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Reply to: Orlando

July 12, 2018

Via U.S. Mail

Chris Rondeau, Chief Executive Officer
Planet Fitness
4 Liberty Ln W
Hampton, NH 03842

RE: Sex discrimination against female Planet Fitness patrons

Dear Mr. Rondeau:

Liberty Counsel is a national litigation, education and public policy organization with an emphasis on civil liberties and the First Amendment. With offices in Florida, Virginia, and Washington, D.C., we have had great success in federal court on behalf of our many clients.

Liberty Counsel represents our client, "Mrs. H.," in the aftermath of the recent discriminatory conduct of Planet Fitness Leesburg, which terminated her contract on the basis that she objected to a man, Jordan "Ivy" Rice, invading her privacy in the women's locker room. This is not the only incident with Mr. Rice known to Planet Fitness. Another woman reported that he exposed his naked body to her in the woman's locker room at this location. In another instance, he was involved in an argument with another woman over use of the tanning room. Misogynist, anti-woman harassment should have no place in Planet Fitness locations, and violates Florida law.

In the wake of his harassment of biological women, we understand that Mr. Rice has transferred his membership to another Planet Fitness location. However, Mrs. H.'s membership in Leesburg remains terminated. **Planet Fitness must immediately reinstate Mrs. H's membership, and make changes to its membership and locker room policies to prevent blatant sex-based harassment by males in the women's lockers and restrooms.**

Mrs. H. is the survivor of an attempted rape, and as such, is keenly aware of and sensitive to men in places where they do not have a legitimate purpose, and where she and other women are in a position of vulnerability. On May 29, 2018, staff at the Leesburg location revoked Mrs. H.'s membership after she was intimidated and alarmed by Mr. Rice in the

women's locker room at this location, and complained about him.

Jordan Rice, a.k.a. "Ivy," claims to be "transgender." During the incident with Mrs. H., he appeared obviously to her as a white male approximately 5'8," with short brown hair, a gray tank-top, and gray sweat pants. He made no attempt to even "pass" as a woman, not that this justifies his presence. Mr. Rice was standing in the women's locker room, facing the mirror, and pretending to apply makeup.

Mrs. H. entered, and noticed him. She was disturbed by his presence, politely confronted him and asked him to leave the women's locker room. Instead, he smirked back at her, and continued to stare at her, remaining standing in front of the mirror "applying makeup," where he had a full view of every single woman entering or exiting the shower area and every single locker, Mrs. H.'s locker, which was directly behind him within three (3) feet.

When Mr. Rice refused to leave, Mrs. H. herself left to give him time to finish what he was doing, so she could use the restroom in privacy. **Mr. Rice remained there for at least an hour, "applying makeup,"** to intentionally deny Mrs. H. the privacy she desired. He was observed to have entered and exited the locker room, wearing the same clothes, and had not showered or changed. Despite a male employee observing that Mr. Rice's behavior was "over the top," staff did not intervene and ask him to finish his business, but permitted him to monopolize the women's locker room. This impeded Mrs. H.'s rightful use of the women's locker room.

A records request reveals that Mr. Rice (incredibly) had called the police to falsely report that he had been "sexually harassed" by Mrs. H. He can be heard on his 911 call, following Mrs. H. across the parking lot of the establishment, over into the next parking lot, calmly relaying to the dispatcher his and Mrs. H.'s appearances, a description of Mrs. H.'s vehicle, and the direction in which she was headed. The fact that he was and is a man was evident to the dispatcher, who repeatedly refers to him as "sir" on that call. No police report was filed.

Planet Fitness's policy of allowing men into women's facilities is not represented in its membership contracts; nor next to its restrooms/lockers; nor are we aware of a disclaimer anywhere within the franchise locations, nor in any literature made readily available to its members. This policy is contrary to common decency and expectations of privacy. It does not respect the privacy rights of either men or women. Mrs. H.'s experience with sexual assault makes the unexpected presence of a man in the women's restroom and locker facilities particularly traumatic to her. Other victims of sexual assault may relive trauma as a result of this policy, which allows predators access to women's lockers, on the subjective grounds that they merely "identify" as a woman.

Mr. Rice had no legitimate purpose in taking an hour pretending to "apply makeup." He appears to be a misogynist, or perhaps have a fetish and derive sexual enjoyment from depriving women of privacy. Planet Fitness's stated goal is to "provide a clean, safe, welcoming environment for anyone who walks through [its] door. . . ." By allowing men to use women's facilities, Planet Fitness has failed to meet even its own standards.

Adding insult to injury, Planet Fitness Leesburg took no action against Mr. Rice, but instead, without talking to Mrs. H. first, or getting her side of the story, sent her a cancellation notice, claiming that she had violated the Planet Fitness “Lunk” policy. This policy warns against “grunting, dropping weights, and judging.” Yet, Mrs. H. did none of those. It is not “judging” to question the presence of an obvious man in the women’s locker room who is intentionally depriving women of privacy, or parading himself naked in the women’s locker.

