation, she asked him to leave. He refused.

8. Kara called the sheriffs, who came and asked for both sides of the story. Jacob quoted RCWs at them, which he had off hand as though he were ready for a conflict.

9. During that interaction, Jacob had a woman come to be with him. She stayed with him while he talked to the sheriffs.

10. A workout class was just finishing, so a lot of members were just walking by. Members were watching the whole scene and looked concerned about what was going on, especially when law enforcement was present. Numerous members asked me about the incident afterwards.

11. The next time I saw Jacob, he was at the front desk talking about fitness with another employee, Ethan. As their conversation ended, Kara approached them to ask Jacob to leave because his membership had been terminated due to his outrageous and rude behavior.

12. Jacob refused to leave and raised his voice at Kara. Kara attempted to explain the gym's concerns and position to Jacob, but he would only argue and quote the RCWs at her and aggressively reassert his position. When Jacob showed he would only engage disrespectfully and aggressively, Kara told him she would have to call the police if he did not leave. He still refused, and Kara ultimately had to call law enforcement.

13. He waited for them to arrive at the front desk, so I made small talk with him to try to bring down the tension. It was clear that he was agitated.

14. Sheriffs arrived, spoke to another employee, and spoke to Jacob. When they spoke to Jacob, he raised his voice at them, accused them of committing felonies and of violating their oaths. It was shocking to see someone act so aggressively with law enforcement.

15. Throughout the incident, members were giving the situation weird looks. They were clearly concerned with what was happening and were disrupted in their use of the gym. Several members asked me about what had happened.

16. Spokane Fitness Center has made other accommodations. There's another member with the same condition as Jacob. We allow that member to wear sandals or loafers when he wishes to use any part of the gym other than the locker room, pool, sauna, and showers. A couple comes in with walkers and we help them navigate the space. We have an elderly member who we even assist getting in her car. A member in a wheelchair uses different access points than other members, and we assist a blind couple in their use of our facilities. We also have a member who is a caretaker who brings the person he cares for with him.

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

SIGNED on Jan 4, 2024 in Spokane, Washington.

Brayden Smith (Jan 4, 2024 15:07 PST)

BRAYDEN SMITH

EXHIBIT 3

2024 JAN -5 P 2:55

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiff;

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ.

Defendant.

NO. 23-2-04946-32

DECLARATION OF ETHAN JAHN

I, ETHAN JAHN, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify with regard to the matters contained herein.

2. I am the front desk manager at Spokane Fitness Center and have been for two and a half years. I took a break from working at the Fitness Center for three months. My first day back was Monday, November 20, 2023.

3. On November 21, 2023, Jacob Niederquell came in to the North location of Spokane Fitness Center located at 110 W. Price Ave. I was only aware of a little bit about the situation with him; I had heard from another employee that an individual

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without shoes came in and caused a scene. I was the only one at the front desk when he was in. He asked me to do an in-body scan with him. I informed him the scan cost $15. He seemed irritated and asked for our policy on charging for the scan in writing. He stated he went to a different place that did it for him for free. He stood there for about half an hour asking me questions about fitness. I was just being nice by answering and didn't want to get very involved with him because Kara had instructed us to try to keep interactions between employees. She wanted to protect the other employees from the situation; Jacob was making members and employees uncomfortable. Jacob approached the situation aggressively and was over the top.

4. After my conversation with Jacob, Kara informed him his membership was terminated. Jacob was not happy and wanted proof we had terminated his membership. He became confrontational; he demanded written confirmation that we terminated his membership and to talk to our lawyer.

5. Kara asked Jacob to leave due to his combative behavior. He refused to leave, and Kara told him that she would have to call the police to have him trespassed if he would not leave voluntarily. Jacob again refused to leave and asserted he had a right to go barefoot, without attempting to engage in a conversation about what a possible reasonable accommodation would look like. Instead, he quoted RCWs and reasserted his position.

6. When the sheriff's deputies came inside, Jacob asked for a letter from a lawyer proving his membership had been terminated. He accused the sheriffs of obstruction of justice for turning their audio off when they were talking to each other.

7. In order to enter or exit the gym members had to walk by the front desk, where the incident was happening, and some appeared uncomfortable. Members were

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disrupted by the incident; several members came up to the desk and asked what was going on. One member, an ex-sheriff, gave an annoyed look at the situation. This took up work time at the front desk and made the atmosphere in the gym uncomfortable.

8. Normally, when members act aggressively, we address it and have a conversation about it. Recently, two members got into a verbal altercation in the locker room. I stepped in, asked them what was going on, and deescalated the situation. With Jacob, de-escalation is not possible. Any attempt to deescalate the situation is met with instant refusal and combative behavior.

9. The Fitness Center has made other accommodations to members requiring them. We accommodate a blind couple, a few members in wheelchairs, and a member who cannot use the stairs. We have one other member with a similar condition to Jacob's. He doesn't wear shoes but uses limited portions of the gym where such an accommodation is reasonable because shoes aren't in those limited areas (i.e. the pool, locker room, sauna, and showers). He wears loafers when he is anywhere shoes are required. Throughout his membership, this member has been willing to engage with us in nonconfrontational conversations about where he can and cannot be barefoot. Initially, he only used the pool and sauna, where he was able to be barefoot. When he wanted to use the weight area, we approached him about what his use of the space could look like without causing concerns for our other members. He did not become frustrated, aggressive, or confrontational with the staff. Instead, he listened to staff about the gym's concerns and worked with them to find a solution that allowed him to access the weight area without causing a safety or health risk to other members.

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

SIGNED on Jan 4, 2024 in Ethan Jahn, Washington.

Ethan Jahn (Jan 4, 2024 08:57 PST)

ETHAN JAHN

Piskel Yahne Kovarik, PLLC
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EXHIBIT 4

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff; v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendant.	NO. 23204946-32 **DECLARATION OF JENNIFER JERALD**

I, JENNIFER JERALD, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify with regard to the matters contained herein.

2. I am a personal trainer and aquafit instructor at Spokane Fitness Center. I have been working there for 13 years, and worked at the building for four years when it was a different gym.

3. My first observation of Jacob Niederquell happened when he was a brand-new member. From day one, he has been antagonistic and problematic. He refuses to

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wear shoes and makes a big stink about it when we ask him to wear shoes. Every request to him is met with an accusation that we are violating his rights.

4. The sheriffs were called on Jacob during my very first interaction with a different client. I had to apologize to her. Jacob made everything really uncomfortable.

5. He came in the day after he filed this lawsuit, right after we found out about his suit. He got some training tips from a Spokane Fitness Center employee before leaving without working out. It appeared he only came in to see how he would be treated.

6. That day Kara Kinney asked Jacob his name and informed him his membership was terminated. Since it became evident that he tries to force employees to say something while on camera, I told Kara I would stand with her while she terminated his membership. As expected, he accused her of retaliation and pulled out his phone and began recording. He asked for a written termination, to which Kara responded she would email it. He responded aggressively that anything she could say, she could put in writing now. At that point, I began recording. Jacob asked me my name, and I said my name was none of his business. He said it was because he would be subpoenaing my video for his lawsuit.

7. This is a pattern with Jacob. He reacts to any communication regarding his request not to wear shoes with aggression, becoming antagonistic rather than engaging in discussion. He pulls out his phone and says he will begin recording because his rights are violated. He never backs down. To me, it seems premeditated and aggressive.

8. I felt like I had to focus on my own safety when he was in the facility. He seemed like a ticking time bomb.

9. We have made other accommodations at The Fitness Center. For example, we open up the basement for access to individuals who cannot maneuver the stairs. We

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make sure there are clear pathways for our blind members and inform them of any changes in the pathway.

10. Most people, unlike Jacob, bring up their need for accommodation right away. My understanding is that Jacob demanded he be allowed to not wear shoes without explaining the situation or why he was requesting to violate policy.

11. Typically, members provide medical releases for medical issues when they may have flare ups during use of our facilities. This allows us to be prepared to accommodate them as necessary.

12. Jacob also likes to dominate our front desk time. He asks questions and engages in confrontations about being barefoot. He likes to tell everyone his life story and why he should not wear shoes. We are afraid of an altercation, and it takes us away from our assigned duties.

13. I try to stay away from him because he makes me uncomfortable. He's ungroomed, his clothes are dirty, and his feet are black on the bottom. He has an antagonistic demeanor; he responds with accusations when staff ask him to follow gym policy. He seems to come in looking for trouble.

14. I have never seen this kind of contempt, upheaval, and discord in the gym for 17 years. Every time Jacob came around the gym, there was discord and a scene. It is disruptive to the business and puts a strain on employees.

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

SIGNED this 29 day of December 2023 in Spokane, Washington.

JENNIFER JERALD

Piskel Yahne Kovarik, PLLC
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EXHIBIT 5

FILED

2024 JAN -5 P 2:55

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff; v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendant.	NO. 23-2-04946-32 **DECLARATION OF ROD WALKER**

I, ROD WALKER, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify with regard to the matters contained herein.

2. I am a maintenance employee at Spokane Fitness Center and have had that position for twelve years.

3. Last month, I witnessed my first incident involving Jacob Niederquell. The front desk employee told Jacob that he was not allowed in our facility if he would not wear shoes. In response, he quoted RCWs, which he had on the tip of his tongue, and sounded rehearsed.

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4. Jacob did not ask any questions. He simply said it was his right to go barefoot and that he would sue under the recited codes of the RCW if his request was denied. He even threatened that it would be a six-figure lawsuit.

5. I watched the employee inform Jacob that they would call the sheriff if that's what was needed to get him to leave. Jacob said that the sheriff's department would be liable for a lawsuit as well if they made him leave. When the sheriff's deputies arrived and were asking Jacob questions, he seemed rehearsed and repeated the RCWs again. Either this wasn't his first rodeo, or he was prepared to make it his first rodeo.

6. Members were walking in and looking at the scenario the whole time. I sensed that members felt very uncomfortable and nervous.

7. A few weeks ago, Jacob came to Spokane Fitness Center's north location. We have a new manager there, Ethan, who was not aware of Jacob's demand to go bare foot. I saw Jacob asking Ethan questions. I overheard Ethan giving free training information to Jacob and walking him around, unable to do any of his work.

8. Jacob was then asked to leave by Kara Kinney, our general manager. Jacob said he would not leave unless Kara called the sheriffs.

9. When the sheriff's deputies showed up, I talked to them and explained that this was the second time we had to call the sheriff's office after we asked Jacob to leave and he refused. I explained that we no longer wanted Jacob at the facility.

10. Jacob again threatened the officers with a lawsuit and quoted the RCWs at them. This went on for about an hour.

11. At one point, the sheriffs were standing about twenty feet from Jacob. He asked the sheriffs if they had their audio recording on. When they responded that they

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did not, he raised his voice, got nasty with them and demanded they put it on.

12. Other gym members noticed that was going on. A retired sheriff is a member and was present that day; I could tell he was appalled by the situation.

13. I was aghast and could not believe the arrogance of Jacob coming in and threatening suit while in the same sentence getting free training information from Ethan.

14. In each instance, the employees at the front desk were unable to do their work for at least an hour. Jacob's behavior is very disruptive to the business in every sense. He disturbs other members who are peacefully attempting to work out, he intimidates staff, hogs staff time by asking incessant questions, refuses to listen to requests from staff, and when his bare feet are brought up he launches into a tired of legal citations and threats of a lawsuit.

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

SIGNED on Jan 2, 2024 in Spokane, Washington.

Rod Walker (Jan 2, 2024 09:49 PST)

ROD WALKER

Piskel Yahne Kovarik, PLLC
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EXHIBIT 6

FILED

2024 JAN -5 P 2:55

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JACOB NIEDERQUELL,

Plaintiff;

v.

THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ.

Defendant.

NO. 23204946-32

DECLARATION OF KARA KINNEY

I, KARA KINNEY, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of, and am competent to testify with regard to the matters contained herein.

2. I am the general manager of Spokane Fitness Center.

3. Jacob Niederquell became a member of Spokane Fitness Center on November 1, 2023.

4. His membership is different than our typical memberships. It is paid for by insurance in the form of a three-dollar payment each time Jacob uses the gym. The

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payments are capped at $30 a month. A regular membership is usually at least $40 a month.

5. That same day I received an email from him. In that email he explained that he is prone to violent outbursts, does not wear shoes, and needed an accommodation for a documented sensory issue. He also stated that his chosen accommodation does not create any additional liability or duties of care for Spokane Fitness Center without offering to hear our perspective or discuss his demand to go bare foot. He then listed a myriad of statutes and regulations and again demanded that he go bare foot. Attached hereto as **Exhibit A** is a true and correct copy of that email.

6. Contrary to Mr. Niederquell's position, allowing a member to violate Spokane Fitness Center policy by going bare foot does pose additional liability and risk to Spokane Fitness Center.

7. I met Jacob Niederquell in person for the first time in early November of 2023 when I was at the counter at Spokane Fitness Center. He approached me and asked if I was ready to meet him. We shook hands and did introductions. He asked if I had received his email. I told him we had, but that we had to abide by Spokane Fitness Center rules and he had to wear something on his feet.

8. He didn't like that answer. He got fired up and began talking about the RCWs, that he had a sensory related disability, and other reasons he should be able to use the facility without shoes. I asked him to leave if he was not going to follow our rules or listen to me, because I could tell it would escalate if we kept the discussion going. He kept telling me reasons he should be able to be barefoot. I informed him I would have to call the police on him if he did not leave due to how aggressive he was being with me. I

was worried about what he would do next. He was very agitated. He said that was fine and to tell them he would be in the locker room or sauna when they arrived.

9. In order to avoid escalation, I called the police before I had to leave for an appointment at the Spokane Fitness Center location in the Valley. It was unfortunate. I hate to have to have a member removed; we always try to work with people. We've worked with other people to grant reasonable accommodations and have been able to have easy discussions to reach a solution. Based on my interaction with Jacob, we would not be able to work toward any solution because he insisted he get what he want and would not discuss anything other than what he demanded.

10. The next time I saw Jacob was in later November. This was after he filed his lawsuit against Spokane Fitness Center. I knew about the lawsuit and the one star review he had given us after we requested that he either discuss his requested accommodation or follow Spokane Fitness Center policy. A true and correct copy of the review is attached hereto as **Exhibit B**.

11. I watched Jacob come into Spokane Fitness Center and ask an employee, Ethan, about nutrition and fitness. I watched Ethan oblige Jacob and answer Jacob's questions.

12. I waited for Jacob to finish his conversation before asking if he was Jacob. When he responded positively, I informed him that his membership was terminated. His membership was terminated because of his self-proclaimed proclivity to violent outbursts coupled with his outrageous and threatening behavior during our previous interaction which caused us to worry about what he may do to staff or other members and his outright refusal to have a rational conversation with Spokane Fitness Center

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about his demand to go barefoot in our facility despite acknowledging our policy that requires members to wear clean shoes.

13. During my interaction with him he became frustrated and aggressive, asked for our lawyer's phone number, and informed me right then that he was recording. I asked him to leave. He refused. I told him I would have to call 911 again and have him trespassed. He refused to leave.

14. I called 911, and the police trespassed Jacob.

15. We normally make reasonable accommodations as they come. For example, we have a blind member who requested that we hold her arm and guide her around the facility so she could get a feel for it. We let her know of any changes to the facility and help her as requested. She had asked us for this accommodation. We used to have a member with the same condition as Jacob. When he initially walked in, we addressed that he wasn't wearing shoes. He explained to us what was going on with him. We had two or three conversations with this member about where foot coverings would and would not be required. These were always low-tension conversations and we came to a resolution with him that worked for both of us.

16. My experience with this member was opposite to my experience with Jacob. Jacob was aggressive and wanted to dominate any discussion with reasons he did not have to wear shoes and did not want to hear anything from me or have any back and forth discussion.

17. Further, Jacob stated that he is prone to violent outbursts due to sensory overwhelm. We cannot control the stimuli Jacob would encounter in the gym, to his feet or otherwise. Having a member who admittedly is prone to violent outbursts is extremely concern in especially in an environment where the floor can be wet, cold, hot, rough,

slimy, slippering, or any other number of sensory sensations depending on how members are using the facility.

18. Spokane Fitness Center is a business. We have all members sign or acknowledge a contract that includes our policy and rule that all members where clean shoes in the gym. Attached hereto as **Exhibit C** is a true and correct copy of Jacob Niederquell's application form which explicitly sets forth our rules:

> *RULES: I agree to the terms of this contract. I understand these rules & will abide by them. If these rules are not respected or not followed; your membership can be terminated at the club's desecration without refund. Other areas, programs & amenities of club may have additional rules or seperate guidelines, check with the front desk for current rules. Club rules are listed below but are not limited too; . . . Shirts and* ***CLEAN athletic shoes must be worn at all times. . . BE RESPECTFUL TO OTHER MEMBERS, GUESTS, AND STAFF . . .***

(emphasis added). We enforce these rules equally to all members, at all of our facilities.

19. We are trained to deal with requests for reasonable accommodation and have accommodated such requests in the past. We were willing to do so with Jacob but he would not engage in any discussion with us. He wanted it his way only and would not hear our concerns as a business over health and safety for all members. He cared solely about his needs and became aggressive anytime his bare feet were addressed. He was not respectful to our staff or other members.

20. Within our facilities there are people whose hands come into contact with the ground frequently. We do not want these members to contract any sort of virus, bacteria, or pathogen that can be spread by bare feet. Further, we do not want or need our members lifting weights to be concerned that other members may be barefoot. Safety is our number one priority. We need our current members to be safe and do not want to

unnecessarily expose our members to potential viruses, bacteria, or pathogens and we want to keep our members safe and comfortable.

21. We had no choice but to terminate Jacob's membership and trespass him from Spokane Fitness Center because any time we attempted to address the fact that he was bare foot he would become aggressive and irate. He would intimidate staff and disturb members trying to work out. He completely refused to have a calm, rational conversation about his requested accommodation. It was not safe or comfortable for anyone involved. Further, when Jacob was politely asked to leave he refused and stormed into the gym pacing in the locker room and spa area, further causing a scene. Members need to treat staff with decency and respect and Jacob refused to do that. We cannot have members aggressively threatening litigation and causing a scene anytime a conversation needs to be had.

22. Unfortunately, we had to trespass another person from our facilities earlier this year. A guest was intimidating members and starting fights. Intimidating other guests and staff and creating an unsafe environment within our facilities is completely unacceptable. This behavior is not tolerated.

23. In conclusion, if any member acted in the threatening, aggressive, and intimidating manner Jacob did our reaction would have been the same. This is especially true in light of the fact that the member had a self-proclaimed proclivity to violent outbursts and the member refused to comply with our reasonable requests. Our actions were in no way motivated by his alleged sensory issues.

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

SIGNED this 29 day of December 2023 in Spokane, Washington.

Kara Kinney (Dec 29, 2023 10:33 PST)

KARA KINNEY

Piskel Yahne Kovarik, PLLC
522 W. Riverside Avenue Ste. 700

Exhibit A

JakeNiederquell@outlook.com

From: Jake Niederquell
Sent: Wednesday, November 1, 2023 4:13 PM
To: Kara@spokanefitnesscenter.com
Cc: C.BagbyMSW@comcast.net
Subject: Re: Concerns of additional liability

Good afternoon, Kara,

My name is Jacob Niederquell. I activated a new membership at the North location for Spokane Fitness Center today, November 1, 2023. My intent is to use the 24-hour facilities predominantly, with some visits to the sauna/steam room at the North location, and to probably sign up for weekly/biweekly personal training sessions to track progress and maintain appropriate goal setting for the purpose of achieving the best fitness level of my life before turning 40 in the next couple of years.

When I was about to leave the North location, after activating my new membership, the young man who helped me set up the membership informed me that he had received a text message from you stating that I would not be allowed to access the facilities due to a conflict between a dress code policy and my need for reasonable accommodation on account of my documented sensory issues (i.e., I don't wear shoes). He indicated that the concern is that modifying your dress code might create additional liability for your company. Therefore, I am writing to you now to quell any concerns you may have and to hopefully answer any related questions as well.

My Washington State property and casualty insurance producer license number is (WAOIC) 1096529. Although the license is not presently active because I elected not to pay for renewal this previous January, I am still adequately trained and qualified to accurately respond to any questions or concerns you may have regarding risk and liability, especially for insurance purposes.

I am also an honor roll paralegal student on track for becoming a law student in the future, and I have a special interest in civil rights law, particularly affecting persons with disabilities. I hope that these facts will give you confidence to know that the facts and law in this correspondence are accurate and relevant to the circumstances at issue presently.

I would like to start by saying that my bare feet are not like most people's bare feet because I go literally everywhere barefoot. I watch my step, I frequently wash my feet and I have muscles and other tissues significantly more developed and trained than those who allow their feet to atrophy and sweat inside their shoes for several hours or more per day. The reason I do not wear shoes is that I have diagnosed tactile hypersensitivity and being able to feel the surfaces that I walk on informs me how to walk on those surfaces safely and effectively. I am also prone to violent outbursts due to sensory overwhelm caused by the burning and aching sensations and feelings of being trapped caused by wearing shoes.

