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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FITNESS INTERNATIONAL, LLC D/B/A LA FITNESS,

Defendant.

No. 8:24-cv-02172-SVW-KES

PLAINTIFF UNITED STATES' OPPOSITION TO DEFENDANT FITNESS INTERNATIONAL LLC'S MOTION TO DISMISS COMPLAINT

Hearing Date: February 3, 2025
Time: 1:30 p.m.
Courtroom: First Street Courthouse Courtroom 10A

Honorable Stephen V. Wilson
United States District Judge

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Title III of the Americans with Disabilities Act (ADA) was enacted to prevent and redress pervasive and unequal treatment of people with disabilities in places of public accommodation. 42 U.S.C. § 12101(a)(2)-(3); *see also id.* § 12101(a)(5) (recognizing the "discriminatory effects of architectural . . . barriers"). It requires public accommodations, like Defendant Fitness International, LLC (LA Fitness), to give people with disabilities the opportunity to participate in or benefit from LA Fitness' services and facilities, comply with standards for physical accessibility, remove architectural barriers in existing facilities where removal is readily achievable, maintain in operable working condition features and equipment that must be accessible, and not impose extra fees on people with disabilities. LA Fitness has repeatedly failed to meet these obligations.

Contrary to LA Fitness' assertions, the United States has more than met its burden at the pleading stage. The United States' Complaint, ECF No. 1, provides numerous examples of accessibility barriers that patrons with disabilities encounter at LA Fitness clubs. In one metropolitan area alone, Dallas-Ft. Worth, multiple clubs had violations that fell into thirteen categories. These include structural barriers from protruding objects, which can be dangerous to people who are blind; reach range violations, which make it difficult or impossible for people with mobility impairments to access basic items like soap and wall hooks; lack of pipe insulation, which protects wheelchair users from injury such as burns from hot water pipes; and barriers at multiple doors, which can prevent access. The Complaint also includes examples from patrons with disabilities who could not access clubs due to accessibility barriers. These include a patron who was left dangling over the water on a broken pool lift, a patron who could not enter an LA Fitness club for years due to a broken elevator, and a patron who was forced to crawl out of a pool. These violations have persisted, many for years, and even after patrons complained to club and corporate staff. They easily support a reasonable inference that LA Fitness' violations of Title III constitute a pattern or practice of discrimination.

To try to escape responsibility, LA Fitness minimizes the significance and implications of the United States' factual allegations and fabricates standards for pleading a pattern or practice that are divorced from the law. It claims, without support, that absent proof of a "coordinated effort to disadvantage individuals with disabilities" the United States cannot validly state a claim. Def.'s Mot. at 7, ECF No. 18 ("Mot."). It employs mathematical gymnastics to devise a statistical pleading standard, when no such requirement exists. Contrary to LA Fitness' creative assertions, there is no such "coordinated effort" requirement and the United States does not need to allege "corporate level directives" to support a reasonable inference of a pattern or practice. *Id.* In fact, courts have found that far fewer allegations than those in the United States' Complaint are sufficient to state a pattern or practice and have not required statistical evidence to plead a pattern or practice. Finally, the numerous incidents of discrimination and ADA violations alleged in the Complaint easily support a reasonable inference that the failures to comply with Title III are not sporadic, but instead, are LA Fitness' pattern or practice. Thus, LA Fitness' Motion lacks merit and should be denied.

II. STATUTORY AND REGULATORY BACKGROUND

Title III prohibits discrimination against individuals on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation, including gym and fitness facilities. 42 U.S.C. §§ 12181(7)(L), 12182(a); 28 C.F.R. § 36.201(a). The ADA Standards for Accessible Design (ADA Standards), comprising the 1991 Standards and 2010 Standards, set out the relevant minimum accessibility standards for ensuring that public accommodations are accessible to and usable by persons with disabilities. *See* 42 U.S.C. §§ 12183, 12186; 28 C.F.R. §§ 36.102, 36.304(d) and 28 C.F.R. Subpart D.