Even if the “Lunk” policy were legitimately applied in this instance (which it is not), Planet Fitness has a “three strikes” rule before a membership is canceled. Specifically, on the first “offense,” Planet Fitness’s policy is to “respectfully call[] attention to the behavior, to give the Lunk an opportunity to follow Planet Fitness rules.” Staff may also choose to sound the “Lunk Alarm,” a loud siren that ostensibly “helps maintain a Judgment-Free Zone by stopping a Lunk in his/her tracks.” After a second offense, staff is required to “[p]olitely inform a member . . . that their membership will be terminated on the next infraction.” Only after three offenses of “grunting, dropping weights, showcasing,” or “judging” may staff terminate a membership for “Lunk-like behavior.”¹ Planet Fitness Leesburg employees have failed to abide by this policy. Moreover, “judging” cannot include calling attention to behavior which is unlawful or which constitutes harassment on the basis of sex, which Mr. Rice’s leering presence in the women’s locker room was.

Planet Fitness is committing consumer fraud by failing to disclose, and failing to render in writing, policies permitting access of opposite-sex individuals to places where women have a reasonable expectation of privacy. It also has abused its discretion and violated its own policies by prematurely canceling Mrs. H.’s membership, without ever listening to the 911 call, getting her side of the story, and giving credence to a non-existent “panic attack” as claimed by Mr. Rice. This violates its own ethics policy, which condemns “tak[ing] unfair advantage of others through manipulation, **concealment**, abuse of privileged information, **misrepresentation of material facts, or by other unfair practices.**” (Emphasis added).

Planet Fitness has also violated several Florida laws. In intentionally failing to disclose in its membership contracts, or by means of posted notices the material fact that Planet Fitness will allow men to be present in women’s restrooms and lockers, at will, Planet Fitness has “intentionally defrauded the public through dishonest or deceptive means,” in violation of Florida’s consumer protection laws. Fla. Stat. § 501.019.

Planet Fitness’ actions herein detailed violate Sections 760.01-760.11 and 509.092, Florida Statutes, which constitute the “Florida Civil Rights Act of 1992.” The Florida Legislature has provided a statement of intent for enactment of this legislation in section 760.01(2): “The general purposes of the Florida Civil Rights Act of 1992 are **to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex**, national origin, age, handicap, or marital status and **thereby to protect their interest in personal dignity**, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within

¹ https://www.planetfitnessuniversity.com/Content/6e576e90-b238-482d-887a-b4ac84c214b9/story_content/external_files/Orientation%20Part%202%20Script%20V.1.pdf

the state." (Emphasis added). Notably, "gender identity" or "transgender" status is not found within the Act; biological "sex" and "religion" are.

The Florida Civil Rights Act prohibits discrimination based on religion and biological "sex" in places of public accommodation. The Act guarantees full and equal enjoyment of "the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation" to all persons without discrimination. The Florida Legislature has expressed its intent that the statute is to be liberally construed. The Act covers "other places of exhibition or entertainment." Consumers avail themselves of Planet Fitness' amenities not just for personal health, but because exercise is enjoyable, and is a form of entertainment. A liberal reading of the definition of a public accommodation in section 760.02(11), Florida Statutes, could easily include Planet Fitness as a "place of entertainment" to advance and accomplish the purposes of the Act.

The Act also includes within the definition of "public accommodation" any "lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment." See Fla. Stat. § 760.02(11)(b) Here, Planet Fitness maintains a "Drink Cooler" along with a lunchroom/lunch counter at which the drinks and other food items are sold for consumption on the premises.

The Act prohibits discrimination against individuals on the basis of "religion," as well as sex. Mrs. H. and numerous others have a sincerely-held religious belief that they not be seen by or encounter members of the opposite sex when they are in states of partial or full undress, or while showering, or while performing private bodily functions. Planet Fitness holds itself out as serving men and women equally, yet by its policies permit some of its customers to deprive the opposite sex of full, equal, private use of the facilities at any time.

Mr. Rice had no legitimate purpose in taking an hour pretending to "apply makeup," nor in walking about the women's locker, naked. He appears to have a fetish and derive sexual enjoyment from depriving multiple women of privacy. Planet Fitness has permitted this man to engage in sexual harassment, and then punished the objecting victims for "judging."

For these reasons, demand is hereby made that Planet Fitness:


1. Withdraw Mrs. H's membership termination based on "Lunk" violation and fully reinstate Mrs. H.'s membership at the Planet Fitness Leesburg location, as well as the other 65 Planet Fitness locations in this franchise; AND
2. Revise Florida Planet Fitness policies to permit access to women's restrooms and lockers based only on biological "sex;" OR
3. Add to all Florida membership contracts actual notice as follows: "Planet Fitness permits men to use women's lockers and restrooms, and women to use men's lockers and restrooms. There is no expectation of sex-based privacy within Planet Fitness facilities;" AND

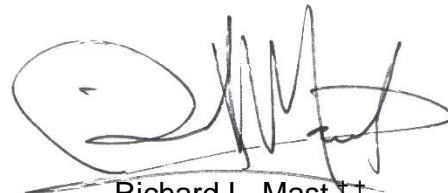
4. Post prominent notices in the locker and shower facilities of Florida locations notifying members that they may encounter members of the opposite sex in areas traditionally reserved for single-sex use.

If we do not receive these requested responses by July 26, 2018, Liberty Counsel will conclude that Planet Fitness is indifferent to the rights of women, and will take further action to secure our clients' safety and privacy interests.

We await your soonest response.

Sincerely,


Mary E. McAlister†


Richard L. Mast ††

CC

Via Email:

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