I would also like to state unequivocally that making reasonable accommodation in the form of modification to policies, practices and procedures, in order to provide me with "same service" access to the facilities similar to any other member's access, is mandatory under Washington State and US Federal law and therefore does not create any additional liability or duties of care for Spokane Fitness Center.

Furthermore, your insurer is also bound by the same laws, rules and/or regulations, and is required to make the same modifications to any policies, practices or procedures which may impact your policy. Your

insurer is also prohibited from taking any adverse action against you, including but not limited to increasing premiums, denying claims, or cancelling coverage, in response to your complying with state and federal mandates to modify policies to provide me with access to the facilities.

Finally, failure to make reasonable accommodation when necessary to provide same service access to the facilities for persons with disabilities is defined as an "unfair practice" which carries liability for significant civil penalties (such as a $12,500 fine imposed by the State of Washington for each occurrence) and can provide cause for a private lawsuit raised by the disabled person.

For your convenience and peace of mind, I am providing the text of relevant state law, with especially pertinent sections highlighted as follows:

RCW 49.60.215 – Unfair practices of places of public resort, accommodation, assemblage, amusement—Trained dog guides and service animals.

It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of… the presence of any sensory, mental, or physical disability… PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

WAC 162-26-110 – Behavior causing risk.

(1) **Proviso interpreted.** This section interprets the following proviso of **RCW 49.60.215**:
"Provided, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice."
(2) **General rule.** It is not an unfair practice under **RCW 49.60.215** to deny a person service in a place of public accommodation because that person's behavior or actions constitute a risk to property or other persons.
(3) **Individual judgment required.** To come within this exception, the denial of service must be based on knowledge of the present behavior or actions of the individual who is not served. It is an unfair practice to exclude all persons who have a disability or who have a particular disability unless the operator of the place of public accommodation can show that all persons with the disability will present a risk to persons or property.
(4) **Likelihood of injury.** Risk to property or other persons must be immediate and likely, not remote or speculative.
(5) **Degree of risk.** Risk of injury to persons may be given more weight than risk of injury to property. Risk of severe injury may be given more weight than risk of slight injury.
(6) **Risk to person with a disability.** Risk to the person with a disability is not a reason to deny service. Law other than the law against discrimination governs liability for injury to customers with a disability. The law against discrimination affects tort liability only insofar as it includes persons with a disability within the public for which public accommodations must be made safe.
(7) **Annoyance to staff or other customers.** Annoyance on the part of staff or customers of the place of public accommodation at the abnormal appearance or behavior of a person with a disability is not a "risk to property or other persons" justifying nonservice.
(8) **Least discriminatory solution required.** It is an unfair practice to deny a person with a disability the enjoyment of an entire place of public accommodation because the person presents a risk of injury when using part of the place. When risk justifies not serving a person with a disability in the same way or same place

as other customers, the person should be served through reasonable accommodation (**WAC 162-26-060**, **162-26-080**), if possible.

WAC 162-26-080 – Reasonable accommodation.

(1) **Unfair practice to not accommodate.** It is an unfair practice for a person in the operation of a place of public accommodation to fail or refuse to make reasonable accommodation to the known physical, sensory, or mental limitations of a person with a disability or to the use of a trained dog guide or service animal by a disabled person, when same service would prevent the person from fully enjoying the place of public accommodation.

(2) **Determining reasonableness.** Whether a possible accommodation is reasonable or not depends on the cost of making the accommodation, the size of the place of public accommodation, the availability of staff to make the accommodation, the importance of the service to the person with a disability, and other factors bearing on reasonableness in the particular situation.

WAC 162-26-070 – General Rules.

These rules apply except where exempted by **RCW 49.60.215** for structural changes or behavior causing risk, or excepted by ruling of the commissioners under **WAC 162-06-030.** It is an unfair practice under **RCW 49.60.215** for any person in the operation of a place of public accommodation, because of disability or use of a trained dog guide or service animal:

(1) To refuse to serve a person;

(2) To charge for reasonably accommodating the special needs of a disabled person;

(3) To require a disabled person accompanied by a trained dog guide or service animal in any of the places listed in **RCW 70.84.010**(3) to pay an extra charge for the trained dog guide or service animal;

(4) To treat a disabled person as not welcome, accepted, desired, or solicited the same as a nondisabled person;

(5) To segregate or restrict a person or deny a person the use of facilities or services in connection with the place of public accommodation where same service is possible without regard to the disability; or

(6) To fail to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when same service would prevent the person from fully enjoying the place of public accommodation, as provided in **WAC 162-26-080**.

WAC 162-26-060 – General Principles.

(1) **Same service preferred.** The purposes of the law against discrimination are best achieved when disabled persons are treated the same as if they were not disabled. The legislature expresses this policy in **RCW 49.60.215** with the words "regardless of." Persons should, if possible, be treated without regard to their disability or use of a dog guide or service animal. This is called "same service" in this chapter.

(2) **Reasonable accommodation.** The law protects against discrimination because of the "presence" of a disability. It does not prohibit treating disabled persons more favorably than nondisabled persons in circumstances where same service will defeat the purposes of the law against discrimination.

For example, this would be true if persons in wheelchairs and nondisabled persons are equally entitled to use the stairway to reach the second floor of a store. In such circumstances, the operator of the place of public accommodation should use the next best solution: Reasonable accommodation.

A reasonable accommodation would be to permit the shopper in the wheelchair to use an elevator to reach the second floor, even though the public in general is not permitted to use the elevator. If there is no elevator and no other safe and dignified way for the customer to reach the second floor, another reasonable

accommodation would be to bring merchandise requested by the customer to the first floor. Reasonable accommodations may also include, but are not limited to, providing sign language interpreters and making printed materials available in alternate formats.

(3) **Overall objective.** People with disabilities must be afforded the full enjoyment of places of public accommodation to the greatest extent practical.

RCW 49.60.040 – Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(2) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary [genitourinary], hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(14) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

EXHIBIT 7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23-2-04946-32 PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TENDERED TO DEFENDANT CAVENDER **WITH SUPPLEMENTAL ANSWERS AND RESPONSES**

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 16:

State the names and contact information of all companies, contractors, technicians and/or sales representatives of all equipment and service providers pertaining to electronic check-in data capture and audio/video surveillance of the North and 24-hour satellite facilities, and of all Spokane Fitness Center employees or independent contractors who have access to and/or responsibility for installation, maintenance, edit, review, preservation, destruction and dissemination of audio/video surveillance records and electronic check-in (keycard) data capture.

ANSWER:

JACOB NIEDERQUELL
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Spokane, WA 99217
541-659-4785

Objection. This interrogatory is overly broad given the needs of the case, burdensome, duplicative and cumulative. To the extent not subject to objection, during the month of November 2023 there were approximately 60-90 part-time and full-time employees. Defendant set up video surveillance in-house. The camera system has an approximate 14-day overlap before the video footage is overwritten.

SUPPLEMENTAL ANSWER:

To the extent not subject to objection, Defendant Cavender installed and maintained the video/audio surveillance software. The surveillance footage is on a 14 day loop.

INTERROGATORY NO. 17:

State whether the plaintiff's electronic check-in (keycard) records for the month of November 2023, were lawfully preserved or unlawfully destroyed. If they were destroyed, state the names and contact information of the persons who ordered and performed the destruction of the evidence. If preserved, state the dates and times for each of the plaintiff's electronic check-ins at the North and 24-hour satellite facilities throughout the month of November 2023. For each instance state the following:

a) Whether the electronic check-in occurred at the North location or at the 24-hour satellite location;
b) Whether there is audio/video surveillance coverage (regardless of the existence of any recordings) of the entrance to that facility;
c) For each check-in at the North location, state whether there is audio/video surveillance coverage of the front desk;
d) Whether there is audio/video surveillance coverage of the areas where gym equipment is available for member use at the location; and,
e) The length of Plaintiff's visit to the location corresponding to each electronic check-in record.

If no such records exist, clearly state that the evidence has been destroyed.

ANSWER:

See response to RFP NO. 11.

SUPPLEMENTAL ANSWER:

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Plaintiff electronically checked-in the north side or satellite location as stated in the record previously produced. There is surveillance at the entrance, front desk and weightroom. Video/audio surveillance is automatically recorded over on a fourteen-day loop, unless specifically retrieved and saved. The dates that Plaintiff was at the front desk speaking with employees regarding his membership were retrieved and previously produced to Plaintiff.

INTERROGATORY NO. 18:

State whether the audio/video surveillance footage of Plaintiff's visits to the North location and to the 24-hour satellite location during the month of November 2023, were lawfully preserved or unlawfully destroyed. If they were destroyed, state the names and contact information of the persons who ordered and performed the destruction of the evidence.

ANSWER:

See Defendants' Fenske answer to interrogatories.

SUPPLEMENTAL ANSWER:

See supplemental answer to INT No. 17.

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CERTIFICATION

The undersigned attorney for Defendants has read the foregoing answers and hereby certifies that they are in compliance with Rule 26(g).

DATED THIS 17th day of July 2024.

22222 Pa

Gerald Kobluk, WSBA 22994
Attorney for Defendants

VERIFICATION

I am a Defendant in the above-captioned matter. I have read the foregoing answers and know the content thereof and believe them to be true and correct.

DATED THIS ____ day of July 2024.

Gene Cavender

JACOB NIEDERQUELL
3722 E. Ermina Ave.
Spokane, WA 99217
541-659-4785

EXHIBIT 8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23204946-32 OBJECTION TO DECLARATION OF BRAYDEN SMITH

THE PLAINTIFF submits his Objection to Declaration of Brayden Smith as follows:

1. Plaintiff objects to paragraph 1 due to the numerous instances of perjury committed by Brayden Smith in his Declaration.

2. Plaintiff reluctantly accepts paragraph 2 because he can neither confirm nor deny this fact.

3. Plaintiff objects to paragraph 3 because of perjury committed therein. Declarant's testimony, "created" by a Piskel, Yahne and Kovarik employee in January, 2024, directly conflicts with evidence already provided in the court record. Declarant's first count of perjury is found in

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his statement, "He did not give me a reason for his request, ask for an accommodation or disclose a disability." This testimony is clearly false, because in the plaintiff's email to Kara Kinney dated November 1, 2023, the plaintiff clearly stated that he informed the guy who helped him setup his membership of his need for reasonable accommodation due to sensory issues associated with autism. The second instance of perjury knowingly committed by Brayden Smith is found in his statement, "I called him back to the front desk and explained that I had contacted management and confirmed he had to wear shoes as it was the gym policy for health and safety reasons." This statement is proven false by the same email to Kara Kinney on November 1, 2023, which claimed that Brayden informed the plaintiff that the manager had concerns for increased liability.

4. Plaintiff objects to paragraph 4 because declarant fails to articulate specific behavior which led to his allegedly feeling "shocked and worried about what was going to happen." Subjective opinions rooted in prejudice are not evidence of objective facts. Finally, this testimony is contradicted by facts identified in plaintiff's email to Kara Kinney on November 1, 2023.

5. Plaintiff objects to paragraph 5 because it contains outright perjury. Declarant states, "The next time I saw Jacob I was with my manager, Kara, at the front desk." This is a flat out lie. Brayden Smith was working at the front desk on November 7, 2023, when he confronted the plaintiff upon entering the building seeking to use the sauna facilities, and informed him that his manager, Kara, required plaintiff to "wear something on your feet, such as flip flops or sandals." This incident is alleged in the complaint, and this paragraph in Brayden Smith's declaration appears to be perjury intended to challenge that allegation in the complaint. Additionally, the introduction of the plaintiff's recording on November 8, declares that "the guy who helped me set up my membership confronted me yesterday…" Brayden Smith demonstrates wanton disregard for the law pertaining to perjury in this paragraph.

6. Plaintiff objects to paragraph 6 because it contains perjury and inflammatory language that is not and cannot be supported by evidence. Smith declares, "Jacob raised his voice at her…"

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this testimony is utterly refuted by the digital recording submitted by the plaintiff which documented the entire interaction between plaintiff and Kara Kinney on November 8, 2023, and constitutes first-degree perjury committed by Brayden Smith. Additionally, plaintiff objects to Smith's assertion, "He blocked others from checking into the gym while berating Kara for enforcing neutral gym policy," because the defendants, presumably upon advice of counsel, have destroyed video surveillance footage of this action with intent of depriving the plaintiff of an opportunity to investigate and impeach this testimony with evidence. Plus, Brayden has already committed at least two counts of perjury in his declaration by the time the reader reaches this paragraph; without evidence to support this assertion, Brayden's testimony must be considered unreliable, at best, or more likely than not, judging by the who "created" his declaration for him, perjury suborned by his attorney of record.

7. Plaintiff objects to paragraph 7 because he has submitted digital evidence of a recording that documented the entire interaction between Kinney and himself on November 8, 2023, and Brayden's statement in this paragraph so egregiously and flagrantly conflicts with that evidence, that this paragraph alone could potentially lead to his being convicted of felony perjury.

8. Plaintiff accepts paragraph 8 insomuch as it provides evidence that plaintiff knew his rights, had legal authorities that guarantee those rights committed to memory, and was fully prepared to face this conflict, lawfully, should Spokane Fitness staff be ignorant enough to start and/or perpetuate it.

9. Plaintiff accepts paragraph 9.

10. Plaintiff accepts paragraph 10 insomuch as it provides evidence of damage to plaintiff's reputation in the community, especially among other members, which was caused by the intentional unlawful acts of Kara Kinney and Spokane Fitness Center.

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11. Plaintiff objects to paragraph 11 because plaintiff made ambitious use of the sauna facilities at the North location (where Brayden works) and the weight machines at the 24-hour satellite location between November 8, 2023, and November 21, 2023, when Brayden now declares falsely was the next time he saw the plaintiff after November 8. Also, in the recording documenting Kinney's and Plaintiff's first interaction, within the first 15 seconds of introducing herself to the plaintiff, Kinney is clearly heard saying, "if you can't wear something on your feet, we will just have to cancel your membership." This clearly marks Smith's declaration that, "his membership had been terminated due to his outrageous and rude behavior" as false testimony knowingly submitted as evidence, i.e., periury suborned by defendants' attorney of record.

12. Plaintiff objects to paragraph 12 because Brayden again makes unfounded allegations of aggressive behavior which are unsupported with evidence and conveniently can't be impeached using Spokane Fitness video surveillance footage, due to spoliation of evidence and either the intentional or negligent misconduct of Attorney Whitny L. Norton who failed to properly advise her clients of their duty to preserve that evidence, as it was created after summons and complaint were filed and served on Spokane Fitness Center. Additionally, to make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Smith fails to articulate any such overt act which could reasonably be perceived as a threat of imminent harm to a person or property. Instead, Brayden relies on vague buzzwords and unfounded allegations of vaguely "aggressive," "intimidating" or "hostile" behavior, as do other employees whose declarations were "created" by Emily Boudreau (Piskel, Yahne & Kovarik employee).

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13. Plaintiff accepts paragraph 13 insomuch as it provides evidence that the plaintiff was suffering from significant emotional distress due to the intentional unlawful acts of Spokane Fitness and staff.

14. Plaintiff objects to paragraph 14 because Deputy Bulpin made no mention of aggressive behavior, especially directed at law enforcement, and the entire issue in his report revolved around plaintiff's opposing discrimination and requiring written documentation of his membership termination before being willing to leave voluntarily. Brayden's repeated use of defamatory descriptors in his declaration that was "created" by the same Piskel, Yahne & Kovarik employee who included perjury in other employees' declarations (perhaps tastelessly redundant and wholly unsupported with evidence, at this point), renders Brayden's more adjective-enhanced accountings of events as unreliably questionable at best, or more likely than not in this case, perjury suborned by defendants' attorney of record.

15. Plaintiff accepts paragraph 15 insomuch as it provides evidence of irreparable damage to plaintiff's reputation in the community, especially among other members, which was caused by the intentional unlawful acts of the defendants.

16. Plaintiff objects to paragraph 16 because Piskel, Yahne & Kovarik apparently haven't trained their dishonest employee (Emily Boudreau) on the concept of relevance, and because this paragraph is completely irrelevant; state and federal law require all places of public accommodation to provide accommodations tailored to the specific needs of each individual with a disability (and not to the bigotry of employees/other members). A one size fits all approach to accommodating is forbidden under the ADA (ADA invokes the Supremacy Clause of the US Constitution, rendering it the binding minimum standard in all states, including Washington). Additionally, speculation from staff that another member's condition is "similar to" or "the same as" the plaintiff's condition does not justify Spokane Fitness' refusal to accommodate the expressed and specific needs of the plaintiff and does not relieve Spokane Fitness of its legal

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obligation to custom fit any accommodations provided to the "specific needs of the individual with a disability" (emphasis added).

CONCLUSION

Brayden Smith submits as fact several false statements and fraudulent misrepresentations that are unsupported with evidence throughout his signed declaration which is sworn under the penalty of perjury. On its face, this declaration could potentially be used to convict Smith of first-degree perjury (Class B felony) beyond a reasonable doubt, without any additional evidence being required. However, in pursuit of the interests of justice, the plaintiff would like to bring to the attention of the Court a common occurrence throughout the declarations signed by employees of Spokane Fitness Center. More specifically, the plaintiff would like the Court to notice that all of these declarations include a chain of custody report for the digital signatures that were obtained from declarants, and the more egregious cases of perjury (such as unsubstantiated claims of "aggressive" and "combative" behavior) were in fact "created" by the same Piskel, Yahne and Kovarik employee ("Emily Boudreau"). Taken together, this evidence suggests that it is more likely than not that the perjury in this record was suborned by the defendants' attorneys of record, even though each instance was sworn to and signed by their declarants.

Additionally, Spokane Fitness breached its duty to preserve the surveillance footage of all of the plaintiff's visits to Spokane Fitness Center, including and especially the controversial incident from November 21, 2023, which fundamentally altered status quo in this case. Due to either the intentional or negligent misconduct of defendants' attorneys of record (Piskel, Yahne & Kovarik), key evidence required for impeaching the numerous counts of perjury littering the defense declarations has been lost. It appears more likely than not that the defendants believed they could commit felony crimes, perhaps upon advice from counsel, in order to defend against this action involving flagrant and brazen knowing and intentional law violations.

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Finally, Brayden Smith has failed to articulate any overt acts committed by the plaintiff which could objectively cause a reasonable person to reasonably believe that the plaintiff posed any imminent threat to person or property, and therefore, all assertions that the plaintiff behaved "aggressively," which are unsupported with evidence, constitute perjury in the first degree (Class B felony). Also, the plaintiff has provided evidence that proves conclusively that allegations of "aggressive" and "intimidating" behavior directed at Spokane Fitness staff when confronted about his lack of footwear are patently false; the plaintiff has legal training/knowledge which substantially surpasses the collective legal knowledge of Spokane Fitness staff, especially pertaining to the issue of his disability and civil rights, and at least from November 8, 2023, he has been conscious of his need to diligently build this case. Therefore, any assertion that the plaintiff behaved in a manner that would justify non-service under the law, especially while recording his interactions, is frankly ridiculous and laughable, at best, or more likely than not in this case, first-degree perjury suborned by defendants' attorney of record.

Wherefore, the foregoing facts being well established, the plaintiff moves to strike the Declaration of Brayden Smith from being used by the defense as evidence to support any of its positions in this case, and asks the Court to allow the plaintiff to make limited use of such Declaration as evidence to support his claims of Spokane Fitness' malice and reckless disregard for his rights, his safety, his well-being and even the law, which is supposed to be binding on everyone equally, when finding for damages, including punitive damages, later. **ER 105**. The plaintiff also strongly urges the Court to refer Brayden Smith for prosecution for first-degree perjury.

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EXHIBIT 9

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23204946-32 OBJECTION TO DECLARATION OF ETHAN JAHN

THE PLAINTIFF submits his Objection to Declaration of Ethan Jahn as follows:

1. Plaintiff objects to paragraph 1 due to the numerous instances of perjury committed by Ethan Jahn in his Declaration.

2. Plaintiff reluctantly accepts paragraph 2 because he can neither confirm nor deny this fact.

3. Plaintiff objects to paragraph 3 because of several misrepresentations and vague statements made therein. Declarant fails to identify which "another individual" (employee, based on context) with whom he discussed the plaintiff's circumstances. Declarant outright lies when

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stating that he was the only person at the front desk when plaintiff arrived. The manager, Kara Kinney, and another employee, Brayden Smith, were also present at the front desk when the plaintiff arrived on November 21, 2023. Although this is not substantive, it does provide evidence of dishonesty, embellishment and declarant's wanton disregard for the law pertaining to perjury. Additional evidence to this effect is the misrepresentation that the In-Body scan cost $15. Jahn informed the plaintiff that the scan would cost $10 per use. Again, although not substantive, this embellishment provides evidence of the declarant's dishonesty and wanton disregard for the law pertaining to perjury. Also, "he ***seemed*** irritated and asked for our policy on charging for the scan in writing," (emphasis added) is a far cry from "approached the situation aggressively and was over the top." To make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Plaintiff objects to the discussion of motive behind Kinney's instructions to Jahn, namely, that she wanted to "protect" employees from the plaintiff. At no time did the plaintiff ever commit any act that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm, and at no time has any employee or member of Spokane Fitness Center articulated such an act; the plaintiff, did, however, repeatedly warn that he would bring this action should discrimination and harassment continue to be directed at him by Spokane Fitness staff, and it is reasonable to believe that Kinney may have wanted to prevent additional employees from sharing in her liability. Finally, court records indicate that on November 17, 2023, summons and complaint had already been filed against Spokane Fitness Center, and Spokane Fitness Center had a duty to preserve all surveillance footage of the plaintiff's interactions with staff from that time forward. Spokane Fitness breached that duty, upon advice of counsel, and

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destroyed the footage of plaintiff's interaction on November 21, 2023, so that it could not be used to impeach the numerous misrepresentations and false testimonies of employees in their declarations. The plaintiff also had the defendants "dead to rights" on his claims in this action by that time; it is patently absurd to even suggest that the plaintiff would jeopardize such a dominant position, especially so soon after filing this action, by engaging in behavior causing risk. Ethan Jahn's several misrepresentations and false statements in this paragraph, taken together, constitute first-degree perjury under the laws of the State of Washington. **RCW 9A.72.020**.