Congress granted the Attorney General authority to investigate alleged violations of Title III and to bring suit in federal court if the Attorney General has reasonable cause to believe any group of persons is engaged in a pattern or practice of disability discrimination. 42 U.S.C. § 12188(b). In this respect, the ADA mirrors other civil rights

laws that grant the Attorney General the authority to bring suit when he or she identifies a pattern or practice of discrimination.[1] *See* 42 U.S.C. § 3614(a) (Fair Housing Act); 42 U.S.C. § 2000e-6 (Title VII of the Civil Rights Act of 1964); 42 U.S.C. § 2000a-5 (Title II of the Civil Rights Act of 1964).

As the Supreme Court explained in *International Brotherhood of Teamsters v. United States*, to establish a pattern or practice of discrimination, the allegations must be more than "the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts," but the defendant's "regular procedure or policy." 431 U.S. 324, 336, 360 (1977) (holding that the Government sustained its burden of proving a pattern or practice of employment discrimination); *see also Cherosky v. Henderson*, 330 F.3d 1243, 1247 (9th Cir. 2003) ("[P]attern-or-practice claims cannot be based on 'sporadic discriminatory acts' but rather must be based on discriminatory conduct that is widespread throughout a company or that is a routine and regular part of the workplace." (citations omitted)); *Nobel Learning Cmtys.*, 676 F. Supp. 2d at 384 (applying this framework to the ADA).

To survive a motion to dismiss, the factual content must "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). The Court must accept the allegations as true, construe them in the light most favorable to the non-moving party, and draw all reasonable inferences from well-pleaded factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *amended,* 275 F.3d 1187 (9th Cir. 2001). Thus, to overcome a motion to dismiss in a pattern or practice case, the allegations must create a reasonable inference that a pattern or practice of discrimination exists. *E.g.*, *United States v. Prashad*, 437 F. Supp. 3d 105, 108-09 (D. Mass. 2020); *EEOC v. Glob. Horizons, Inc.*, 904 F. Supp. 2d 1074, 1085 (D. Haw. 2012); *Nobel Learning Cmtys.*, 676 F. Supp. 2d at 384.

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[1] ADA pattern or practice cases rely on Title VII and Fair Housing Act (FHA) case law. *E.g.*, *United States v. Nobel Learning Cmtys.*, 676 F. Supp. 2d 379, 383-85 (E.D. Pa. 2009).

III. ARGUMENT

A. The United States Has Met Its Burden of Pleading that LA Fitness Engages in a Pattern or Practice of Discrimination under Title III.

The United States' burden to plead a pattern or practice of discrimination is not onerous. There is no minimum number of incidents or victims which the United States must allege or ultimately prove. Courts have found that two to three examples of discrimination are enough to state a pattern or practice, even after discovery and trial. *See*, *e.g.*, *United States v. Hurt*, 676 F.3d 649, 654 (8th Cir. 2012) (finding that trial testimony of four victims established a pattern or practice of sexual harassment); *United States v. Big D Enters., Inc.*, 184 F.3d 924, 931 (8th Cir. 1999) (holding that "the government [had] conclusively demonstrated a pattern and practice of discrimination" based on evidence an operator of three apartment complexes had discriminated against three victims); *United States v. Pelzer Realty Co.*, 484 F.2d 438, 445 (5th Cir. 1973) (concluding that realty company's discriminatory treatment of two home buyers "qualif[ied] as a pattern or practice" of discrimination); *United States v. Mintzes*, 304 F. Supp. 1305, 1314 (D. Md. 1969) (after bench trial, finding a pattern or practice where defendants made unlawful representations to owners of three properties); *see also United States v. Garden Homes Mgmt. Corp.*, 156 F. Supp. 2d 413, 420 (D.N.J. 2001) (based on evidence of "at least five incidents of racial discrimination," denying summary judgment motion filed by operator of three apartment complexes); *United States v. City of New York*, 713 F. Supp. 2d 300, 323 (S.D.N.Y. 2010) (observing "that the discrimination appeared to impact only four women [did] not diminish the Government's case" at trial).