4. Plaintiff accepts paragraph 4, except the plaintiff never asked to speak to defendants' lawyer, he only asked to know the name of the lawyer.

5. Plaintiff objects to paragraph 5 because it contains outright perjury. Declarant states, "Kara asked Jacob to leave due to his combative behavior." By asserting, "combative behavior" declarant is swearing under penalty of perjury that plaintiff assaulted or attempted to assault somebody. No person other than Ethan Jahn has raised any claims suggesting that plaintiff assaulted or attempted to assault anyone. Neither Deputy Hansmann's nor Deputy Bulpin's reports (November 8 and November 21, respectively) make any mention of violent or aggressive behavior observed, or document any complaints that the plaintiff exhibited violent or aggressive behavior, and both records clearly indicate that Spokane Fitness staff forced or attempted to force deprivation of the plaintiff's rights specifically due to his lack of footwear and Spokane Fitness' adamant refusal to reasonably accommodate his medical condition. Additionally, upon advice of counsel, Spokane Fitness' destroyed surveillance footage of this interaction so that it could not be used to impeach the perjury committed by employees in their declarations. To even suggest that the plaintiff would jeopardize his dominant position in this case with "combative behavior" is so ridiculous, it should be criminalized. This paragraph alone should invalidate anything Ethan Jahn has to say as unreliable at best, and more likely than not, perjury suborned by the defendants' attorney of record (Whitny L. Norton).

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6. Plaintiff accepts paragraph 6.

7. Plaintiff accepts paragraph 7 insomuch as it provides evidence that the plaintiff's reputation in the community, especially among other members, was irreparably damaged by the intentional unlawful acts of the defendants.

8. Plaintiff objects to paragraph 8 because the declarant again commits perjury and demonstrates wanton disregard for perjury laws by alleging the plaintiff assaulted or attempted to assault someone (i.e. "combative behavior"). Additionally, whether other members got into a verbal altercation in the locker room (potentially actual aggressive behavior involved) bears no relevance to this case aside from providing grounds for discovery; were either of those members' memberships terminated for their aggressive behavior? The plaintiff has never been accused of committing any actual aggressive act, including engaging in verbal altercation with other members. The plaintiff has only been accused of reciting legal authorities which pertain to the circumstances and lawfully opposing unlawful discrimination when instructed to leave due to his documented and diagnosed medical condition by refusing to leave, which actions have been repeatedly dishonestly framed as aggression by Spokane Fitness staff in their declarations. *See* **RCW 9A.72.020**.

9. Plaintiff objects to paragraph 9 because it is utterly irrelevant; state and federal law require all places of public accommodation to provide accommodations tailored to the specific needs of each individual with a disability (and not to the bigotry of employees/other members). A one size fits all approach to accommodating is forbidden under the ADA (ADA invokes the Supremacy Clause of the US Constitution, rendering it the binding minimum standard in all states, including Washington). Additionally, speculation from staff that another member's condition is "similar to" or "the same as" the plaintiff's condition does not justify Spokane Fitness' refusal to accommodate the expressed and specific needs of the plaintiff, and does not relieve Spokane

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Fitness of its legal obligation to custom fit any accommodations provided to the "**specific** needs of the **individual** with a disability" (emphasis added).

CONCLUSION

Ethan Jahn submits as fact several preposterous and fraudulent misrepresentations that are unsupported with evidence or even with sound reasoning throughout his signed declaration which is sworn under the penalty of perjury. On its face, this declaration could potentially be used to convict Jahn of first-degree perjury (Class B felony) beyond a reasonable doubt, without any addition evidence being required. However, in pursuit of the interests of justice, the plaintiff would like to bring to the attention of the Court a common occurrence throughout the declarations signed by employees of Spokane Fitness Center. More specifically, the plaintiff would like the Court to notice that all of these declarations include a chain of custody report for the digital signatures that were obtained from declarants, and the more egregious cases of perjury (such as unsubstantiated claims of "aggressive" and "combative" behavior) were in fact "created" by the same Piskel, Yahne and Kovarik employee ("Emily Boudreau"). Taken together, this evidence suggests that the perjury in this record was suborned by the defendants' attorneys of record, even though each instance was sworn to and signed by their declarants.

Additionally, Spokane Fitness breached its duty to preserve the surveillance footage of all of the plaintiff's visits to Spokane Fitness Center, including and especially the controversial incident from November 21, 2023, which fundamentally altered status quo in this case. Due to either the intentional or negligent misconduct of defendants' attorneys of record (Piskel, Yahne & Kovarik), key evidence required for impeaching the numerous counts of perjury littering the defense declarations has been lost. It appears more likely than not that the defendants believed they could commit felony crimes, perhaps upon advice from counsel, in order to defend against this action involving flagrant and brazen knowing and intentional law violations.

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Finally, Ethan Jahn has failed to articulate any overt acts committed by the plaintiff which could objectively cause a reasonable person to reasonably believe that the plaintiff posed any imminent threat to person or property, and therefore, all assertions that the plaintiff behaved "aggressively," (or especially "combative") which are unsupported with evidence, constitute perjury in the first degree (Class B felony). Also, the plaintiff has provided evidence that proves conclusively that allegations of "aggressive" and "intimidating" behavior directed at Spokane Fitness staff when confronted about his lack of footwear are patently false; the plaintiff has legal training/knowledge which substantially surpasses the collective legal knowledge of Spokane Fitness staff, especially pertaining to the issue of his disability and civil rights, and at least from November 8, 2023, he has been conscious of his need to diligently build this case. Therefore, any assertion that the plaintiff behaved in a manner that would justify non-service under the law, especially while recording his interactions, is frankly ridiculous and laughable, at best, or more likely than not in this case, first-degree perjury suborned by defendants' attorney of record.

Wherefore, the foregoing facts being well established, the plaintiff moves to strike the Declaration of Ethan Jahn from being used by the defense as evidence to support any of its positions in this case, and asks the court to allow the plaintiff to make limited use of such Declaration as evidence to support his claims of Spokane Fitness' malice and reckless disregard for his rights, his safety and his well-being, when finding for damages, including punitive damages, later. **ER 105**. The plaintiff also strongly urges the Court to refer Ethan Jahn for prosecution for first-degree perjury.

DATED THIS 8 Day of March, 2024.

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EXHIBIT 10

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23204946-32 OBJECTION TO DECLARATION OF JENNIFER JERALD

THE PLAINTIFF submits his Objection to Declaration of Jennifer Jerald as follows:

1. Plaintiff objects to paragraph 1 of the Declaration because Jennifer Jerald indicates elsewhere that she did not personally witness or know the facts that she was declaring. *See* Declaration para. 10.

2. Plaintiff reluctantly accepts paragraph 2 because he can neither confirm nor deny this fact.

3. Plaintiff objects to paragraph 3 because it is too overbroad/vague, argumentative, and unsupported with evidence that has or can be produced by either party. Records show defendant's

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membership at Spokane Fitness Center started on November 1, 2023, and terminated on November 21, 2023 – a span of only three weeks. Therefore, all of the defendant's visits to the gym were as "a brand-new member." Additionally, Jerald does not clarify or specify what she means by "day one." Furthermore, "antagonistic and problematic" are too vague and subjective to qualify with evidence and constitutes an assertion that has not been and cannot be supported with evidence. Finally, the declarant starts her statement in the past tense and then ends it in the present tense, while leading into a description of the plaintiff's last visit to Spokane Fitness Center facilities, and documents that her Declaration was written almost two months later. Presumably, the declarant's "day one" assertion in paragraph 3 is meant to identify November 21, 2023, when the declarant first had any actual interaction with the plaintiff; everything pertaining to the events of any day other than November 21, 2023, in her declaration, is hearsay that is not admissible under ER 802.

4. Plaintiff objects to paragraph 4 because it is overbroad/vague, argumentative and unsupported with evidence. Jerald fails to specify which instance of law enforcement being summoned to remove the plaintiff that she is referring to in this statement. Additionally, it is improper for the declarant to "blame the victim" for the disruption and discomfort caused by police presence, when it was Spokane Fitness Center's general manager who unlawfully summoned police to force the plaintiff's removal from the premises. The plaintiff did not solicit a police response, nor was there a lawful basis for the manager, Kara Kinney, to solicit a police response. As bystanders, the declarant and her client were uncomfortable with the police action; sound reasoning dictates that the plaintiff was much more uncomfortable with that disturbance, to the point of suffering injuries and damages, even. Finally, the declarant leads directly into her description of the events on November 21, 2023, from paragraph 4, indicating that she was referring to the incident on November 21, 2023, in paragraph 4, when she stated "from day one."

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5. Plaintiff objects to paragraph 5 because it is vague and unsupported with evidence. Records show that plaintiff filed and served Spokane Fitness Center with summons and complaint for this lawsuit on November 17, 2023. Although it is true that the plaintiff visited a Spokane Fitness Center location the day after filing the lawsuit, it is untrue that the plaintiff had any interaction with Jennifer Jerald during that visit. Additionally, the declarant fails to specify whether she is referring to the day after Spokane Fitness staff were notified by owners/management that plaintiff filed a lawsuit (November 21, 2023), or the actual day after the suit was filed (November 18, 2023). The errors in recall to this point in the Declaration indicate that much of what is being declared is hearsay, or more likely than not in this case, knowingly false statements she was instructed to make in attempt to help her long-time employer escape accountability for knowingly and willfully violating the law.

6. Plaintiff accepts paragraph 6 in part and objects in part. The plaintiff was audio recording rather than video recording the incident on November 21, 2023, and the plaintiff has never used, threatened the use of or solicited or attempted to solicit the aid of anyone with intent that they use "force" to make Spokane Fitness staff do anything. The only person using, threatening the use of or soliciting the aid of anyone with intent that they use "force" to make anyone do anything was Kara Kinney who unlawfully summoned police to knowingly deprive the plaintiff of rights using force or threat of force. *See* **RCW 9A.36.070**. Additionally, plaintiff objects to declarant's claim that he exhibited any aggression. Declarant and plaintiff both recorded the interaction, and no aggression was documented by either party. To make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Declarant's unqualified statement of fact in the Declaration ("He responded

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aggressively") constitutes a statement which declarant does not know to be true and is **perjury in the first degree** when committed in a declaration submitted as evidence to the court "under penalty of perjury under the laws of the State of Washington." *See* **RCW 9A.72.020, 080.**

7. Plaintiff objects to paragraph 7 because declarant has not articulated any specific interactions with the plaintiff sufficient for establishing a "pattern" of anything and because to make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Declarant's unqualified statement of fact in the Declaration ("He reacts to any communication regarding his request not to wear shoes with aggression") constitutes a statement which declarant does not know to be true and is **perjury in the first degree** when committed in a declaration submitted as evidence to the Court "under penalty of perjury under the laws of the State of Washington." *See* **RCW 9A.72.020, 080.**

8. Plaintiff objects to paragraph 8 because declarant's statement is immaterial and conveys an irrational fear which is not supported by evidence. Additionally, such a statement is prejudicial while also being unfounded. Also, Jerald has fully demonstrated throughout her declaration that most of what she is declaring involves facts and information that she does not, in fact, have personal knowledge about, beyond whatever she came to "believe" through hearsay. Declarant has failed to articulate any overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm, and therefore has not provided any allegations which on their face could remotely support the baseless and unqualified opinions contained in paragraph 8.

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9. Plaintiff objects to paragraph 9 because it is irrelevant to proving or disproving the plaintiff's allegations.

10. Plaintiff accepts paragraph 10 only so far as to establish with evidence that declarant Jennifer Jerald does not actually have personal knowledge of the facts alleged in her declaration because her statement in paragraph 10 drastically contradicts facts provided elsewhere in evidence. *See* **S/N: 11 pages 10 through 15**.

11. Plaintiff objects to the implication in paragraph 11 that he has any expressed or implied duty to provide Spokane Fitness staff with access to his private health information as condition imposed on his access to the facilities, which privacy is guaranteed by the laws of the United States and of the State of Washington. Plaintiff had a duty under the law to inform Spokane Fitness management: a. That he had a need for reasonable accommodation. b. What accommodation he needed. c. The nature of his disability requiring accommodation. Plaintiff fulfilled these duties via email to Kara Kinney on November 1, 2023.

12. Plaintiff wholly objects to paragraph 12 because it is unfounded and untrue. Plaintiff's visits to Spokane Fitness Center facilities typically involved between two and three hours of moderate-to-intense physical exercise, and on the occasions when he visited the North location, liberal use of the steam room/sauna facilities. Less than 1% of 1% of the plaintiff's time spent on Spokane Fitness Center property consisted of the plaintiff being anywhere near the front desk. In fact, the only times the plaintiff spent any significant time at the front desk were the two occasions when Kara Kinney unlawfully summoned law enforcement, knowingly, in violation of RCW 4.24.345. Additionally, had Spokane Fitness fulfilled its duty to preserve the digital check-in data and corresponding CCTV footage documenting plaintiff's numerous visits to Spokane Fitness Center facilities this statement would unequivocally be proven to be false. It is precisely because of defendants' premeditated intent to commit perjury by making unqualified statements that can only be contradicted rather than proven with Spokane Fitness' surveillance footage, such as that

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in paragraph 12, that Spokane Fitness Center destroyed records which they had a legal duty to preserve after summons and complaint were filed and served on Spokane Fitness Center (November 17, 2023).

13. Plaintiff objects to paragraph 13 because "Annoyance on the part of staff or customers of the place of public accommodation at the abnormal appearance… of a person with a disability is not a 'risk to property or other persons' justifying nonservice." **WAC 162-26-110(7)**. Additionally, Jerald implies in paragraph 13 that Spokane Fitness' policy requiring shoes exists for aesthetic purposes. The language used by declarant in paragraph 13 also indicates that the declarant harbors animosity/malice toward the plaintiff due to his unusual appearance and lawful opposition to discrimination in places of public accommodation. Finally, declarant's assertion "he seems to come in looking for trouble" is a conclusion drawn by Jerald that is wholly unsupported by evidence.

14. **Plaintiff objects to paragraph 14 on the grounds that it is overtly and inexcusably perjury.** Declarant has articulated observing only one of the plaintiff's numerous visits to Spokane Fitness Center facilities (his last visit). The unqualified statement, "Every time Jacob came around the gym, there was discord and a scene," is an outright lie knowingly entered into the declaration and sworn under penalty of perjury. Plaintiff made numerous visits to the gym from November 1, 2023, through November 21, 2023, and on most of those occasions there was no mention of his lack of footwear, no harassment directed at him and no threats to unlawfully summon law enforcement to remove him. On only a handful of occasions a scene was caused by Spokane Fitness staff unreasonably and unlawfully by harassing him about his medical condition and need for reasonable accommodation, and on every such occasion, Spokane Fitness staff confronted the plaintiff in front of other members rather than showing reasonable discretion to approach him privately, such as in response to his email from November 1, 2023. It is clear that the intent of Spokane Fitness staff to was to perpetually make the plaintiff feel uncomfortable,

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unwelcome and unsolicited in Spokane Fitness facilities every time they harassed him about his medical condition, which harassment did not occur every time he visited the gym. There is absolutely no evidence to support the knowingly false statement submitted by Jennifer Jerald in paragraph 14, and as such, this statement constitutes the Class B felony crime of first-degree perjury committed by Jennifer Jerald. **RCW 9A.72.020, 080**.

CONCLUSION

Declarant Jennifer Jerald commits numerous acts which constitute perjury in the first degree in her declaration submitted as evidence before the Court and sworn "under penalty of perjury under the laws of the State of Washington." In paragraph 1 she declares that she has personal knowledge of the facts alleged in her declaration but in paragraphs 3, 4, 5, 7, 10, 11, 12 and 14 she demonstrates a lack of personal knowledge, and a reliance on hearsay and/or personal beliefs or assumptions made without supporting evidence, for sourcing the allegations in these paragraphs.

Additionally, Jennifer Jerald has failed to articulate any acts committed by the plaintiff which could objectively cause a reasonable person to reasonably believe that he posed any imminent threat to person or property, and therefore, all assertions that the plaintiff behaved "aggressively," which are unsupported with evidence, constitute perjury in the first degree (Class B felony). Also, the plaintiff has provided evidence that proves conclusively that allegations of "aggressive" and "intimidating" behavior directed at Spokane Fitness staff when confronted about his lack of footwear are patently false; the plaintiff has legal training/knowledge which substantially surpasses the collective legal knowledge of Spokane Fitness staff, especially pertaining to the issue of his disability and civil rights, and at least from November 8, 2023, he has been conscious of his need to build this case. Therefore, any assertion that the plaintiff behaved in a manner that would justify non-service under the law, especially while recording his interactions, is frankly absurd. Furthermore, Jerald's baseless opinions and assumptions regarding

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the intentions behind plaintiff's visits to Spokane Fitness Center facilities are unreasonable and irrational, being fully unsupported by evidence, and are also immaterial rather than admissible evidence.

Wherefore, the foregoing facts being well established, the plaintiff moves to strike the Declaration of Jennifer Jerald from being used by the defense as evidence to support any of its positions in this case, and asks the court to allow the plaintiff to make limited use of such Declaration as evidence to support his claims of Spokane Fitness' malice and reckless disregard for his rights, his safety and his well-being, when finding for damages, including punitive damages, later. ER 105. The plaintiff additionally asks the Court to refer Jennifer Jerald for prosecution for first-degree perjury.

DATED THIS 8 Day of March, 2024.

JACOB NIEDERQUELL
Plaintiff
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EXHIBIT 11

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23204946-32 OBJECTION TO DECLARATION OF ROD WALKER

THE PLAINTIFF submits his Objection to Declaration of Rod Walker as follows:

1. Plaintiff accepts paragraph 1.

2. Plaintiff reluctantly accepts paragraph 2 because he can neither confirm nor deny this fact.

3. Plaintiff accepts paragraph 3 insomuch as it provides evidence that the plaintiff knows his lawful rights and the responsibilities of agents/employees of places of public accommodation relative to those rights, and because it provides evidence of pretext in defense narratives,

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generally. Plaintiff objects, however, to Walker's lack of specificity as to the date of the interaction in paragraph 3 and of the name/position of the "front desk employee" referenced.

4. Plaintiff objects to paragraph 4 because it is inaccurate and contradicted with digital evidence lawfully obtained and submitted by the plaintiff.

5. Plaintiff objects to paragraph 5 because it contains embellishments and alleged statements made by the plaintiff which were not made in fact, and because the plaintiff has submitted digital evidence lawfully obtained which contradicts Walker's testimony in this paragraph. *See* **RCW 9A.72.020, 080.** Plaintiff further objects to subjective opinions in paragraph 5 being admitted as evidence of objective facts.

6. Plaintiff accepts paragraph 6 in part and objects in part. Plaintiff accepts that members observed the abuse plaintiff was knowingly and intentionally subjected to due to the malice of manager Kara Kinney, and the implication that such circumstances were damaging to the plaintiff's reputation in the community, especially among other members, but objects to subjective opinions and speculation as to the thoughts and feelings of those other members being admitted as evidence of objective fact.

7. Plaintiff accepts paragraph 7 in part and objects to paragraph 7 in part because answering questions pertaining to goods/services provided by Spokane Fitness Center and offering general fitness information/advice are substantially the essential functions of Ethan's position. Therefore, the assertion that he couldn't do his work, essentially because he was doing his job, is absurd.

8. Plaintiff accepts paragraph 8 in part and objects to paragraph 8 in part because it contains perjury. Spokane County Sheriff's Office records indicate that plaintiff conditioned vacating the premises upon being provided with written notice and proof of termination of his membership, and not on whether the manager unlawfully summoned law enforcement for a second count of

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violation of **RCW 4.24.345** as declared falsely by Rod Walker in paragraph 8. *See* **RCW 9A.72.020**.

9. Plaintiff accepts paragraph 9 insomuch as it provides evidence of a pattern of abuse directed at the plaintiff by Spokane Fitness staff.

10. Plaintiff objects to paragraph 10 because it contains perjury. In his official report, Spokane County Sheriff's Deputy Bulpin makes several references to the plaintiff's lawsuit and intent to sue Spokane Fitness for discrimination but does not mention any such threats to sue Spokane County Sheriff's Office. Although it is true that the plaintiff intends to hold SCSO accountable at law for the misconduct of deputies, namely for deputies deactivating their body-worn cameras while conspiring with Spokane Fitness staff to deprive the plaintiff of his lawful rights, neither the plaintiff nor defendants possess any records which corroborate the assertion made by Walker in paragraph 10.

11. Plaintiff accepts paragraph 11 in part and objects in part. Plaintiff accepts paragraph 11 insomuch as it provides evidence of official misconduct and of officers conspiring with Spokane Fitness staff to deprive the plaintiff of his lawful rights, as alleged in paragraph 10 of the present document. Plaintiff, however, objects to Walker's assertion, "he got nasty with them" on the basis that such language is subjective and vague, and is also a bit gas-lighty considering the circumstances he is describing.

12. Plaintiff accepts paragraph 12 in part and objects in part. Plaintiff accepts paragraph 12 because it provides evidence that the plaintiff's reputation in the community, especially among other members, was irreparably damaged by the intentional acts of defendants Kara Kinney and Spokane Fitness Center (which acts triggered the filing of plaintiff's Motion for Preliminary Injunction), but objects to subjectivity and speculation being accepted as evidence of objective fact; also, the member's former position or (secret) opinion is irrelevant to proving or disproving the allegations against defendants.

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13. Plaintiff objects to paragraph 13 because the subjective opinions or value judgments of Rod Walker are immaterial to proving or disproving any allegations against the defendants.

14. Plaintiff objects to paragraph 14 because it is vague, inaccurate and perjury suborned by defendants' attorney of record. Declarant Rod Walker articulates only two occasions where he had any interaction with or observed plaintiff in Spokane Fitness Center. Both interactions involved Spokane Fitness staff knowingly unlawfully summoning law enforcement with intent to infringe on the plaintiff's rights secured by the Constitutions of the United States and of the State of Washington, to unlawfully discriminate against the plaintiff, to cause the plaintiff to feel harassed, humiliated or embarrassed, to cause the plaintiff to be expelled from a location he was lawfully allowed to be, and to damage the plaintiff's reputation in the community. Any disruption to business activities caused by the presence of law enforcement is disruption that was caused by Spokane Fitness staff, and it is improper and dishonest to "blame the victim" (plaintiff) for such disruption. Additionally, plaintiff objects to the baseless allegations that, "he disturbs other members who are peacefully attempting to workout, he intimidates staff, hogs staff time by asking incessant questions" because none of these assertions are or can be supported by any evidence; and all legitimate evidence which has been gathered or submitted to date contradicts these assertions. Spokane Fitness Center has destroyed key evidence, namely surveillance footage of each of the Plaintiff's visits which contradict statements such as those made in this paragraph, with intent to deceive the Court and to enter perjury, such as the statements in paragraph 14 of this Declaration, as evidence. **RCW 9A.72.020**.

CONCLUSION

Declarant Rod Walker makes numerous subjective and vague statements, and at least a few misrepresentations which altogether constitute an unreliable declaration at best, or more likely than not in this case, perjury in the first degree. Rod Walker has also failed to articulate any acts committed by the plaintiff which could objectively cause a reasonable person to

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reasonably believe that he ever posed any imminent threat to person or property at Spokane Fitness Center. All assertions or implications that suggest the plaintiff engaged in behavior causing risk that would justify nonservice at any time while holding membership at Spokane Fitness Center are unfounded and unsupported with evidence, and evidence shows clearly that the plaintiff is more aware of his rights and responsibilities under the law than the entire collective of Spokane Fitness staff. Furthermore, Rod Walker fails to allege any facts, whether subjective or objective, that warrant a denial of service and termination of plaintiff's gym membership, and additionally provides evidence of pretext to any and all claims made by defendants that plaintiff's membership was canceled for any reason other than his need for reasonable accommodation and lawful opposition to Spokane Fitness' refusal to accommodate.

Wherefore, the foregoing facts being well established, the plaintiff moves to strike the Declaration of Rod Walker from being used by the defense as evidence to support any of its positions in this case, and asks the court to allow the plaintiff to make limited use of such Declaration as evidence to support his claims of Spokane Fitness' malice and reckless disregard for his rights, his safety and his well-being, and of applicable law when finding for damages, including punitive damages, later. **ER 105**. The plaintiff additionally asks the Court to consider referring Rod Walker for prosecution for first-degree perjury.

DATED THIS 8 Day of March, 2024.

JACOB NIEDERQUELL
Plaintiff
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EXHIBIT 12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL Plaintiff, Vs. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ. Defendants.	Case No. 23204946-32 OBJECTION TO DECLARATION OF KARA KINNEY

THE PLAINTIFF submits his Objection to Declaration of Kara Kinney as follows:

1. Plaintiff objects to paragraph 1 due to the numerous instances of perjury committed by Kara Kinney in her Declaration.

2. Plaintiff accepts paragraph 2.

3. Plaintiff accepts paragraph 3.

4. Plaintiff objects to paragraph 4 because of relevance, and adds that Kinney's leading with this fact creates reasonable suspicion that her intentional unlawful acts in this case were at

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Spokane, WA 99217
541-659-4785

least motivated in part by her disdain for the plaintiff's economic status and belief that the plaintiff couldn't afford to hold her accountable at law for discrimination and other abuses.

5. Plaintiff accepts paragraph 5 in part and objects in part. Kinney acknowledges that she received an email from the plaintiff where the plaintiff fulfilled his duties under the law: 1. To request reasonable accommodation. 2. To identify what that accommodation is. 3. To provide the nature of the disability requiring accommodation. Plaintiff objects to the inflammatory and dishonest language used to describe the plaintiff's email to her on November 1, 2023.

6. Plaintiff objects to paragraph 6 because neither Kinney, nor defense counsel, have been able to articulate any actual risk presented by modifying dress code to permit plaintiff's access, and because state law explicitly states, "Risk to the person with a disability is not a reason to deny service. Law other than the law against discrimination governs liability for injury to customers with a disability." Furthermore, in his email on November 1, 2023, the plaintiff provided his Washington State Property and Casualty Insurance Producer license number to Kinney to inform her that he was qualified to speak to the subject of liability. State records show the plaintiff scored a 100% on the commercial liability portion of his state exam for licensure. Plaintiff objects to this paragraph because Kinney is wholly unqualified to contend with plaintiff's confirmed knowledge on the subject. Also, state law states, "Risk to property or other persons must be immediate and likely, not remote or speculative." No immediate and likely risk to property or other people can be asserted absent clear evidence of open wound/infection visible on plaintiff's bare feet at the time when he seeks access to the facilities. There have been no such instances of risk in this case.

7. Plaintiff accepts paragraph 7.

8. Plaintiff objects to paragraph 8 because it contains perjury. Plaintiff has submitted digital evidence which conclusively disproves the statements of fact declared by Kinney in paragraph 8, namely any mention that police were called due to plaintiff's behavior, or any expressed or

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implied claim that the plaintiff's behavior was unruly, aggressive, intimidating, hostile, dangerous, etc.

9. Plaintiff objects to paragraph 9 because it is mostly irrelevant, and because the ADA provides, "A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual." **28 C.F.R. § 36.203(a)**. Also, the ADA provides, "Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept." **28 C.F.R. § 36.203(c)(1).** Kinney's lack of training and knowledge on the subject of reasonable accommodations required under the law does not justify nonservice or any of the intentional unlawful acts she committed. Finally, the plaintiff has provided digital evidence with proves conclusively that within the first 15 seconds of introducing herself to the plaintiff, Kinney stated, "if you can't wear anything on your feet, we will just have to cancel your membership." The law prohibits Kinney's "my way or the highway" approach to accommodating disabilities.

10. Plaintiff accepts paragraph 10 insomuch as it provides evidence that plaintiff lawfully and mindfully opposed unlawful discrimination perpetrated knowingly and intentionally by Kara Kinney and Spokane Fitness Center.

11. Plaintiff accepts paragraph 11.

12. Plaintiff objects to paragraph 12 because very clearly contains evidence of first-degree perjury, knowingly and intentionally committed by Kara Kinney. Plaintiff has never been accused of committing any overt act that could cause a reasonable person to reasonably perceive a threat of imminent harm to person or property, nor has any employee of Spokane Fitness Center articulated any such act, therefore, all claims of aggressive, violent, intimidating, dangerous, etc., behavior are pretextual, and false testimony constituting perjury. Additionally, Kinney stated within the first 15 seconds of meeting the plaintiff, "if you can't wear anything on your feet, we

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will just have to cancel your membership," to which the plaintiff replied, "you can't do that, that's against the law." Also, after Kinney continued to argue with the plaintiff about why she was refusing to accommodate his needs, the plaintiff asks, "so what you're saying is you intend to break the law, violate my rights, intentionally, after being informed what the law is and what the circumstances of this case are?" To which, Kinny emphatically replied, "Yes," and then proceeded to challenge the plaintiff to sue her for it and threatened to call the police to force the removal of the plaintiff. Finally, Deputy Hansmann stated in his official report, "the only reason [they] wanted him trespassed was because he doesn't wear shoes." This evidence clearly shows that Kinney's statements in paragraph 12 are false testimony constituting perjury in the first degree.

13. Plaintiff objects to paragraph 13 because it contains perjury. Also, Spokane Fitness had a duty to preserve video surveillance footage of the interaction described in paragraph 13 because it occurred after summons and complaint were both filed and served on Spokane Fitness Center. Presumably, acting on advice of counsel, Spokane Fitness destroyed that evidence so that it couldn't be used to impeach the testimony in the declarations regarding the events of that day. Nonetheless, to make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Kinney has failed to articulate any such overt act which can be reasonably construed as "aggression." Therefore, Kinney's statement is perjury.

14. Plaintiff accepts paragraph 15 insomuch as it provides an admission of guilt for unlawful summoning of law enforcement in violation of RCW 4.24.345.

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15. Plaintiff accepts paragraph 15 insomuch as it provides evidence of irreparable damage to plaintiff's reputation in the community, especially among other members, which was caused by the intentional unlawful acts of the defendants.

16. Plaintiff objects to paragraph 16 because it is irrelevant; state and federal law require all places of public accommodation to provide accommodations tailored to the specific needs of each individual with a disability (and not to the bigotry of employees/other members). A one size fits all approach to accommodating is forbidden under the ADA (ADA invokes the Supremacy Clause of the US Constitution, rendering it the binding minimum standard in all states, including Washington). Additionally, speculation from staff that another member's condition is "similar to" or "the same as" the plaintiff's condition does not justify Spokane Fitness' refusal to accommodate the expressed and specific needs of the plaintiff, and does not relieve Spokane Fitness of its legal obligation to custom fit any accommodations provided to the "specific needs of the individual with a disability" (emphasis added).

17. Plaintiff objects to paragraph 17 because it is irrelevant. Plaintiff never asked Spokane Fitness to control or attempt to control the stimuli in the gym, plaintiff merely asked for reasonable modification to policies, practices and procedures, which is mandatory under the ADA because it costs nothing to provide and is "readily achievable."

18. Plaintiff objects to the relevance of paragraph 18 because the ADA explicitly prohibits the use of contracts and contract terms to deprive covered persons of any rights or privileges secured by the Act, which means any contract terms in Spokane Fitness' contract with the plaintiff that can be construed to deny him access to the facilities or to deprive him of a right to reasonable accommodation and equal access are void/voidable terms that are unenforceable as a matter of law. **28 C.F.R. § 36.202(a).**

19. Plaintiff objects to paragraph 19 because it contains perjury, and because defendants have produced no evidence to prove that any Spokane Fitness employee receives training on the

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ADA and WLAD, and because Kinney refused to communicate discretely with the plaintiff about her concerns and instead "created scenes" to embarrass and harass the plaintiff and refused to respond to his email from November 1, 2023. Also, Kinney emphatically admits to intending to break the law and violate the plaintiff's rights after learning what the law required and what the circumstances of the case were; Kinney is not in any position to judge "respect."

20. Plaintiff objects to paragraph 20 because Kinney is not able to articulate any risks other than speculative or remote risks regarding "pathogens that can be spread by bare feet," nor has she investigated the higher, more dangerous concentration of pathogens that are known to be spread in and on shoes; this statement is purely pretextual and does not serve any legitimate purpose other than to antagonize the plaintiff and to dehumanize him. Also, defense counsel provided a letter to plaintiff alleging that his being barefoot in the gym posed some risk of spreading pathogens, but when scrutinized, that information proved that "safety" is not a concern at all for Spokane Fitness, if it were, areas where particularly high risk for transmission (such as locker rooms) would receive increased attention rather than relaxation of the rules; Spokane Fitness shoe policy is purely aesthetic and it is perjury for Kinney to declare otherwise, especially remotely/speculatively, and without any supporting evidence.

21. Plaintiff objects to paragraph 21 because to make an assertion of "aggression," declarant must be able to articulate some overt act committed by the plaintiff that would objectively cause a reasonable person to reasonably believe person or property were threatened with imminent harm; plaintiff merely exhibiting verbal tone or body language that indicated he was at the time suffering emotional distress does not rise to any standard which supports the declarant's allegations of aggression. Kinney has failed to articulate any such overt act which can be reasonably construed as "aggression." Therefore, Kinney's statement is perjury. Additionally, plaintiff has submitted digital evidence which conclusively proves the testimony in paragraph 21

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to be false testimony knowingly and intentionally submitted by Kara Kinney, constituting the felony crime of perjury in the first degree.

22. Plaintiff objects to the relevance of paragraph 22, also because Kinney creates a false equivalence; the only "unacceptable" acts committed by plaintiff in evidence is that he knew his rights, and advocated for those rights, lawfully, while opposing unlawful discrimination at Spokane Fitness Center, and Spokane Fitness staff made a severe error in judgement when they assumed the Plaintiff was too "poor" to hold them accountable at law. Perjury and spoliation of evidence are not lawful strategies for defending a lawsuit. A lawful strategy for avoiding liability in this case would have been to treat the plaintiff with dignity and respect and to reasonably modify the aesthetic dress code policy to provide plaintiff with "unmolested" access.

23. Plaintiff objects to paragraph 23 because declarant continues to commit perjury and to defame the plaintiff in the record, by accusing the plaintiff vaguely of aggressive behavior without articulating any overt act that would make a reasonable person reasonably believe risk of harm to person or property was imminent. Plaintiff, however, accepts Kinney's admission that she would unlawfully summon law enforcement and terminate the membership of other persons with disabilities whom she thinks can't afford to hold her accountable at law for knowingly and intentionally violating the law, who also oppose unlawful discrimination lawfully and who do not accept her "my way or the highway" approach to accommodating disabilities.

CONCLUSION

Kara Kinney submits as fact several obvious false statements and fraudulent misrepresentations that are unsupported with evidence throughout her signed declaration which is also sworn under the penalty of perjury. On its face, this declaration could potentially be used to convict Kinney of first-degree perjury (Class B felony) beyond a reasonable doubt, when compared with hc digital evidence provided by the plaintiff.

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Additionally, Spokane Fitness breached its duty to preserve the surveillance footage of all of the plaintiff's visits to Spokane Fitness Center, including and especially the controversial incident from November 21, 2023, which fundamentally altered status quo in this case. Due to either the intentional or negligent misconduct of defendants' attorneys of record (Piskel, Yahne & Kovarik), key evidence required for impeaching the numerous counts of perjury littering the defense declarations has been lost. It appears more likely than not that the defendants believed they could commit felony crimes, perhaps upon advice from counsel, in order to defend against this action involving flagrant and brazen intentional law violations.

Finally, Kara Kinney has failed to articulate any overt acts committed by the plaintiff which could objectively cause a reasonable person to reasonably believe that the plaintiff posed any imminent threat to person or property, and therefore, all assertions that the plaintiff behaved "aggressively," which are unsupported with evidence, constitute perjury in the first degree (Class B felony). Also, the plaintiff has provided evidence that proves conclusively that allegations of "aggressive" and "intimidating" behavior directed at Spokane Fitness staff when confronted about his lack of footwear are patently false; the plaintiff has legal training/knowledge which substantially surpasses the collective legal knowledge of Spokane Fitness staff, especially pertaining to the issue of his disability and civil rights, and at least from November 8, 2023, he has been conscious of his need to diligently build this case. Therefore, any assertion that the plaintiff behaved in a manner that would justify non-service under the law, especially while recording his interactions, is frankly ridiculous and laughable, at best, or more likely than not in this case, first-degree perjury suborned by defendants' attorney of record.

Wherefore, the foregoing facts being well established, the plaintiff moves to strike the Declaration of Kara Kinney from being used by the defense as evidence to support any of its positions in this case, and asks the Court to allow the plaintiff to make limited use of such Declaration as evidence to support his claims of Spokane Fitness' malice and reckless disregard

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for his rights, his safety, his well-being and even the law, which is supposed to be binding on everyone equally, when finding for damages, including punitive damages, later. **ER 105**. The plaintiff also strongly urges the Court to refer Kara Kinney for prosecution for first-degree perjury.

DATED THIS 2 Day of March, 2024.

JACOB NIEDERQUELL
Plaintiff
541-659-4785

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Spokane, WA 99217
541-659-4785

EXHIBIT 13

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff, v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ, Defendants.	SPOKANE COUNTY SUPERIOR COURT Case No. 23-2-04946-32

TRANSCRIPT OF EXCERPT OF AUDIO RECORDING
PRODUCED BY JACOB NIEDERQUELL
November 8, 2023

Filename: Spokane fitness 11.8.23 pt 1.m4a
Total Duration: 44 minutes and 45 seconds
Duration of Excerpt: 2 minutes and 25 seconds
Location: Spokane Fitness Center North - Front Desk
110 West Price Avenue
Spokane, WA 99208

Transcription Service: CMTranscription, LLC
By: Christine Jenkins
8490 92nd Terrace
Seminole, FL 33777
(732) 930-8737
Electronically Sound Recorded

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

SPOKANE FITNESS CENTER NORTH - FRONT DESK

NOVEMBER 8, 2023, 11:35 A.M.

MR. SMITH: How ya doing?

MR. NIEDERQUELL: Howdy. Is your boss in yet?

MR. SMITH: She is, yeah.

MR. NIEDERQUELL: She is? Where's she at?

MS. KINNEY: Well, I actually have to leave for the valley, in -- by -- in ten minutes, but...

MR. SMITH: She's in a bit of a hurry today, so I'm not sure --

MR. NIEDERQUELL: Hi. I'm Jake.

MS. KINNEY: Hi, Jake. How are you?

MR. NIEDERQUELL: I need my therapy today --

MS. KINNEY: Mm. Okay.

MR. NIEDERQUELL: And that's what I'm here for. So, you received my email?

MS. KINNEY: I did.

MR. NIEDERQUELL: Okay.

MS. KINNEY: Well, if you --

MR. NIEDERQUELL: Any concerns?

MS. KINNEY: Well, yeah. If you can't wear something on your feet, we will have to just cancel your membership.

MR. NIEDERQUELL: No, you can't do that. That's against the law --

MS. KINNEY: Well, it's not --

MR. NIEDERQUELL: -- you'll be sued for it.

MS. KINNEY: That's fine, go ahead because we do have our own policies and that is our policy to keep you safe.

MR. NIEDERQUELL: Yes. Do you realize that your policy is below law?

MS. KINNEY: Fine. Go ahead and, you know, whatever you need to do.

MR. NIEDERQUELL: So what you're saying is you intend to break the law, violate my rights, intentionally, after being informed what the law is and what the circumstances of this case are?

MS. KINNEY: Yes. The owners would like us to -- like you to follow our policy to keep you safe.

MR. NIEDERQUELL: Okay. Well, I would like you, as a place of public accommodation open to the public and --

MS. KINNEY: We are a private company --

MR. NIEDERQUELL: -- licensed through the state of Washington to operate --

MS. KINNEY: We're a private company.

MR. NIEDERQUELL: You are a private company. A place of public accommodation is defined as any private property --

MS. KINNEY: I need you to calm down, if you're going to talk to me like this.

MR. NIEDERQUELL: It's defined -- here, I'm going to put my backpack on here. It is defined as any private property

that is held open to the public for commerce or trade. So with that said, this is a place of public accommodation defined in the law. I've provided you with that definition in email --

MS. KINNEY: We have in every contract the right to refuse service and that's what we're doing.

MR. NIEDERQUELL: What -- no, you're not. I'm going to proceed like there's no issue.

MS. KINNEY: I'm going to call 911 then.

MR. NIEDERQUELL: You can call the police if you want to, but be aware that RCW 4.24.345 means I can sue you personally for making that call.

MS. KINNEY: Okay. Sounds good.

MR. NIEDERQUELL: And I can ask for punitive damages.

MS. KINNEY: I'm going to need you to leave.

MR. NIEDERQUELL: I won't.

MS. KINNEY: Okay. I'll call.

MR. NIEDERQUELL: Do what you gotta do. Uh, I'll be in the locker room.

(Whereupon, at 11:37 a.m. the excerpt was concluded.)