Moreover, courts have found that the accumulation of similar discriminatory conduct supports a reasonable inference that a pattern or practice exists, without comparing the number of allegations to the size of the defendant's enterprise. A court denied a motion to dismiss where the EEOC's complaint alleged a foreign labor recruiter and employers had subjected seven people and others similarly situated to employment discrimination. *Glob. Horizons, Inc.*, 904 F. Supp. 2d at 1085. And in an ADA Title III

case, a court found that the United States had sufficiently pled a pattern or practice of discrimination against preschool students where the complaint alleged eleven children experienced discrimination. *Nobel Learning Cmtys.*, 676 F. Supp. 2d at 384.

The Complaint provides multiple examples, both specific and general, of how LA Fitness has failed to provide accessible facilities in violation of the ADA. *E.g.*, Compl. ¶¶ 15-27, 30-33. For example, Patron A has experienced barriers in the accessible showers at two LA Fitness locations. *Id.* ¶¶ 31-32. Moreover, the Complaint describes how facilities in the Dallas-Ft. Worth area had numerous deviations from the requirements in the 1991 ADA Standards for Accessible Design and the 2010 ADA Standards for Accessible Design. These deviations fell into at least thirteen categories, with multiple violations within each category. *Id.* ¶ 33(a)-(m). Each individual deviation within each category is potentially its own ADA violation and may threaten the safety and independence of people with disabilities. The shower barriers, *see id.* ¶ 33(c), can prevent people with disabilities from safely showering. The protrusions observed from mounted wall lockers, pool emergency phones, paper towel dispensers, and the front desk, *id.* ¶ 33(b), can be dangerous for individuals with vision impairments. Reach range violations observed from toilet seat dispensers, wall hooks, AED boxes, sanitizer, and soap dispensers, *id.* ¶ 33(a), can prevent wheelchair users from accessing safety and other basic equipment. Wheelchair users can be burned by the lack of pipe insulation observed in the locker rooms, *id.* ¶ 33(d). The barriers found at multiple doors, *id.* ¶ 33(g), may prevent people from safely navigating around the gym.

The Complaint alleges at least six examples of how LA Fitness has failed to maintain equipment in working condition – at multiple locations, involving multiple forms of equipment – resulting in people with disabilities being unable to access the facilities, in violation of 28 C.F.R. § 36.211(a). *E.g.*, Compl. ¶¶ 15-27, 33. Patron A encountered inoperable pool lifts at several LA Fitness locations and has been left stuck dangling over the water. *Id.* ¶¶ 17-18. Similarly, Patron B, who swims several times per week, encountered inoperable pool lifts at two LA Fitness locations, forcing him to crawl

out of the pool after swimming. *Id.* ¶¶ 19-21. For years, Patron B's father contacted corporate staff to raise concerns about the inoperable lifts. *Id.* ¶ 20. Due to inoperable pool lifts, Patron C has had to call LA Fitness front desk staff to manually move the lift chair when she is ready to leave the jacuzzi. *Id.* ¶ 23. She feels extremely fearful that she will be stuck in the jacuzzi when she cannot reach them by phone. *Id.* Patron D could not access the LA Fitness where he is a member in 2022 and 2023 because the elevator was broken. *Id.* ¶ 27. Inoperable pool and spa lifts were observed at multiple LA Fitness facilities in the Dallas Ft-Worth area. *Id.* ¶ 33(f). Other similarly situated individuals with disabilities have been harmed by Defendant's failure to maintain its equipment in operable working condition. *Id.* ¶¶ 15, 25.

The Complaint alleges two examples of improper surcharges. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(c). LA Fitness charged a patron an additional fee to receive assistance from his caretaker. Compl. ¶ 34. Patron B's father spent about $500 on a battery and charging case for broken pool lifts at two LA Fitness locations after waiting almost a year for LA Fitness to replace the pool lift battery. *Id.* ¶ 35.

Each of these examples is disability discrimination. The Complaint is not intended or required to be an exhaustive catalog of every ADA violation at every LA Fitness location, but it describes more than a "mere occurrence of isolated or 'accidental' or sporadic discriminatory acts." *Teamsters*, 431 U.S. at 336. The allegations, asserted before any discovery has taken place, support a reasonable inference that LA Fitness' failure to comply with Title III constitutes a pattern or practice of discrimination.