Certificate

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Plaintiff;

3. This transcript is a true and correct record of the recordings to the best of my ability;

4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

5. I have no financial interest in the litigation.

/s/ *Christine Jenkins* October 16, 2024

Christine Jenkins

Seminole, FL

CET #1050

EXHIBIT 14

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff, v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ, Defendants.	SPOKANE COUNTY SUPERIOR COURT Case No. 23-2-04946-32

TRANSCRIPT OF 911 CALL
PRODUCED BY JACOB NIEDERQUELL
November 8, 2023

Filename: 2310168316_1
Duration: 4 minutes, 45 seconds
Location: Spokane Fitness Center North - Front Desk
110 West Price Avenue
Spokane, WA 99208

Transcription Service: CMTranscription, LLC
By: Christine Jenkins
8490 92nd Terrace
Seminole, FL 33777
(732) 930-8737
Electronically Sound Recorded

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

SPOKANE FITNESS CENTER NORTH - FOYER/FRONT DESK

NOVEMBER 8, 2023, 11:37 A.M.

AUTOMATED VOICE: Wednesday, November 8, 2023, 11:37 and 46 seconds.

OPERATOR: 911. What is the location of your emergency?

MS. KINNEY: Hi. It's not a big emergency. I'm calling from the Spokane Fitness Center. I have a gentleman that will not leave the premises. We've told him a couple of times, at least five different times -- sorry -- that he cannot be in our facility without wearing proper shoes and --

OPERATOR: Okay. Just to confirm, I have the address of the Spokane Fitness Center at 110 West Price Avenue; is that correct?

MS. KINNEY: Yes.

OPERATOR: And your best callback number, 509-467-3488?

MS. KINNEY: Yes.

OPERATOR: Okay.

MS. KINNEY: He just won't leave, and we've told him those are our policies. He needs to wear shoes. He refuses to and he said he will not leave.

OPERATOR: And is there any weapons there?

MS. KINNEY: No.

OPERATOR: Are you wanting him formally trespassed or

just moved along?

MS. KINNEY: Yeah. I would like that trespass, yes.

OPERATOR: All right. Just updating this for our dispatchers. Where is he at on the property?

MS. KINNEY: He is now in our locker room, the men's locker room.

OPERATOR: Does he appear to be high or intoxicated?

MS. KINNEY: No.

OPERATOR: Okay. Is he a White male, Black male, Hispanic, Asian?

MS. KINNEY: White male.

OPERATOR: Twenties, thirties, forties for age?

MS. KINNEY: 37.

OPERATOR: Thank you. And do you know his name?

MS. KINNEY: It's Jacob -- I don't know if he goes by Jake or Jacob --

OPERATOR: Okay.

MS. KINNEY: Yeah.

OPERATOR: Do you know his last name by chance?

MS. KINNEY: I do. I'm seeing if he checked in here real quick. Jacob -- and I don't know how to exactly -- so it's Niederquell, I believe. Niederquell. N-i-e-d-e-r-q-u-e-l-l.

OPERATOR: Thank you. Do you have his middle initial or date of birth?

MS. KINNEY: One second. Date of birth is January 31st. And did you ask me something else? Sorry.

OPERATOR: Do you have his middle initial by chance or the year that he was born?

MS. KINNEY: 1986, and I don't have his middle initial.

OPERATOR: No problem. And he's a member there, correct?

MS. KINNEY: Yes.

OPERATOR: And can I get your first and last name?

MS. KINNEY: My name is Kara, K-a-r-a, Kinney, K-i-n-n-e-y, but unfortunately I have somewhere I need to be so I have a --

OPERATOR: That's okay.

MS. KINNEY: -- someone else here. Okay. Okay. Good.

OPERATOR: Okay. Who is going to be there to speak to law enforcement?

MS. KINNEY: Brandon -- or, excuse me. Gosh. His name is Brayden. Brayden Smith.

OPERATOR: And what's his middle initial and date of birth?

MS. KINNEY: I'm not sure. I don't know if I can find that.

OPERATOR: That's okay.

MS. KINNEY: Hang on one -- I know his birthday is October 2, 2002, I believe.

OPERATOR: All right. I'm just getting it all updated since they're going to want to speak to an employee so we can get him formally trespassed.

MS. KINNEY: Okay. Yeah. That would be --

OPERATOR: All right. Just to confirm, I have them coming to 110 West Price Avenue at the Spokane Fitness Center.

MS. KINNEY: Yes.

OPERATOR: All right. I have that request in for you. If anything escalates or changes, feel free to call us back.

MS. KINNEY: Okay. I will. Thank you so much.

OPERATOR: Thank you. Bye.

MS. KINNEY: Mm-hm. Bye.

AUTOMATED VOICE: Wednesday, November 8, 2023, 11:42 and 11 seconds.

(Whereupon, at 11:42 a.m. the recording was concluded.)

Certificate

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Plaintiff;

3. This transcript is a true and correct record of the recordings to the best of my ability;

4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

5. I have no financial interest in the litigation.

/s/ *Christine Jenkins* October 16, 2024

Christine Jenkins

Seminole, FL

CET #1050

EXHIBIT 15

SPOKANE COUNTY SHERIFF

FIELD CASE REPORT

CASE# 2023-10168316

REPORTING DISTRICT: SC13

EVENT

REPORTED DATE/TIME	OCCURRED INCIDENT TYPE	LOCATION OF OCCURRENCE
11/8/2023 11:37	Trespass	Spokane Fitness Center 110 W PRICE AVE Spokane, WA
OCCURRED FROM DATE/TIME	OCCURRED THRU DATE/TIME	
11/08/2023 11:30	11/08/202311:30	

OFFENSES

	STATUTE/DESCRIPTION	COUNTS	ATTEMPT/COMMIT

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE
Adult Complainant	KINNEY, KARA SUE	N

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)
09/13/1965	58	110 W PRICE AVE Spokane, WA

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE
White	Female	5'5"	112	Blonde	Blue

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3
43G [redacted] WA	(509)467-3488 Work		

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE
Adult Person	NIEDERQUELL, JACOB	N

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)
01/31/1986	37	3722 E ERMINA AVE Spokane, WA 99217

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE
White	Male	5'11"	230	Brown	Hazel

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3
43G [redacted] WA	(541)659-4785 Cellular Phone - Persona		

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE
Adult Person	BAGBY, CHRISTINE M	N

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)
05/16/1968	55	3722 E ERMINA AVE Spokane, WA 99217

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE
White	Female				

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3
	(509)655-7753 Cellular Phone - Person		

ASSOCIATED CASES

2023- 2023- 2023-
2023- 2023- 2023-

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

SPOKANE COUNTY SHERIFF

CASE# 2023-10168316

FIELD CASE REPORT

ADDITIONAL SUBJECTS

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE
Adult Person	SMITH, BRAYDEN A	N

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)
10/02/2002	21	110 W PRICE AVE Spokane, WA 99208

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE
White	Male				

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3
	Work (509)467-3488		

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

SUBJECT

JACKET/SUBJECT TYPE	NAME (LAST, FIRST, MIDDLE SUFFIX)	NON-DISCLOSURE

DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)

RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR	EYE

DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

NARRATIVE

On 11-8-2023, at approximately 1230 hours, I responded to the Spokane Fitness center, 110 W Price Ave for a possible trespassing issue. The complainant, Kara Kinney, was reporting she wanted a male in the facility trespassed for not wearing shoes after being asked to put shoes on and he refused.

Prior to arrival, I read through the call note which stated Jacob Niederquell, the subject in question, often says he has a disability to avoid wearing shoes in private businesses reference SPD case #2023-20202485. In this call, Lt Kendall references RCW 49.60.215 and in this RCW, it clearly states a person with a sensory condition is a protected person. It also states the following:

"That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice."

In reviewing the Americans with Disabilities Act, it says every structure shall be modified, if applicable, its structure to accommodate persons with disabilities. Whereas a structure out of compliance shall make any area reasonably accessible to those individuals with disabilities.

Upon arrival, I contacted Jacob and his partner, Christine Bagby, in the lobby of the fitness center. Jacob said he had a sensory condition in which he was unable to wear shoes. He started to recite several RCW's and WAC codes stating this was an illegal act and in fact, it was a criminal offense for them to even call the police to have him removed. I told him it would only be illegal if I removed him without proper cause and only then, his recourse would be to civilly sue the establishment for violating his rights. I told him my job was to protect both his rights as a citizen and the rights of a business owner. After listening to Jacobs side of what was going on and the RCW's I reviewed, I found no grounds to remove him from the facility other than he was not wearing shoes when asked to do so.

I contacted Brayden Smith, who was acting on behalf of the complainant, Kara Kinney. I asked if there was anything else besides Jacob not wearing shoes as the reason, they wanted him trespassed. He said he did not know but would call his manager. She said it was their policy for all patrons to wear shoes while in the fitness center. RCW 49.60.215 also states if a place can show the accommodation would endanger the health and safety of other patrons, they can refuse entry. I found there was no such restriction in the fact the only accommodation which would be needed is to allow Jacob to not wear shoes therefore, this exemption does not apply. The only reason the fitness center wanted Jacob trespassed was because he refused to wear shoes. I advised Brayden I would not be able to trespass Jacob today as the only reason was, he would not wear shoes. I told them what they decided to do after this was up to them but if they chose to revoke his membership, he could sue them. I told him he might want to speak to management about it prior to do this as it would open them up to civil suit. I relayed the information I told Brayden to Jacob, and I would not be trespassing him today.

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

NARRATIVE (continuation)

Based on my investigation, I found no reasonable, or legal grounds, to trespass Jacob and this was a civil issue between both parties. This report is for informational purposes only.

Case settled by report.

D. A. Hansmann #59-2222

All statements in this investigation are paraphrased by the investigating Officers. Paraphrased statements do not contain the entire statements. If there is any doubt about the content of the paraphrased statements, reviewers are encouraged to review the video recording of the investigation (BWC).

I certify under the penalty of perjury under the laws of the State of Washington that all statements made herein are true and accurate and that I have entered my authorized user ID and password to authenticate it. Place Signed: Spokane County WA.

REPORTING OFFICER	DATE	REVIEWED BY	
Hansmann	11/8/2023	Salas, Kenneth B	11/08/2023

EXHIBIT 16

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

JACOB NIEDERQUELL, Plaintiff, v. THE FITNESS CENTER, INC. d/b/a SPOKANE FITNESS CENTER, and M3K, LLC., and JOSEPH "JOEY" G and ALISON J FENSKE, and GENE CAVENDER, and KARA S and ERIC W KINNEY, and FREDERAL "FRED" R and TRISHA A LOPEZ, Defendants.	.	SPOKANE COUNTY SUPERIOR COURT Case No. 23-2-04946-32

TRANSCRIPT OF 911 CALL
PRODUCED BY JACOB NIEDERQUELL
November 21, 2023

Filename: 2310174850_1
Duration: 2 minutes, 48 seconds
Location: Spokane Fitness Center North - Front Desk
110 West Price Avenue
Spokane, WA 99208

Transcription Service: CMTranscription, LLC
By: Christine Jenkins
8490 92nd Terrace
Seminole, FL 33777
(732) 930-8737
Electronically Sound Recorded

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

SPOKANE FITNESS CENTER NORTH - FRONT DESK

NOVEMBER 21, 2023, 9:13 A.M.

AUTOMATED VOICE: Tuesday, November 21, 2023, 09:13 and 12 seconds.

OPERATOR: 911. What's the location of the emergency?

MS. KINNEY: 110 West Price Avenue.

OPERATOR: 110 West Price. Do you need police, fire, or medical help there?

MS. KINNEY: Well, I have a member here that we've terminated his account and he will not leave.

OPERATOR: Okay. Is he yelling at you guys or anything like that right now?

MS. KINNEY: There's many reasons, but he's -- our lawyer has told us that we can terminate his membership and he's not leaving.

OPERATOR: Okay. But right now is he yelling at you guys or anything like --

MS. KINNEY: No. No. No. But he has -- self-proclaimed has violent tendencies, so.

OPERATOR: Okay. Any pushing or hitting or anything like that?

MS. KINNEY: No.

OPERATOR: Any weapons?

MS. KINNEY: No. Not that we know of.

OPERATOR: Are you wanting him trespassed from the property or just moved along?

MS. KINNEY: Moved along for now.

OPERATOR: And what is his name?

MS. KINNEY: Jacob Niederquell.

OPERATOR: How do you spell "Niederquell"?

MS. KINNEY: N-i-e-d -- let me just find it here real quick. N-i-e-d-e-r-q-u-e-l-l.

OPERATOR: And Jacob's middle initial?

MS. KINNEY: Gosh, I don't -- I don't think I have that.

OPERATOR: Okay. Do you have his date of birth?

MS. KINNEY: 1/31/86.

OPERATOR: And what color shirt or coat is he wearing?

MS. KINNEY: Gray Carhartt sweatshirt.

OPERATOR: All right. What is your name?

MS. KINNEY: My name is Kara, K-a-r-a.

OPERATOR: Mm-hm. What's your last name?

MS. KINNEY: Kinney. K-i-n-n-e-y.

OPERATOR: All right, Kara. And are you calling from 509-467-3488?

MS. KINNEY: Yes.

OPERATOR: I'll go ahead and notify responders, ask to contact you there at Spokane -- is it Spokane Fitness still?

MS. KINNEY: Yes.

OPERATOR: Okay. At 110 West Price?

MS. KINNEY: Yes.

OPERATOR: All right. If there's any changes, go ahead and call us back, please.

MS. KINNEY: Okay. Thank you so much.

OPERATOR: Thank you. Bye.

MS. KINNEY: Bye.

AUTOMATED VOICE: Tuesday, November 21, 2023, 0915 and 38 seconds.

(Whereupon, at 9:15 a.m. the recording was concluded.)

Certificate

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Plaintiff;

3. This transcript is a true and correct record of the recordings to the best of my ability;

4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

5. I have no financial interest in the litigation.

/s/ *Christine Jenkins* October 16, 2024

Christine Jenkins

Seminole, FL

CET #1050

FILE UNDER SEAL

Dr. Gostnell Rpt.

DAVID R. GOSTNELL, Ph.D.

Clinical Psychologist
Neuropsychologist

1923 N.E. Broadway
Portland, Oregon 97232
Telephone: (503) 281-6615
Fax: (503) 288-1670

PSYCHODIAGNOSTIC EXAM

Name of Client: Derik Niederquell
DFP Number: 3242933
Claim Number: C82430
Date of Birth: 1/31/86
Date of Exam: 11/24/15

Referral Information and Assessment Procedures

Derik is a 29-year-old man who reports chronic socially maladaptive behavior and interpersonal disruptions, referred for a psychodiagnostic exam for Social Security disability determination. He was interviewed in my Wheeler office with a friend, and administered a mental status exam. Records were reviewed as detailed below.

Chief Complaints

Derik explained that "people don't usually like me" because of his propensity for "blurting out" whatever he thinks, without regard for consequences. He has irresistible impulses to correct people, who generally do not like what he says, and therefore shun him. His girlfriend terminated their relationship because of this behavior, and he has lost most of his jobs due to interpersonal conflict, with either bosses or co-workers.

He reported that he sleeps "like a rock" except that he snores heavily and often stops breathing. Regarding appetite, he reported frequent "munchies," resulting in excessive weight. He acknowledged irritability as a function of his "negative focus," especially after inadequate sleep or food. He is not deliberately reclusive and reported that he enjoys social contact if he likes somebody, and that he has often relied on people giving him gifts. He denied any history of suicidal ideation, and reported no incidents of hallucinatory delusional thinking, ideas of reference, or any other signs of a thought disorder.

Medications

He takes no medications of any kind, except for cannabis, which he smokes regularly.

Medical and Psychiatric History

Derik reported no known medical history. He could recall no significant injuries, major illnesses, or surgery. The possibility of sleep apnea is suggested by his description of snoring and interrupted breathing at night, noted above.

When he was in the third or fourth grade, his mother took him to a mental health professional "because she thought I was crazy, not like normal kids." He believes he was unusually stubborn, resulting in many "ass whippings," mostly because of his refusal to wear shoes, which began at an early age. He described a sense of confinement when wearing shoes, which has continued to the present time, and recalled feeling "free" whenever his family allowed him to go barefoot. He also recalled an early compulsion to correct others.

During middle childhood, he saw a counselor two or three times, and was then taken by his mother to "a crazy religious guy who advised her to get me out of the house," based on biblical passages. He was seen by "a bunch of people" after that, in a hospital, at a juvenile facility, and in outpatient clinics. He recalled that one provider said he was autistic, leading him to research autism on the Internet, where he found support for the use of cannabis as self-medication.

His most recent contact with a mental health professional was earlier this year, when he had a psychological evaluation, including an IQ test, for "community living case management," which he was denied.

Developmental and Psychosocial History

Derik was born and raised in Florida, primarily by his mother. His father was in prison throughout his childhood, and is probably still there, although Derik has never known why. His mother has had several subsequent boyfriends and two additional husbands. He has one younger brother, who still lives in Florida, with whom he has little contact. He is now estranged from his mother, who sent him to live with a relative in Alabama when he was 17 years old.

He has never married, but has had several girlfriends, the longest for about two years. His longest friendship was also for two years. He has been with his present girlfriend, who has children, for about a year. He remains with her mostly because he likes her kids. About two months ago, he was befriended a man (who came with him to the evaluation) and his wife, with whom he is now living.

Educational and Vocational History

He initially attended a private church school, was then transferred to a public school, frequently moved back and forth between the two programs, and was then briefly homeschooled. He explained that his attendance was disrupted by fights and conflicts, leading to disciplinary actions and suspensions, until he ended up in a "second chance school" where he was tested and found "not stupid." To get out of high school, he successfully tested for his GED, and then unexpectedly was also awarded a regular diploma. He had always done well in English and science, but had trouble with homework. He reported no postsecondary education of any kind.

He has held numerous short-term jobs, none for more than three months, mostly outside work, which he prefers. Although he worked for two years doing yard work for one person, it was part-time, intermittent and seasonal. He enjoys landscaping, particularly working with living things. His ideal job,

however, would be as a "rally car driver." He has not had a regular job for many years, although he did some yard work during the past summer.

Drug, Alcohol and Legal History

He drank heavily for about a year, many years ago. He has used marijuana on a daily basis for many years, ostensibly to help manage his "autistic" behaviors. Let's took a "handful of Klonopin" which resulted in behavior that landed him in jail, three days of which she does not remember. He believes he had been arrested for assault. In addition, he reported "many little arrests" for marijuana use, missing court, and other misdemeanor offenses.

He also admitted to a history of juvenile detention, mostly based on "false claims" of assault and other offenses by his mother. He acknowledged continued bitterness and resentment toward his mother, especially because he was "manhandled, mistreated and drugged" while held in juvenile facilities.

Daily Activities

For the past two months he has lived with his new friend Barry and his wife, and their two dogs. During the previous two years, he had been living mostly outside, occasionally sleeping on people's couches. His had no place of his own since living in Alabama, where he was able to support himself by "selling things," which he declined to further describe.

He acknowledged a tendency to neglect his grooming, hygiene, dental care, and other personal needs. While living with his new friends, he has cleaned his own space, but does not participate in general household chores or maintenance. He explained that he prefers always use one personal dish for meals, to minimize cleaning (which Barry, present for the interview, described as a continuing source of disagreement). He tends to the trees on various property, and is planning a garden for the upcoming spring. He admitted that he does not cook well (with which Barry agreed), mostly relying on a microwave preparations.

He has a driver's license but no car. He travels by walking, getting rides from Barry, and occasionally using the city bus. He also acknowledged deficient money management skills, which he attributed to his difficulties with organization. Is capable of shopping although he makes poor choices with regard to nutritional value and budgetary limits; although he does okay if asked to buy one or two specific objects. Otherwise, it is likely to buy "stupid shit."

He has had cell phones, both of which he broke and frustration. He has an old laptop computer that he uses to look at movies, play games, Google topics of interest, and for social networking. He admitted that he likes to "focus on things that piss me off."

When asked about skills and personal strengths, he said that he is a good debater, likes to tinker and build things, play video games, read (spiritual, philosophical and scientific subjects), work with animals, and maintain a garden. Barry commented that he is good at fixing computers.

Mental Status and Behavioral Observations

Derik arrived punctually for his appointment in the company of his friend Barry, who had driven him to the exam and who, upon Derek's request, sat in on the interview. He is a mildly overweight man with a shaggy appearance, due to his long unkempt hair, full beard, and disheveled attire. He was barefoot, despite the winter weather. He initially seemed reluctant to separate from his friend for the interview, but was cooperative and easily engaged in his presence. Development of adequate rapport was gradual, and he participated with no obvious resistance, defensiveness or evasiveness, but his provocative behavior was that without judgment.

Although initially argumentative, his demeanor became somewhat more pleasant over the course of the exam. He seldom made eye contact, however, and at times became mildly agitated, especially in describing how he had been treated by his mother and juvenile authorities during his childhood. His affect was predominantly anxious but otherwise euthymic and stable. His speech was fluent, intelligible, and well within the normal range for vocabulary and grammar, although he made liberal use of obscenities in expressing his thoughts and feelings.

His thought processing was coherent and logical, although strongly egocentric. He reported no hallucinations, delusions or other psychotic activity, nor did he express ideas of reference or appear to attend to internal stimuli during the interview. He had no difficulty tracking content, and he provided answers to interview questions that were generally relevant and direct, often volunteering additional information emphasizing his bitterness about past wrongs. He revealed fair insight in regard to his psychological functioning.

On mental status testing, he was alert and fully oriented to time, person, place and date, and quickly named the three most recent American presidents. His forward and reversed auditory digit spans, seven and five items respectively, indicate normal primary recall and working memory. He quickly and accurately subtracted serial sevens from 100. He repeated five words from immediate memory, and retained three words following a five-minute delay, suggesting normal short-term verbal acquisition and retention. Given a three-part task of copying four simple drawings, signing his name and folding the paper, he completed all three steps with no need for reminding, and he produced accurate figure copies.

On questions of similarity, he identified orange and banana as "grown on trees" (stubbornly defending his position when told that they are both fruit), abstractly responded that egg and seed are the beginning of life, concretely said that table and chair have four legs, and oddly responded that work and play are alike because you "have to be awake." On questions of social judgment, he said that if he found a letter on the street he would "leave it," and if he saw fire in a theater he would "tell the person next to me." His interpretations of four common proverbs were markedly concrete.

Summary and Conclusions

Derik presented a lifelong history of oppositionality and poor social adaptation, for which he has been evaluated and occasionally treated by multiple mental health providers beginning in early childhood. He reported years of trials on various medications, and several previous diagnoses including anxiety and mood disorders, personality disorder, and, most convincingly, a form of autism. His early aversion to wearing shoes suggests a sensory aversion symptomatic of a pervasive developmental disorder, which has continued to the present time.

Based on behavioral observations and mental status testing, a diagnosis on the autism spectrum (previously Asperger disorder), consistent with his developmental history, his indicated. During the interview, he avoided eye contact, revealed egocentric thinking and communication, cognitive rigidity, and a provocative demeanor. He seemed to have average or better intellectual capacity and appeared cognitively intact, with normal working and short-term memory, tracking and reasoning, although concrete in his conceptualizations.

He also revealed a narrow range of interests, to which he has adapted by seeking employment in gardening and landscaping, although his poor social skills have interfered with sustained employment.

No medical, educational or mental health records were available for review. There is one document headed *Report of Contact* (10/13/15), apparently from the SSA district office in Astoria, summarizing a phone conversation in which Derek was described as obscene and uncooperative, and ended with his girlfriend answering most of the interview questions after he was challenged by the interviewer. The general tone of this account is consistent with his presentation for the current interview.

Although this claimant presents with broadly normal intellectual and cognitive abilities, he has conspicuously deficient social judgment and interpersonal skills that are consistent with a disorder on the autism spectrum, resulting in marginal social adaptation and poor vocational achievement. By definition a neurodevelopmental disorder, his symptoms began in early childhood and persisted into his adulthood, limiting his adaptive behaviors. Despite her basic cognitive functions that appear intact, a more comprehensive evaluation, including neuropsychological testing, may reveal deficiencies of executive functioning that further contributed to his functional limitations.

DSM-5 Diagnoses

Autism Spectrum Disorder, without accompanying intellectual or language impairment, requiring substantial support

I appreciate the opportunity to participate in the evaluation of this client. I am available to answer questions or discuss concerns as needed.

David Gostnell, PhD
Clinical Neuropsychologist/Psychologist
Oregon License Number 600 (expires 11/30/2017)

FILE UNDER SEAL

Dr. Vasquez Rpt.

Positive Development
for youth & families

Veronica Vázquez, PhD | Licensed Psychologist | DrVeronicaV@gmail.com | positive-development.com
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CONFIDENTIAL

PSYCHOLOGICAL EVALUATION

This report is private, privileged, and confidential. Information should not be copied or released without legal consent. Any unauthorized duplication, transmittal, redisclosure, or retransfer of this report is expressly prohibited.

Name:	Derik Jacob Niederquell	**Accompanied by:**	Aleta Tilley (girlfriend)
Date of Birth:	01/31/1986	**Date of Evaluation:**	10/03/2016
Age:	30 years, 8 months	**Date of Report:**	11/22/2016
Education Level:	12th grade	**Referral Source:**	Stacie Mullins Eligibility Specialist Clackamas County Developmental Disabilities Program

Reason for Evaluation:

Jake is a 30 year, 8 month old Caucasian male referred for an evaluation by Stacie Mullins. Ms. Mullins requested information regarding his current adaptive functioning skills, current diagnostic impressions, and determination as to whether any limitations, if present, are the result of possible diagnostic conditions. He has a long-standing well-documented history of social communication/social interaction deficits; limited insight and motivation; difficulty making appropriate academic progress despite 'superior' cognitive skills; difficulty maintaining employment; periods of homelessness; and multiple psychiatric hospitalizations as an adolescent. He was diagnosed with Autism Spectrum Disorder on 11/24/15.

Results from this evaluation will be used to determine whether he will qualify for services through the developmental disabilities program. Ms. Mullins provided medical, psychological, and educational records for this writer to review. The evaluation was conducted in a quiet office located within the Clackamas County Public Services Building in Oregon City, OR.

Evaluation Procedures and Tests Administered:

Developmental History:	Clinical Interview based on DSM-5 diagnostic criteria Review of Records
Adaptive Assessment:	Vineland Adaptive Behavior Scales, 3rd Edition (Vineland-3), Domain Level Parent/Caregiver Form
Other Methods of Assessment:	Clinical Observations Clinician-Rated Severity of Autism Spectrum and Social Communication Disorders Form

Informed Consent:

This writer discussed the purpose of this evaluation, limits of confidentiality, and explained this was a consultative evaluation intended to provide information to Ms. Mullins at Clackamas County Developmental Disabilities Program and did not constitute a doctor-patient treatment relationship. Mr. Niederquell indicated he understood the purpose and limits of confidentiality and provided written consent to participate.

HISTORICAL INFORMATION: History and background information was provided by Jake, review of available records, and his current girlfriend, Aleta Tilley. Please refer to Appendix A for a list of records reviewed. Jake was an excellent historian for certain fact-based information, such as where he was born, what schools he attended, which states he travelled through on his way to Oregon, etc. At the same time, he had significant difficulty answering two part questions and had to relay information in a concrete manner (which couldn't be interrupted, even for clarification). Ms. Tilley was able to supplement information, particularly regarding his current adaptive behavior skills.

Family Background/Historical information

Family history was primarily obtained from record review; the limited information Jake was able to provide was corroborated through records.

He is the only child born to his parents at St. Joseph's Hospital in Elgin, Illinois. Inpatient records from Tallahassee Memorial Behavioral Health Center (TMBHC) indicate his mother reported his father was serving a life sentence in Illinois for 2 murders; some records indicate his father was reportedly executed but this was never verified. **Jake is unaware of the reason his father was incarcerated.** However, he knows he was in prison and believes he's still there.

Jake reported he was a few months old when he and his mother moved to Clearwater, Florida where they resided until he was 4. His mother married her "high school sweetheart" and had a

second son. Records indicate Jake previously described his first stepfather as very abusive towards his mother and physically abusive of himself; he reportedly protected his mother and younger brother from him. His mother remarried a third time when he was 12 years old. Records describe the relationship between Jake and his second stepfather as very conflictual with possible physical/emotional abuse.

His early childhood included frequent moves, significant family stressors and discord, and times of financial instability. Jake reported they lived in Clearwater, FL until age 4; in the surrounding area from 4-6; Oak, FL from ages 6-12; than moved to Havana, Fl.

His adolescent years were particularly tumultuous with 4 inpatient hospitalizations and time at a juvenile detention center from 14-15. Records indicate at least one of these hospitalizations (the 2nd) was "felt to be manipulative in nature" by his mother, per the attending physician, Connie Speer, MD. Records indicate his mother "abandoned him" at 15 by refusing to pick him up after the 2nd inpatient hospitalization. He was taken into custody by the State and spent time in group foster placements. Despite being told by his mother that his father and all paternal relatives were deceased, paternal relatives were located while he was in juvenile detention.

At age 17, he was reportedly legally emancipated and moved with a paternal aunt in Alabama. They had a falling out after a few months and he moved in with his paternal grandmother. He developed a close relationship with a paternal uncle at age 18, however, his uncle passed away when Jake was 20. The following 6-7 years were spent living in Tennessee, Kentucky, Indiana, Alabama, Georgia, Michigan, and Illinois before leaving Alabama "for good" around 26-27 years of age. He made his way to Colorado, were he camped for three months before making his way to Oregon, where he's resided the last three years. He primarily lived in Nehalem, OR and recently made his way up to Clackamas County, where he currently resides.

Records indicate his father had a history of psychiatric hospitalization, but no clear diagnosis. Jake reported no known family history of intellectual disabilities, autism spectrum disorder, or genetic disorders on either side of the family.

Prenatal/Birth History

Jake was unable to provide detailed information regarding his prenatal/early childhood history. However, he believed he was "typical" in birth weight. Collateral records contained no information regarding prenatal/birth history or early developmental milestones.

Developmental/Medical History

Collateral records indicate Jake previously reported seeing a mental health professional in 3rd or 4th grade because his mother thought he was "crazy, not like normal kids". Medical records indicate a suicide attempt in 3rd grade where he attempted to hang himself. He reported being unusually stubborn resulting in many "ass whippings" primarily, which reportedly began at an early age. He reported a sense of confinement when wearing shoes and feeling "free" when he was allowed to go barefoot. He reported last wearing shoes when he was still in school, and stated he only wore them en route *to* school; he immediately took them off when he arrived to his class which resulted in a lot of behavioral referrals and subsequent volatile arguments with his mother.

He reportedly saw a counselor 2-3 times in middle school before being taken by his mother to a "crazy religious guy who advised her to get me out of the house" based on biblical passages. Records from Tallahassee Memorial Behavioral Health Center (TMBHC) indicate 4 inpatient hospitalization from 14-15 years olds. Information is summarized below:

08/25/2000- 14 years, 7 months old (6 days total)
08/31/2000

He was admitted after a "very difficult argument" where his mother and stepfather of 2 years went into his room and took some personal items. Jake reported his mother grabbed his hair and slapped his face. Local police were called and brought him to the hospital. He presented with increased anger with his mother and stepfather following daily arguments including "a great deal of power struggles and authority issues". Jake admitted to a history of depression and difficulties with his temper; his mother was most worried about his temper and expressed fear he would hurt her or others.

He reported a close relationship with his brother (age 12 at the time) but a "very conflicted relationship" with his mother who often "pushed his buttons". Triggers included Jake asking his mother to call an area school to see if he could be admitted there and his mother reportedly repeatedly putting it off despite saying she would call. This led to Jake becoming angry and his mother telling him he couldn't go to a concert he'd been looking forward to.

Shortly after presenting to the unit, he was described as "cooperative; **not psychotic**; limited insight and motivation; and agreeable to being in the hospital". He reported feelings of depression "for some time", feeling increased anger, at times couldn't control his temper, difficulty falling asleep, reduced appetite with **a loss of 6 pounds in the last two weeks**, thinking of suicide every day, **and feeling he couldn't go home because of the amount of**

anger at home. He reportedly heard his mother state she "hated him and didn't want him at home". Thus, he didn't want to return home. When asked about his biological father he reported he'd never met him, his mother told him the state of Illinois put him to death, and he felt conflicted about the information.

Psychological testing "suggested signs of an adjustment disorder with mixed emotional features and conduct; a rule out for conduct disorder; oppositional features; distorted perceptions of reality "at times"; no signs of AD/HD; and AXIS II features of unruliness, forcefulness, and oppositional behavior". Results from cognitive and academic achievements testing were:

Wechsler Intelligence Scale for Children-3rd Ed. (WISC-III)

Full Scale IQ	107 (Average)
Verbal IQ	117 (High Average)
Performance IQ	96 (Average)

Woodcock-Johnson III Tests of Achievement (WJ-III ACH)

Broad Reading	125 (Superior)
Broad Mathematics	120 (High Average)

The report indicates the hospitalization was directed at "getting a good evaluation" and noted his family and didn't have financial resources to keep him in the hospital for any length of time. His mother reported being frightened of him and pursued legal charges due to his past history of threats. The report indicates **"finally enough charges were brought to him that he was felt to be appropriate to go to JARC (juvenile detention center)"**. This suggests legal charges were initially insufficient to warrant being lodged in juvenile detention; it's unclear whether "additional charges" were made in order to *justify* lodging him in JARC. Nonetheless, he was discharged after 6 days with final diagnoses of: Bipolar Disorder; Oppositional Defiant Disorder; R/O Conduct Disorder. Connie Speer, MD also noted problems with primary support group, education, and peer group.

07/12/2001- 15 years, 5 months old (14 days total)
07/26/2001

He was admitted after cutting his arm with a razor blade resulting in several superficial cuts. Medication from the previous hospitalization were discontinued because it made him "feel medicated". He had started counseling but "was unable to afford the co-pay". In-home services included three hours per week. Jake reported feeling angry with his mother, stating she didn't

listen to him, and felt increasing stress with no one to vent his feelings to. The local police were called after his mother learned he'd cut his arm after "things escalated"; the exact precipitating event is unclear. He'd had to repeat 9th grade, despite a history of doing well academically, after being lodged in a juvenile detention center the previous year and not having been allowed to make up his work. Dr. Speer noted **"it was felt his admission was manipulative in nature.** It was not felt he needed to be kept in the psych center for any length of time. He does have charges. The mother is hoping he will be placed in a program to help with some of his behavior". She noted the hospital stay "was mainly dealing with confronting him with some of his behavior". He was discharged back to the juvenile detention center.

11/09/2001 15 years, 9 months old (Leon County Juvenile Detention Center)

Records indicate he participated in a court ordered psychiatric evaluation with Dr. Dennis Platt at the detention center. Dr. Platt indicated Jake "shook his mother up violently and attempted to throw her to the floor after she took some song lyrics he wrote containing murder, suicide, and Satanic warship scenarios". * this information was not included in the previous hospitalizations which led to his placement in the detention center; it's unclear where this information came from. Nonetheless, Dr. Platt described his behavior as "severely disturbed" and indicated he was "in competent to proceed to trial". He diagnosed him with Bipolar Disorder and Inhalant Dependence, considered him to be a high risk to himself and to others, and recommended a neurological exam in light of his inhalant use and suggested mood stabilizers be administered with regular laboratory workups to make sure he was being administered a proper dose of medication.

11/13/2001 15 years, 9 months old

He was admitted for the 3rd time at TMBHC. The report noted he has been in detention for several months related to charges including threatening to kill his parents. He's been getting in trouble at the detention center and was brought in with several bite marks on both wrists and a sore on his head from hitting his head. He reportedly requested admission to the inpatient unit; reportedly, detention center staff were concerned that without intervention he would hurt himself again. He explicitly told hospital staff that he would hurt himself if he returned to the center. There was concern regarding medication management and whether he was receiving the prescribed dosages. His history of behavioral difficulties, question regarding mood swings, and history of extremely oppositional behavior were noted. Dr. Connie Speer noted it was felt his behavior may be related to anxiety as he was expected to enter an intensive outpatient foster program (Camelot Care) the upcoming week. She specifically noted that "perhaps he is anxious about this transition".

Jake had been in detention "approximately 4.5 months"; he'd been kicked out of school for acting out. Outpatient counseling had been ineffective in terms of his anger management. It was noted that his mother had "abandoned him" after refusing to pick him up from the detention center. His mood was described as anxious in affect and labile in mood although **he did not appear psychotic.** He acknowledged the transition to the outpatient foster program was a stressor for him and led to anxiety.

He participated in another psychological evaluation where he earned a Full Scale IQ of 122, corresponding with the Superior range of cognitive skills (Verbal IQ=126; Performance IQ=112) on the Wechsler Abbreviated Scale of Intelligence (WASI). Several other measures were administered but for the purpose of this current evaluation won't be summarized. Larry Kubiak, PhD (psychologist) noted he described symptoms of a major depressive episode, low self-worth, hopelessness, chronic suicidal ideation; symptoms of anxiety including insomnia, worrying most of the time, biting his nails and picking at his skin; and displayed impulsive propensities which could exacerbate problems with emotional self regulation. Dr. Kubiak indicated he "clearly experiences significant interpersonal problems including social skills deficits and difficulties trusting people". Despite functioning in the superior range of intelligence with academic achievement skills commensurate with his cognitive abilities (well above grade level) he'd become "increasingly distressed over the past two years and was showing signs of being on a deteriorating trajectory".

DSM-IV diagnoses included: Oppositional Defiant Disorder; Major Depressive Disorder, Severe; Psychotic Disorder NOS; Inhalant Dependence by history; R/O Bipolar Disorder; R/O Post Traumatic Stress Disorder.

12/12/2001- 12/18/2001 **15 years, 10 months old (6 days)**

His fourth admission occurred several weeks after a dependency hearing where he was placed in the custody of Children and Families. He was supposed to be placed within five days but things "fell through on two or three occasions". He became discouraged and shown increasingly poor impulse control at the detention center, had threatened to hurt himself, and was physically abused by other kids in the detention center on the day of admission.

By this time, he'd been out of the family home for 5 consecutive months (since July 2001), not including the time from the first hospitalization and subsequent time at the juvenile center. He was brought to the emergency department in shackles. It was noted he "attempted to be cooperative but was quite stressed. He became very anxious when discussing the other kids in detention, telling me they beat up on him and he could not resist or they would have beaten him

up worse. He was increasingly agitated at the thought of returning to detention and made references that he would be better off dead then returning there. He had an anxious affect, mood was somewhat anxious and depressed, but **no signs of psychosis**. He made several hopeless suicidal references. Insight and judgment were present but limited. He expressed anger when expressing how he felt, as things he'd been promised had not come through".

Dr. Speer noted staff needed to work with the legal setting to see if he could be appropriately placed; she also stated "I understand some of this boy's anger at this point".

After 6 days he was discharged; on the day of discharge he escalated again and became physically aggressive toward staff. Dr. Speer stated it was felt he was not safe to be on the unit due to his long history of increasing agitation and the rest. Assault charges were pressed by staff and he was discharged back to the detention with the recommendation that they look for a placement as soon as possible. DSM-IV discharge diagnoses included:Bipolar Disorder and Oppositional Defiant Disorder.

Records from Adventist Health Tillamook Medical Group (AH TMG) indicate Jake was seen by David Bradburn, MD on 10/07/15. Progress notes indicate he was new to the area and lived in a tent with his girlfriend and dog. He requested a medical marijuana card for Autism and low back pain due to a disc problem; a letter for his service dog for housing purposes; and a letter for permission to go barefoot continually (which he reported helped his Autism). Dr. Bradburn indicated he was alert, oriented to person/place/time, grooming was poor, hair was dirty, exam room smelled musty, and his train of thought was somewhat tangential but was articulate, verbose and rambling.

Dr. Bradburn listed a primary encounter diagnosis of Autism Spectrum Disorder, supplied a letter for his service dog, and recommended follow up with a psychiatrist at a family counseling center to rule out Bipolar Disorder, per previous records. He also noted that he would not supply a letter for permission to go barefoot, noted he had "flip-flops he can wear in public facilities. No medical marijuana permit signed. Seems like a preference and not a necessity".

On 11/24/15 Jake was evaluated by David Gostnell, PhD (Clinical Neuropsychologist Psychologist) for a psychodiagnostic exam for Social Security disability determination. He was interviewed in his Wheeler, OR office, was accompanied by a friend, and administered a mental status exam. Dr. Gostnell summarized his medical/psychiatric/legal/educational history. He'd spent most of the previous two years living outside, occasionally sleeping on people's couches, had had no place of his own since leaving Alabama, supported himself by "selling things", and had spent the last two months living with his new friend Barry and his wife.

Jake acknowledged a tendency to neglect his grooming, hygiene, and dental care, and other personal needs. Since living with Barry and his wife, he didn't participate in general household chores or maintenance (but cleaned his own space) and preferred to always use one personal dish for all meals (to minimize cleaning). This was described as a continuing source of disagreement between Jake, Barry, and his wife. He tended to trees on various properties and was planning a garden for the upcoming spring. It was reported he didn't cook well and mostly relied on microwave meals. He had a drivers license but no car and traveled by walking, getting rides from Barry, and occasionally using the city bus. He acknowledged deficient money management skills (which he attributed to problems with organization) and was capable of shopping although he made poor choices with regard to nutritional value and budgetary limits. Barry noted he did ok if asked to buy one or two specific things, otherwise, was likely to spend money on "stupid shit".

Barry drove him to the appointment. Jake was described as shaggy in appearance due to long unkempt hair, full beard, and disheveled attire; **was barefoot despite the winter weather**; was initially reluctant to separate from Barry for the interview but was cooperative and easily engaged in his presence. Development of "adequate rapport was gradual, and he participated with no obvious resistance, defensiveness or evasiveness, but his provocative behavior was that without judgment. Although initially argumentative, his demeanor became somewhat more pleasant over the course of the exam". He seldom made eye contact, at times became mildly agitated (especially when describing how he'd been treated by his mother and juvenile authorities during childhood). His speech was described as fluent, intelligible, and well within the normal range for vocabulary and grammar although he made "liberal use of obscenities in expressing his thoughts and feelings".