B. LA Fitness Misconstrues the Factual Allegations and the Law

LA Fitness minimizes the allegations as amounting to "claims from four Patrons" and three "conclusory allegations unadorned with facts" that LA Fitness fails to maintain accessible features in operable working conditions, fails to maintain elevators in operable working condition, and fails to remove architectural barriers in existing facilities where such removal is readily achievable. Mot. at 5 (citing Compl. ¶¶ 14, 24, 28). This reductive distillation ignores the significance of the numerous violations

observed at the gyms in Dallas-Ft. Worth and the experiences of the individual patrons. It also reads the three cited paragraphs out of context. A pattern or practice is plausibly alleged where the complaint "adequately advises defendants of the nature of the claims against them *and* provides examples of [the] conduct." *United States v. Webb*, 4:16cv1400 SNLJ, 2017 WL 633846, at *4 (E.D. Mo. Feb. 16, 2017) (emphasis added); *see also Prashad*, 437 F. Supp. 3d at 108 n.4 (rejecting "the suggestion that the information provided by the Government [was] too 'meager and vague'" where the complaint "identifie[d] the nature of the Government's claim against Defendants and offer[ed] several examples of the conduct underlying that claim" (citation omitted)). Far from being "replete with conclusory allegations," Mot. at 4, the Complaint adequately advises LA Fitness of the discriminatory conduct at issue and provides examples from individual patrons and violations observed at clubs in Dallas-Ft. Worth.

LA Fitness also improperly attempts to heighten the pleading standard by arguing that it does not know "whether Patrons A-D are members and which club or clubs they used," and "which or how many clubs allegedly have had non-compliant features or whether they still exist." Mot. at 2, 6. Under Fed. R. Civ. P. 8(a)(2), the complaint must merely contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Courts reject arguments that more detailed allegations are necessary. *E.g.*, *United States v. Cochran*, No. 4:12-CV-000220-FL, 2013 WL 12158997, at *3 (E.D.N.C. May 10, 2013) (rejecting a defendant's argument that the complaint should "should be more specific, instead of painting broad strokes as to the time period, locations, and conduct giving rise to the claims"). Moreover, at the pleading stage, the Court must accept the non-moving party's allegations as true. *Sprewell*, 266 F.3d at 988. The United States' allegations that Patrons A-D are members who experienced the violations described in the Complaint exceed the level of detail required under Fed. R. Civ. P. 8(a)(2), Compl. ¶¶ 15-32, 34-35, as do the allegations describing the violations at the clubs in Dallas-Ft. Worth, *id.* ¶ 33. Accordingly, they must be taken as true.

LA Fitness relies on *Birdwell v. AvalonBay Communities, Inc.*, No. 21-cv-00864-

JST, 2023 WL 6307894 (N.D. Cal. Sept. 27, 2023), for the proposition that "similar infrequent allegations of discriminatory conduct" are insufficient under Rule 12(b)(6) to plead a pattern or practice. Mot. at 6. In *Birdwell*, one individual alleged that her landlord engaged in a pattern or practice of denying reasonable accommodation requests because it denied her request for modified rent three times.[2] *Birdwell*, 2023 WL 6307894, at *6-7. The plaintiff did not allege that she was denied other types of accommodations or that the landlord denied other renters' accommodation requests. *Id.* The court held that she needed to "allege more than three denials of the *same* [accommodation] request" to establish a pattern or practice of denying reasonable accommodation requests. *Id.* at *6 (emphasis added). The decision does not conflict with or disturb the cases, previously discussed, finding that two to three distinct allegations of discrimination can be sufficient to sustain a pattern or practice. As discussed above, the United States' Complaint alleges numerous distinct violations at multiple locations illustrated through the experiences of several people, more than enough to successfully allege a pattern or practice. *E.g.*, Compl. ¶¶ 15-35.