Dr. Gostnell opined he presented with "broadly normal intellectual and cognitive abilities" with "conspicuously deficient social judgment and interpersonal skills that are consistent with a disorder on the autism spectrum, resulting in marginal social adaptation and poor vocational achievement. By definition a neurodevelopmental disorder, his symptoms began in early childhood and persisted into his adulthood, limiting his adaptive behaviors. Despite basic cognitive functions that appear intact, a more comprehensive evaluation, including neuropsychological testing, may reveal deficiencies of executive functioning that further contributed to his functional limitations". A DSM-5 diagnosis of ***Autism Spectrum Disorder, without accompanying intellectual or language impairment, requiring substantial support*** was assigned, which was consistent with his reported history and current observations.

Disability Determination records from 2015-2016 indicate Scott F. Kaper, PhD (psychologist) opined the following on 04/25/16:

> "CL has obvious social deficits, but he did to calm down over the course of the assessment, and his mse [mental status exam] was largely intact. No shoes in November is provocative, but it would seem to be no more so than smoking marijuana for his Autism. I echo Dr. Bradburn here, that these are preferences more than anything else. It is precisely his ability to ingratiate himself with others that has helped him through-which is not consistent with the the severity that would lead to allowance. Would also highlight the antisocial edge to his personality. His current situation includes some support to be sure, but it is also the case that he lived without support, homeless, for sometime, indicating he can manage his ADLs on his own if need be. I would argue that Dr. Gostnell's conclusion about the CL's needing "substantial support" is best understood in light of such facts. And I would argue further that there is no reason he could not bring a similar resourcefulness to a jobsite. Evidence supports initial decision."

It is this writer's opinion Dr. Kaper has little experience assessing or working with individuals on the Autism Spectrum. His statement that Jake's intolerance for wearing shoes are " preferences more than anything else" is inconsistent with the wealth of infonnation regarding hypo/hyper reactivity including tactile (touch) sensitivities in individuals with Autism Spectrum Disorder. In fact, it is one of the specific examples listed under DSM-5 diagnostic criteria for Autism (p. 50, Criteria B.4). Jake's displayed a strong aversion to wearing shoes since he was a young child. During this current interview, he had visible physical reactions at the mere mention of wearing shoes. That is, his body clenched, pupils dilated, and his demeanor abruptly changed to an agitated state. His reaction, coupled with his history, suggests he has **significantly difficulty** tolerating shoes. and **is not** merely a "preference".

Educational/Vocational History

Jake's early educational history included enrollment in public schools, private Catholic schools, homeschooling for a short time, and schooling through a juvenile detention center.

His schooling was significantly disrupted in 9th grade when he had his first psychiatric inpatient hospitalization at 14 years, 7 months (08/25/2000). Results from cognitive and academic achievement measures indicated Average to High Average cognitive skills (Full Scale IQ=107 with High Average Verbal skills, SS=117); High Average Math skills (SS=120); and Superior Reading Skills (SS=125).

Educational records from Leon County School indicate that during the 2001-2002 academic year he was residing in a residential program. He was described as "a very bright young man with great academic potential. He performs at 12.2 (grade level) in Reading and 13.1 in Math. In class he does not always put forth his best effort and has difficulty completing tasks on time".

Identified goals included:

-editing written products and making corrections prior to turning in assignments
-turning in class assignments within designated time frames
-taking turns during structured leisure activities (e.g. computer games)
-following game rules during structured sports activities
-refraining from initiating negative behavior
-ignoring negative peer requests
-complying with staff requests to initiate an activity
-complying with staff requests to stop an activity

His history of verbal and physical aggression with peers and adults was also noted. Identified goals included:

-refraining from acts of physical aggression by two or fewer instances during a nine week grading session
-refraining from fighting peers; causing injury to staff; engaging in self injurious behaviors; destroying property; and remaining in designated areas on the school campus.

Jake reported he ended up at a "second chance of school" where he was tested and found "not stupid". He reported he passed the GED test and earned a regular high school diploma.

He's held several short-term jobs, never more than three months, primarily doing "outside work", which he enjoys. This is consistent with information from the Disability Determination documents which indicate he worked as a car cleaner for 2 months at 17 years, 11 months; as a cook for approximately 2 months around age 18; and as a "landscaper" on/off from 19 years to 26 years of age.

He reported he's very interested in landscaping/gardening and is "almost obsessive about the standard of quality" he adheres to in this. He reported he'll work on things until it's right, even though it might take an extended period of time. His strong work ethic in areas of interest appears to have served him well as he's tried to sustain himself through part-time jobs "here and there".

Current Interview

In order to confirm a diagnosis of Autism Spectrum Disorder this writer incorporated a detailed interview and developmental history based on DSM-5 criteria.

Jake and his girlfriend reported a history of communication and social interaction difficulties including deficits in social emotional reciprocity; a failure to engage in typical back-and-forth conversation; a reduced sharing of interests, emotions, and affect; significant difficulty processing and responding to complex social cues, such as knowing when and how to join the conversation; a history of poorly integrated verbal and nonverbal communication skills; a tendency to avoid eye contact; difficulty in the understanding and use of gestures; history of difficulty developing, maintaining, and understanding relationships; history of difficulty adjusting his behavior to suit different social contexts; and a history of restricted, repetitive patterns of behavior, interests, and activities.

Jake was precise when recalling certain dates and typically calculated his corresponding age, including the year and month, immediately and unprompted. He often did this when discussing periods of time as well (e.g., reporting his age when he moved as a child, etc.).

He spoke and displayed behaviors and characteristics consistent with a diagnosis on the autism spectrum throughout the interview. He often bickered about minute details, became easily frustrated when this writer or his girlfriend attempted to clarify information, and displayed social interaction skills less developed than expected for his age. He seemed to have an incredible memory for certain details, but had significant difficulty answering other general questions. Consistent with collateral data, he communicated strong negative feelings about his mother, brother, and step-father including how they "messed things up" for him.

He has a long-standing, well documented history of significant difficulty developing, maintaining, and understanding relationships. As previously mentioned, his relationship with his mother was characterized by significant instability including frequent moves; a volatile relationship; exposure to domestic violence; and having 2 step-fathers who engaged in volatile/ physically abusive behaviors toward him. Although he reported a close relationship with his brother as a child, this fell apart when his mother abandoned him at 14-15. Understandably, he's had significant difficulty forming close relationships. However, educational documents indicate a history of difficulty with peer relationships since early childhood.

At age 15, he had no friends and was picked on/physically abused by peers in juvenile detention. A frequent source of conflict between he and his mother included his history of restricted, repetitive patterns of behavior/interest/activities. He reported a history of hand flapping, toe-walking, head banging (when younger), and rocking. He still engages in hand flapping, toe-walking, and rocking (which was observed throughout the interview). He reported "if I step on my heels I can feel it and hear it and it causes huge headaches. This is the natural way to walk (then demonstrated toe-walking). He reported he "used to beat on myself and face as a kid" and continues to constantly chew on his fingernails and skin. However, he's trying to stop biting on

the skin around his nails because he's "a vegetarian and don't want to eat my skin and be a canibal". He frequently swayed from side to side or back and forth and constantly fidgeted with his hands and feet.

He continues to engage in the repetitive use of objects including lining up his personal items. His girlfriend reported he always lines up items pulled from his pockets and becomes upset and notices "if even a paperclip is moved".

He continues to be very rule bound and extremely rigid about certain things, can't be convinced or persuaded otherwise, and becomes very upset with unexpected changes. For example, he continues to use only "1 cup" to eat and drink. His girlfriend pointed out his "cup" is an old spaghetti sauce jar and noted no one's allowed to use it. She also noted he doesn't use utensils when eating and only does things on his schedule. He frequently paces "to process his thoughts" and continues to display sensory sensitivities. He doesn't like to have his head touched; has to "work himself up" to be able to tolerate washing his hair; trims his beard with scissors because he can't stand the sound of a razor; dislikes loud noises in general (especially the sound of electronics humming or "enclosed sounds"). He noted the sound of nature comforts him which is why he enjoys working outside.

He's "sensitive to the cold but likes things to be cold". He continues to be extremely particular about which foods he'll eat; eats the same thing every day; and refuses to eat non-organic foods. However, he views it as "eating simple".

Jake has made progress in his overall skills but still requires daily guidance and prompts in order to complete many activities of daily living. He continues to display behaviors and mannerisms consistent with a diagnosis of Autism Spectrum Disorder which were observed throughout the current evaluation.

Hobbies/Interests/Strengths

Jake described his strengths as: being a good debater; tinkering and building things; playing video games; reading (spiritual, philosophical, and science); working with animals; maintaining a garden; and fixing computers.

RESULTS OF CURRENT EVALUATION:

Jake, his girlfriend, and emotional support dog of 2 years arrived on time for this current evaluation. He avoided eye contact throughout the evaluation. He immediately began questioning my experience and background and seemed to "interview" me to determine whether he felt comfortable enough to proceed. After answering his questions he informed me he "googled me" and seemed comfortable with the responses provided. He was casually dressed in a cream/green striped polo shirt and khaki shorts; his shirt was on inside out. Consistent with his history, he was barefoot, minimally groomed, and had poor hygiene. He was able to state his full name, date of birth, current age, highest grade completed, and height and weight (5'11" and 215 lbs.). He reported he's right-handed and has no history of hearing impairments. He's worn glasses since age 16 and had his most recent eye exam within the last year. His glasses are currently broken but duct-taped together. Consistent with prior reports, he was able to converse, had generally fluent speech, but often had difficulty explaining his ideas more than one way. At times he was pedantic and literal. He had a tendency to provide information through a very detailed timeline and couldn't be interrupted. His tendency to provide irrelevant detailed information made conversation difficult, as he tended to engage in lengthy monologues. When attempts were made to help his streamline his responses he'd become agitated and say "I'm getting there, hold on"! He was often concrete in his understanding and use of language. He displayed communication and social interaction deficits; had difficulty seeing things from another's perspective; and often answered questions in a direct manner which could give the impression of being rude, even though this didn't appear to be his intention. He often interrupted the conversation and provided answers which sometimes appeared scripted. Other times, his responses seemed out of context. For example, when discussing his difficulties understanding speech and appropriately using gestures for social interactions (i.e., eye contact, facial expressions, body orientation, and speech intonation) he emphatically disagreed but then agreed and stated he often feels uncomfortable and has to be on guard. He then said "managers at stores are like turkeys stalking their prey"; after some prompting it became clear he was referring to the ongoing challenges he's had in local stores. That is, he's often watched closely by staff or managers when he shops; it appears to his tendency to go barefoot, generally unkept appearance, and social skill deficits bring unwanted attention. His girlfriend noted he's often harassed in stores unless she's with him. This occurs at such a frequency he's learned to carry a copy from Dr. Gostnell's report to show police officers/store managers, etc. to verify his Autism diagnosis. He showed this writer the copy he carries in his wallet. Although he was slow to "warm up" he eventually displayed some of his sense of humor, wit, and positive qualities. At the same time, he could quickly become triggered by something and become irritable, frustrated, and difficult to redirect. Toward the end of the evaluation, he became fixated on semantics and stated "speaking is my own art. Sometimes I confuse or make people angry. I've learned how to be polite but am more on a mission to get whatever I'm going to get done. That's why I don't talk to people.

People don't understand. Like, sometimes I use the word nigger because it's from where I come from". He then engaged in a lengthy monologue regarding the history of the Spanish word "negro". He concluded by saying "I don't understand why it's unacceptable to use". Although both this writer and his girlfriend attempted to redirect him, he continued speaking on the topic. Overall, he tolerated the evaluation well and participated as best as he could.

Adaptive Behavioral Functioning:

The Vineland Adaptive Behavior Scales-Third Edition (Vineland-3; Domain Level Parent/ Caregiver Form) was administered to obtain an estimate of his current level of communication, daily living, social, and coping skills. The average range for Standard Scores is 85-115, with a mean score equal to 100 and standard deviation of 15. Results are depicted in Table 1.

Table 1
Vineland Adaptive Behavior Scales-Third Edition (Vineland-3)
Domain Level Parent/Caregiver Form

ABC	Standard Score (SS)	95% Confidence Interval	Percentile Rank	Adaptive Level
Adaptive Behavior Composite	**59**	**54 - 64**	**<1**	**Low**
Domains				
Communication	70	62 - 78	2	Low
Daily Living Skills	53	45 - 61	<1	Low
Socialization	47	41 - 53	<1	Low

The Adaptive Behavior Composite (ABC) provides an overall summary measure of his adaptive functioning. His ABC standard score is 59, with a 95% confidence interval of 54 to 64. His percentile rank of <1 means that his score was greater than or equal to <1% of individuals in his age group in the Domain-Level Parent/Caregiver Form normative sample.

The Communication domain measures how well he exchanges information with others. This includes taking in information, expressing himself verbally, and reading and writing. His

Communication standard score is 70, with a 95% confidence interval of 62 to 78. This corresponds to a percentile rank of 2.

The Daily Living Skills domain assesses his performance of the practical, everyday tasks of living that are appropriate for his age. Such tasks include various aspects of self-care (e.g., dressing, hygiene), helping around the home, and functioning in the community (e.g., buying things). His standard score for Daily Living Skills is 53, with a 95% confidence interval of 45 to 61 and a percentile rank of <1.

His score for the Socialization domain reflects his functioning in social situations. This domain covers his interpersonal relationships, play and leisure activities, and coping skills in social situations. His Socialization standard score is 47, with a 95% confidence interval of 41 to 53. The percentile rank is <1.

His adaptive behavior composite score appears to represent a valid and accurate assessment of his current adaptive functioning skills. Results are consistent with his girlfriend's description of his abilities, my current observations, and information from collateral records.

SUMMARY AND RECOMMENDATIONS:

Jake is a 30 year, 8 month old Caucasian male referred for a current psychological evaluation and developmental assessment by Stacie Mullins, Eligibility Specialist, Clackamas County Developmental Disabilities Program to provide information about his current adaptive functioning skills, diagnostic impressions, and determination as to whether any limitations, if present, are the result of possible diagnostic conditions.

Jake is currently functioning in the Low level of adaptive skills. He displays significant deficits more than 2 standard deviations below the mean in the areas of communication, socialization, and daily living skills. His Vineland-II Adaptive Behavior Composite (SS=59) and domain scores appear to represent a valid and accurate assessment of his current adaptive functioning skills and were consistent with current clinical impressions, observations, and data.

A primary diagnosis of Autism Spectrum Disorder will be assigned based on his history and current clinical observations of persistent deficits in social communication and social interactions across multiple contexts and restricted, repetitive patterns of behavior, interests, and activities.

Jake was reported to have a history of 1) Deficits in social-emotional reciprocity (i.e., the ability to engage with others and share thoughts and feelings) such as: nontraditional social approaches; a failure to engage in typical back-and-forth conversation; a reduced sharing of interests,

emotion, or affect; a reduced tendency to initiate or respond to social interactions; 2) Deficits in nonverbal communicative behaviors used for social interaction including: poorly integrated verbal and nonverbal communication skills; reduced use of eye contact and body language (e.g., body gestures, facial expressions, body orientation, or speech intonation); deficits in understanding and use of gestures; and reduced use of facial expressions and nonverbal communication; and 3) Difficulty in developing, maintaining, and understanding relationships including: difficulties in making friends and a reduced interest in peers.

He also has a history of restricted, repetitive patterns of behavior, interests, and activities including 1) Stereotyped or repetitive motor movements, use of objects, or speech; 2) Highly restricted, fixated interests that are unusual in their level of intensity or focus; and 3) Increased reactivity/sensitivity to sensory input.

Records indicate symptoms were present in his early developmental period and this is corroborated with collateral information from past evaluations including clinical observations. Symptoms have caused clinically significant impairment in social, educational, and other important areas of current functioning and are not better explained by intellectual disability (per previous cognitive testing with scores in the High Average to Superior range).

I believe Jake's deficits in adaptive functioning are primarily related to features of Autism Spectrum Disorder. He has a previous diagnosis of Autism from Dr. Gostnell, which is supported by current results. Prior diagnoses of Oppositional Defiant Disorder; Major Depressive Disorder, Severe; Psychotic Disorder NOS; Inhalant Dependence by history; Bipolar Disorder; and Post Traumatic Stress Disorder were likely masked by features of Autism, particularly given the circumstances at the time of diagnosis (inpatient hospitalization, being abandoned by his mother in juvenile detention, etc.).

Educational supports appear to have been beneficial and it is likely he will continue to need support in order to make important education, healthcare, and legal decisions. He certainly has specific skills and strengths which can be beneficial if channeled in a positive prosocial manner; however, he needs significant assistance to learn positive coping skills and channel his strengths. He has a tendency to "burn out" relationships due to features of Autism. Nonetheless, he has a desire to live as independently as possible and fulfill his lifelong dream of owning his own business.

Findings from this evaluation are consistent with the DSM-5 diagnostic criteria listed below.

DSM-5 DIAGNOSIS:

F84.0 Autism Spectrum Disorder requiring substantial support (level 2) for deficits in social communication AND restricted, repetitive behaviors.
-Without accompanying intellectual impairment, per previous cognitive testing
-Without accompanying language impairment (has fluent speech).

It was a pleasure to work with Jake. If I may be of any further assistance, please do not hesitate to contact me.

Veronica Vázquez, Ph.D.
Licensed Psychologist #2241

APPENDIX A

2015-2016 Disability Determination Explanation
12/22/15 Pacific Medical & Surgical Group Disability Examination
11/24/15 Psychodiagnostic Exam
10/7/15 Medical Progress Note
2001-2002 Leon County Schools IEP Paperwork
2000-2001 Tallahasse Memorial HealthCare Behavioral Health Records
1998-1999 Florida Dept. of Education, Leon Co. Public Schools Records

FILE UNDER SEAL

ALJ DECISION

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	CLAIM FOR
Derik Jacob Niederquell (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	592-92-6401 (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before me on a request for hearing dated June 30, 2016 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The claimant appeared and testified at a hearing held on October 5, 2017, in Portland, OR. Also appearing and testifying were George S. Bell, MD, an impartial medical expert, and Paul K. Morrison, an impartial vocational expert. The claimant is represented by George Wall, an attorney.

The claimant has amended the alleged onset date of disability to June 1, 2011.

The claimant submitted or informed the Administrative Law Judge about all written evidence at least five business days before the date of the claimant's scheduled hearing (20 CFR 404.935(a) and 416.1435(a)).

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2014. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

If the claimant is under a disability and there is medical evidence of a substance use disorder(s), there is an additional issue as to whether the substance use disorder(s) is a contributing factor material to the determination of disability under sections 223(d)(2) and 1614(a)(3)(j) of the Social Security Act. If so, the individual is not under a disability.

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After careful review of the entire record, I find that the claimant has been disabled from June 1, 2011, through the date of this decision. I also find that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, I must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, I must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1522 and 416.922; Social Security Rulings (SSRs) 85-28 and 16-3p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, I must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, I must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, I must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

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Next, I must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b) and 416.965). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), I must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(f), 404.1560(c), 416.912(f) and 416.960(c)).

If it is found that the claimant is disabled and there is medical evidence of a substance use disorder(s), I must determine if the substance use disorder(s) is a contributing factor material to the determination of disability. In making this determination, I must evaluate the extent to which the claimant's mental and physical limitations would remain if the claimant stopped the substance use. If the remaining limitations would not be disabling, the substance use disorder(s) is a contributing factor material to the determination of disability (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

1. **The claimant's date last insured is December 31, 2014.**

2. **The claimant has not engaged in substantial gainful activity since June 1, 2011, the amended alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).**

The claimant worked after the established disability onset date; however, this work was an unsuccessful work attempt. The claimant's 2011 earnings are prior to the amended alleged onset date. Thereafter, the claimant earned $2,865 in 2012 at Grass Etc. (8D). According to the claimant, he worked at Grass Etc. in 2012 for two months until he hurt his back. He also describing arguing with co-workers in that job. The claimant's work activity was preceded by a

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significant break in his work activity, the claimant worked less than 6 months, and he testified that he stopped working because of his impairments. Therefore, I find that the claimant's work after the alleged disability onset is an unsuccessful work attempt. I will proceed with the sequential evaluation process.

3. The claimant has the following severe impairments: degenerative disc disease; autism spectrum disorder. (20 CFR 404.1520(c) and 416.920(c)).

The above medically determinable impairments significantly limit the ability to perform basic work activities as required by SSR 85-28.

Other symptoms and complaints appear in the medical treatment records periodically, but there is nothing to show that they are more than transient or cause significant vocational limitations. Any such impairment is not a severe medically determinable impairment because no objective, acceptable medical documentation supports such a finding.

4. The severity of the claimant's impairment meets the criteria of section 12.10 of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 416.920(d) and 416.925).

In making this finding, I have considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSR 16-3p. I also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927.

In considering the claimant's symptoms, I must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and effects of the claimant's symptoms to determine the extent to which they limit the claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, I must consider other evidence in the record to determine if the claimant's symptoms limit the ability to do work-related activities.

The claimant described having a propensity for anger when things do not go as planned, inability to be flexible to change, and problems getting along with people. (5E). He wrote that he needs reminders to put on clean clothes and to prepare meals. According to the claimant, he has a history of quitting or being laid off because he could not get along with people. (5E).

The severity of the claimant's impairment meets the criteria of section 12.10. The "paragraph A" criteria are satisfied because the claimant has medical documentation of qualitative deficits in

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verbal communication, nonverbal communication, and social interaction; and significantly restricted, repetitive patterns of behavior, interests, or activities.

The "paragraph B" criteria are satisfied because the claimant's impairment causes a moderate limitation in understanding, remembering, or applying information, an extreme limitation in interacting with others, a moderate limitation in concentrating, persisting, or maintaining pace, and an extreme limitation in adapting or managing oneself.

At the hearing, the impartial medical expert, George Bell, MD, offered the following summary of the evidence and medical opinion. Dr. Bell testified that the claimant was diagnosed with an autism spectrum disorder in 2015 (5F), but has had psychiatric symptoms since early childhood that were misunderstood prior to the autism diagnosis. For example, Dr. Bell identified that the claimant was diagnosed with cluster B traits (1F), bipolar disorder, and impulse control disorder. In terms of the autism spectrum disorder, Dr. Bell cited the claimant's difficulty with interpersonal conflicts, odd behavior, short-term jobs, preference being outdoors, dislike of shoes, impaired grooming, poor social skills and judgment, and his argumentativeness.

Dr. Bell opined that the severity of the claimant's mental impairment meets Listing 12.10. According to Dr. Bell, the claimant has extreme limits in interacting with others and adapting or managing oneself. He gave moderate limits in understanding, remembering or applying and concentrating, persisting or maintaining pace.

Medical records are very consistent with the claimant's allegations, and show significant limitation in areas of mental functioning. Moreover, records are consistent with Dr. Bell's testimony. The consultative examiner, David Gostnell, PhD diagnosed autism spectrum disorder. (5F/5). The evidence demonstrates that the claimant's symptoms from this impairment include a well-documented history of difficulty developing, maintaining, and understanding relationships. Treatment records note social interaction deficits, limited insight and motivation, difficulty making appropriate academic progress, difficulty maintaining employment and periods of homelessness. (8F/2, 13). The record documents the claimant's longstanding aversion to wearing shoes. (5F/4; 8F/11). Records show that the claimant functions in the Low level of adaptive skills. (8F/17).

As for the opinion evidence, I give significant weight to the opinion of impartial medical expert, Dr. Bell, because his opinion is based on thorough review of the claimant's medical records, and is consistent with treatment notes showing a longstanding history of significant limitations from mental impairment.

I note that Dr. Bell determined that the claimant could manage his own benefits. Dr. Bell also said that the earliest date that the severity of the claimant's impairment met the listing was August 25, 2000. While I give great weight to Dr. Bell's opinion that the claimant's impairment meets the severity of Listing 12.10, I find that the claimant does require a representative payee. Additionally, I give little weight to Dr. Bell's opinion regarding the earliest date that the severity of the claimant's impairment met the listing because that date is prior to the amended alleged onset date, June 1, 2011. In fact, the claimant was working prior to June 1, 2011.

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Some weight is given to the opinion of DDS medical consultants, Neil Berner, MD, and Peter Bernardo, MD. (3A; 4A; 5A; 6A). However, these findings are not relevant because I find that the severity of the claimant's mental impairment meets the criteria of Listing 12.10.

Limited weight is given to the opinion of DDS psychological consultants, Scott F. Kaper, PhD, and Ben Kessler, PsyD, because they did not consider new evidence, or the medical expert's testimony. (3A; 4A; 5A; 6A).

Some weight is given the opinion of consultative examiner, Dr. Gostnell. (5F/5). This opinion is consistent with treatment records and Dr. Bell's testimony. However, Dr. Gostnell recommended further testing.

I give some weight to the opinion of consultative examiner, Steven Vander Waal, MD. (6F/2). However, these findings are not relevant because I find that the severity of the claimant's mental impairment meets the criteria of Listing 12.10.

Some weight is given to the opinion of Veronica Vasquez, PhD. (8F). However, the extreme limits in concentrate, persist, or maintain pace, and the extreme limits in understand, remember, or apply information are not consistent with the record as a whole and are inconsistent with Dr. Bell's testimony. (9F/2-4).

Little weight is given to John Green, MD because this opinion is not consistent with the record as a whole and the determination of disability is reserved to the Commissioner. (11F/3).

The claimant's friend, Aleta Tilley, completed a statement. (10E). This statement receives some weight to the extent it is consistent with the claimant's medical records and Dr. Bell's testimony.

In summary, the record as a whole supports finding that the severity of the claimant's autism spectrum disorder meets Listing 12.10.

5. The claimant has been under a disability as defined in the Social Security Act since June 1, 2011, the amended alleged onset date of disability (20 CFR 404.1520(d) and 416.920(d)).

6. The claimant's substance use disorder(s) is not a contributing factor material to the determination of disability (20 CFR 404.1535 and 416.935).

Applying the sequential evaluation process a second time, the claimant's other impairments would not improve to the point of nondisability in the absence of the substance use disorder(s). The impartial medical expert testified that the severity of the claimant's impairment would meet the criteria of Listing 12.10 even in the absence of marijuana use. Accordingly, the claimant would still be disabled in the absence of the substance use disorder(s).

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DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 10, 2015, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since June 1, 2011.

Based on the application for supplemental security income protectively filed on September 10, 2015, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since June 1, 2011.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 36 months.

It is recommended that a determination be made concerning the appointment of a representative payee who can manage payments in the claimant's interest.

/s/ Jo Hoenninger
Jo Hoenninger
Administrative Law Judge

October 27, 2017
Date

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From:	Jake Niederquell on behalf of JakeNiederquell@outlook.com
To:	Gerald Kobluk
Subject:	RE: 23-2-04946-32_Discovery Supplement
Date:	Friday, December 20, 2024 9:18:00 PM
Attachments:	Dr. Vasquez_Adaptive Behavior Evaluation_highlight.pdf Dr. Gostnell_Diagnostic Evaluation_highlight.pdf

Mr. Kobluk:

Due to your stipulation to the court that you will not disclose my private information to your clients or anyone not working directly for you on the case, and the Court's explanation of the best evidence rule, please find attached the unredacted copies of the full documents from Dr. Gostnell and Dr. Vasquez excerpted in the previous discovery responses. I have highlighted the portions that I believe are exceptionally sensitive as the judge ordered. If you would do me the courtesy of highlighting (in a different color) and returning to me any portions other than what I previously provided that are relevant to this case, it would be greatly appreciated.

Thank you,
Jake Niederquell

From:	Gerald Kobluk
To:	Jake Niederquell
Cc:	Michelle Hernandez; Yvonne Kobluk
Subject:	RE: 23-2-04946-32_Discovery Supplement
Date:	Monday, December 23, 2024 11:32:11 AM
Attachments:	PROPOSED Order RE compel.docx 24.12.23 Protective Order.docx SODEMANN Authorization for Records.docx SODEMANN - Psychotherapy release.doc Social Security Consent Form.pdf

Mr. Niederquell:

Pursuant to the Court's oral ruling on Friday, attached is a DRAFT Order compelling discovery, and related DRAFT Protective Order. Please review and provide any proposed revisions. Also attached are Releases for you to sign pertaining to medical and Social Security records.

Should we not reach agreement as to the form of these orders, we will submit these to the Court for presentment.

Gerry.

GERALD KOBLUK
KSB LITIGATION, P.S. | TRIAL ATTORNEYS
510 W. Riverside Ave. #300 Spokane, WA 99201
T 509 624 8988 F 509 474 0358 / gkobluk@KSBlit.legal / KSBlit.com

From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Friday, December 20, 2024 9:18 PM
To: Gerald Kobluk <gkobluk@ksblit.legal>
Subject: RE: 23-2-04946-32_Discovery Supplement

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Thank you,
Jake Niederquell

From:	Jake Niederquell
To:	Gerald Kobluk
Cc:	Michelle Hernandez; Yvonne Kobluk
Subject:	RE: 23-2-04946-32_Discovery Supplement
Date:	Tuesday, December 24, 2024 12:00:00 AM
Attachments:	Revised_24.12.23 Protective Order.docx Revised_PROPOSED Order RE compel.docx Niederquell_SSA Disability Decision_Highlight_10.27.17.pdf

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Mr. Kobluk:

Please find attached my revised versions of the proposed orders.

I think my version of the Court's decision on Defendants' motion to compel discovery responses much more closely captures the Court's actual oral decision. I don't expect you will agree to it regardless how well it captures what the judge said and what the law requires, so I believe we will need to present our proposed orders and have the judge decide on that one.

I made only 1 revision to the proposed Stipulated Protective Order, I think, which more accurately captures the oral stipulation you made at the hearing. If you're willing to agree to it, I'm ready to sign. Let me know.

Additionally, please also find attached a copy of the administrative law judge's decision from my disability determination hearing in October 2017 (it was a long time ago, I got my timeline skewed, 2017, not 2016). Gold highlights generally important parts, blue highlights autism related parts, and orange highlights parts specifically related to my sensory condition (which is the only part actually relevant to this case, and as you can see was not a major focus in my disability determination, even though it was a factor). I have provided this document for you as a courtesy to give you peace of mind that my official ASD diagnosis, including but not limited to my sensory disturbances, has already been adjudicated rendering the documents you've adamantly requested immaterial to the needs of this case.

Please keep in mind that this evidence does little to nothing for proving/disproving whether I was in fact officially diagnosed with a condition requiring accommodation in November 2023. Dr. Gostnell's report clearly indicates that I was in fact so diagnosed, and Dr. Vasquez's report confirms it; Dr. Green's page, derived from Dr. Gostnell's and Dr. Vasquez's reports, is merely the one I asked my then primary care doctor for so I could show people who confronted me and threatened me with cops that I had a diagnosed disability requiring accommodation. I stopped carrying it with me when I eventually realized it was pointless because abusive and predatory personalities (like your clients) don't care about the facts or the law at all; they see me and think "easy prey" a lot like you have done throughout this case.

Dr. Vasquez's report is the most up-to-date diagnostic report regarding my autism in my medical history. It was ordered and used for determining my eligibility for Oregon Developmental Disabilities Services (I was determined eligible despite normal or better

intelligence based on the adaptive behavior scores in her report). My social security lawyer thought it was also important for use in my disability claim. It does not focus on my sensory condition, although it does provide enough information to conclusively prove that I was, in fact, officially diagnosed with a sensory condition requiring accommodation in November 2023.

Dr. Bell did not submit any written opinions or reports (to my knowledge) but simply consulted by reviewing all records and previous medical opinions in the case (including the outdated ones you keep requesting and the more recent ones I keep relying on), and then by testifying orally at the hearing (via teleconference). His testimony was given the most weight by the judge and he very substantially agreed with Dr. Gostnell and Dr. Vasquez on numerous issues (including my sensory condition, as indicated by the ALJ), hence my assumption that their reports, which are the most up-to-date diagnostic reports available in my medical history, are all that's needed to prove the first element of my discrimination claim. I have requested a copy of the transcript of that hearing so that you can better see what his full testimony actually was, and I don't know how long it will take to receive that transcript, if it is even still available. Hopefully I will know something next week regarding if I will be able to obtain that transcript.

Hopefully we can move on from this subject and start focusing on more important issues, like how much will it take in punitive damages to deter the type of abuse your clients are caught red-handed engaging in, not just locally but also wherever I may roam down the road.

Jake.

From: Gerald Kobluk <gkobluk@ksblit.legal>
Sent: Monday, December 23, 2024 11:27 AM
To: Jake Niederquell <JakeNiederquell@outlook.com>
Cc: Michelle Hernandez <mhernandez@ksblit.legal>; Yvonne Kobluk <ylkobluk@ksblit.legal>
Subject: RE: 23-2-04946-32_Discovery Supplement

Mr. Niederquell:

Pursuant to the Court's oral ruling on Friday, attached is a DRAFT Order compelling discovery, and related DRAFT Protective Order. Please review and provide any proposed revisions. Also attached are Releases for you to sign pertaining to medical and Social Security records.

Should we not reach agreement as to the form of these orders, we will submit these to the Court for presentment.

Gerry.

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From: Jake Niederquell <JakeNiederquell@outlook.com>
Sent: Friday, December 20, 2024 9:18 PM
To: Gerald Kobluk <gkobluk@ksblit.legal>
Subject: RE: 23-2-04946-32_Discovery Supplement

Mr. Kobluk:

Due to your stipulation to the court that you will not disclose my private information to your clients or anyone not working directly for you on the case, and the Court's explanation of the best evidence rule, please find attached the unredacted copies of the full documents from Dr. Gostnell and Dr. Vasquez excerpted in the previous discovery responses. I have highlighted the portions that I believe are exceptionally sensitive as the judge ordered. If you would do me the courtesy of highlighting (in a different color) and returning to me any portions other than what I previously provided that are relevant to this case, it would be greatly appreciated.

Thank you,
Jake Niederquell

From:	Gerald Kobluk
To:	Rayfield, Tracy
Cc:	Michelle Hernandez; Yvonne Kobluk; jakeniederquell@outlook.com; madscientist.tag@gmail.com
Subject:	Niederquell v. Fitness Center et al; Cause No. 23-2-04946-32
Date:	Tuesday, December 31, 2024 9:26:17 AM
Attachments:	PROPOSED Order RE compel.docx 24.12.23 Protective Order.docx Revised_PROPOSED Order RE compel.docx Revised_24.12.23 Protective Order.docx

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Tracy:

I hope you enjoyed the Holidays! Before the break, recall the motion to compel that was argued in this matter on Dec. 20. In accordance with the Court's oral ruling, and pursuant its direction, I drafted two Orders: an Order Granting Defendants' Motion to Compel, and a separate Protective Order. These proposed Orders were sent to Mr. Niederquell for his review on Monday, 12/23. Mr. Niederquell did not agree to Orders as drafted and proposed his own. I have attached both versions for the Court's review and consideration. (The first two Orders are from KSB; the "Revised" Orders are from Mr. Niederquell).

I assume these competing Orders will be considered without argument...and the Court will sign whichever Order is most appropriate. If the Court wishes oral argument, please advise. Both versions are provided in Word format should the Court wish to make its own revisions.

Happy New Year! Gerry.

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RCW 49.60.010

Purpose of chapter.

This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

[**2020 c 52 s 1**; **2007 c 187 s 1**; **2006 c 4 s 1**; **1997 c 271 s 1**; **1995 c 259 s 1**; **1993 c 510 s 1**; **1985 c 185 s 1**; **1973 1st ex.s. c 214 s 1**; **1973 c 141 s 1**; **1969 ex.s. c 167 s 1**; **1957 c 37 s 1**; **1949 c 183 s 1**; Rem. Supp. 1949 s 7614-20.]

NOTES:

Effective date—1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [**1995 c 259 s 7**.]

Severability—1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1993 c 510 s 26**.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [**1969 ex.s. c 167 s 10**.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [**1957 c 37 s 27**.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [**1949 c 183 s 13**.]

*Community renewal law—Discrimination prohibited: RCW **35.81.170**.*

RCW 49.60.030

Freedom from discrimination—Declaration of civil rights.

(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW **48.30.300**, **48.44.220**, or **48.46.370** does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin, citizenship or immigration status, or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW **49.60.225** contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter **19.86** RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

[**2020 c 52 s 4**; **2009 c 164 s 1**; **2007 c 187 s 3**; **2006 c 4 s 3**; **1997 c 271 s 2**; **1995 c 135 s 3**. Prior: **1993 c 510 s 3**; **1993 c 69 s 1**; **1984 c 32 s 2**; **1979 c 127 s 2**; **1977 ex.s. c 192 s 1**; **1974 ex.s. c 32 s 1**; **1973 1st ex.s. c 214 s 3**; **1973 c 141 s 3**; **1969 ex.s. c 167 s 2**; **1957 c 37 s 3**; **1949 c 183 s 2**; Rem. Supp. 1949 s 7614-21.]

NOTES:

Intent—1995 c 135: See note following RCW **29A.08.760**.

Severability—1993 c 510: See note following RCW **49.60.010**.

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1993 c 69 s 17**.]

Severability—1969 ex.s. c 167: See note following RCW **49.60.010**.

Severability—1957 c 37: See note following RCW **49.60.010**.

Severability—1949 c 183: See note following RCW **49.60.010**.

RCW 49.60.510

Privileged health information—Noneconomic damages—Waivers.

(1) By requesting noneconomic damages under this chapter, a claimant does not place his or her health at issue or waive any health care privilege under RCW **5.60.060** or **18.83.110**, or any other law, unless the claimant:

(a) Alleges a specific diagnosed physical or psychiatric injury as a proximate result of the respondents' conduct, and relies on the records or testimony of a health care provider or expert witness to seek general damages; or

(b) Alleges failure to accommodate a disability or alleges discrimination on the basis of a disability.

(2) Any waiver under subsection (1)(a) and (b) of this section is limited to health care records and communication between a claimant and his or her provider or providers:

(a) Created or occurring in the period beginning two years immediately preceding the first alleged unlawful act for which the claimant seeks damages and ending at the last date for which the claimant seeks damages, unless the court finds exceptional circumstances to order a longer period of time; and

(b) Relating specifically to the diagnosed injury, to the health care provider or providers on which the claimant relies in the action, or to the disability specifically at issue in the allegation.

[**2020 c 254 s 1**; **2018 c 70 s 1**.]

WAC 162-26-080

Reasonable accommodation.

(1) **Unfair practice to not accommodate.** It is an unfair practice for a person in the operation of a place of public accommodation to fail or refuse to make reasonable accommodation to the known physical, sensory, or mental limitations of a person with a disability or to the use of a trained dog guide or service animal by a disabled person, when same service would prevent the person from fully enjoying the place of public accommodation.

(2) **Determining reasonableness.** Whether a possible accommodation is reasonable or not depends on the cost of making the accommodation, the size of the place of public accommodation, the availability of staff to make the accommodation, the importance of the service to the person with a disability, and other factors bearing on reasonableness in the particular situation.

(3) **Carrying not favored.** Carrying a mobility-impaired person is not required by law and is not an acceptable accommodation, except in rare circumstances. Carrying should be done only when there is no other way for the mobility-impaired person to use the facility and when it is agreeable to the person with a disability.

(4) **"Arranged service."** The concept of "arranged service," as formerly defined in commission rules, is incorporated fully within the scope of reasonable accommodation.

[Statutory Authority: RCW **49.60.120**(3). WSR 99-15-025, § 162-26-080, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW **49.60.120**(3) and 1997 c 271. WSR 98-08-035, § 162-26-080, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW **49.60.120**(3). WSR 83-02-012 (Order 43), § 162-26-080, filed 12/23/82.]

WAC 162-26-110

Behavior causing risk.

(1) **Proviso interpreted.** This section interprets the following proviso of RCW 49.60.215:

"Provided, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice."

(2) **General rule.** It is not an unfair practice under RCW 49.60.215 to deny a person service in a place of public accommodation because that person's behavior or actions constitute a risk to property or other persons.

(3) **Individual judgment required.** To come within this exception, the denial of service must be based on knowledge of the present behavior or actions of the individual who is not served. It is an unfair practice to exclude all persons who have a disability or who have a particular disability unless the operator of the place of public accommodation can show that all persons with the disability will present a risk to persons or property.

(4) **Likelihood of injury.** Risk to property or other persons must be immediate and likely, not remote or speculative.

(5) **Degree of risk.** Risk of injury to persons may be given more weight than risk of injury to property. Risk of severe injury may be given more weight than risk of slight injury.

(6) **Risk to person with a disability.** Risk to the person with a disability is not a reason to deny service. Law other than the law against discrimination governs liability for injury to customers with a disability. The law against discrimination affects tort liability only insofar as it includes persons with a disability within the public for which public accommodations must be made safe.

(7) **Annoyance to staff or other customers.** Annoyance on the part of staff or customers of the place of public accommodation at the abnormal appearance or behavior of a person with a disability is not a "risk to property or other persons" justifying nonservice.

(8) **Least discriminatory solution required.** It is an unfair practice to deny a person with a disability the enjoyment of an entire place of public accommodation because the person presents a risk of injury when using part of the place. When risk justifies not serving a person with a disability in the same way or same place as other customers, the person should be served through reasonable accommodation (WAC 162-26-060, 162-26-080), if possible.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-26-110, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-26-110, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-110, filed 9/22/82.]

(Copy Receipt) (Clerk's Date Stamp)

SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

NIEDERQUELL, JACOB, **Plaintiff/Petitioner(s),** **VS.** **KINNEY, ERIC WADE, FITNESS CENTER INC, FENSKE, JOSEPH G, FENSKE, ALISON J, CAVENDER, GENE, KINNEY, KARA S,** **Defendant/Respondent(s).**	**COA NO. 40903-1-III** **SUPERIOR CT NO. 23-2-04946-32** **INDEX TO CLERKS PAPERS** ***(INX)***

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