LA Fitness' arguments that the allegations lack "statistical meaning" are also without legal basis. Mot. at 2, 5-8. The United States need not allege a certain threshold number of violations or employ statistics at trial or summary judgment to prove its case, much less at the pleading stage. *See, e.g.*, *Washington v. Matheson Flight Extenders,*

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[2] The plaintiff also alleged a pattern or practice of violating the physical accessibility requirements that made it difficult for her to access her dwelling. The court noted that to adequately plead a pattern or practice, the plaintiff would have needed to allege that the defendant's "failure to comply with the federal disability laws [was] a direct result – not of individualized decisions pertaining to a particular facility – but instead, to [defendant's] alleged pattern and practice relying on inadequate guidelines and procedures that fail to ensure the requisite access to [defendant's facilities]." *Birdwell*, 2023 WL 6307894, at *6 (citing *Californians For Disability Rts., Inc. v. Cal. Dep't of Transp.*, No. C 06-5125 SBA, 2009 WL 2982840, at *2 (N.D. Cal. Sept. 14, 2009)). The court dismissed the plaintiff's claims, finding that her allegations fell outside of the statute of limitations period. *Id.* at *6-7. Here, unlike in *Birdwell*, the United States relies on timely allegations that extend far beyond "individualized decisions pertaining to a particular facility." *E.g.*, Compl. ¶¶ 20-21, 27, 31, 35; *see also* 28 U.S.C. § 2415(b) (three-year statute of limitations period for money damages); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982) (holding that the statute of limitations for a pattern or practice runs from the last occurrence of the unlawful act).

Inc., 440 F. Supp. 3d 1201, 1215 (W.D. Wash. 2020) (at summary judgment, holding that "[t]he definition of a pattern or practice is not capable of a precise mathematical formulation" (quoting *Ste. Marie v. E. R.R. Ass'n*, 650 F.2d 395, 406 (2d Cir. 1981))); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 501 (1989) ("[W]here gross statistical disparities *can* be shown, they alone in a proper case *may* constitute proof of a pattern or practice of discrimination under Title VII[.]" (emphasis added) (quotation marks and citation omitted)). Courts regularly find that plaintiffs have plausibly alleged a pattern or practice without statistically comparing the number of violations to the number of potential victims. *E.g.*, *Prashad*, 437 F. Supp. 3d at 108-09; *Glob. Horizons, Inc.*, 904 F. Supp. 2d at 1085; *Nobel Learning Cmtys.*, 676 F. Supp. 2d at 384.

LA Fitness claims that, to establish a pattern or practice, the United States must plead that "corporate-level directives" led to the discrimination. Mot. at 7. This is not true. As discussed above, the United States can allege and prove a pattern or practice without an express discriminatory policy or corporate directive, such as through repeated instances of discrimination. *See Teamsters*, 431 U.S. at 334-40; *EEOC v. Am. Nat'l Bank*, 652 F.2d 1176, 1188 (4th Cir. 1981) (a "pattern or practice" may be shown "by statistics alone" or "by a cumulation of evidence").

Here, far from being "isolated" incidents arising from "an individual employee's decision or maintenance lapses," Mot. at 7, the allegations are numerous, occurred at multiple locations, and persisted – often for years – even after patrons complained to club and corporate staff. As the owner and operator of its 700 clubs, Compl. ¶ 1, LA Fitness cannot evade responsibility by blaming its own clubs or employees. Many barriers involve facility design issues – including roll-in showers being too narrow, *id.* ¶ 33(c), excessive pool deck slopes, *id.* ¶ 33(f), improper changes in level door at thresholds and showers, *id.* ¶ 33(g), (h), and inaccessible wall lockers, sauna and shower controls, and emergency phone boxes, *id.* ¶¶ 31-32, 33(i) – not individual employees' decisions or maintenance lapses. The accumulation of similar unlawful conduct easily supports a reasonable inference that failure to comply with Title III is not "the mere

occurrence of isolated or accidental or sporadic discriminatory acts," but rather, LA Fitness' "regular procedure or policy." *See Teamsters*, 431 U.S. at 336, 360.

C. Granting the Motion Would Not Result in A Complete Dismissal Because the Complaint Alleges a Second Basis for Jurisdiction.

In addition to its pattern or practice allegations, the United States' Complaint alleges that LA Fitness' discrimination against individuals protected under Title III raises an issue of "general public importance" in violation of 42 U.S.C. § 12188(b)(1)(B)(ii), Compl. ¶¶ 5-6, 43-44, which LA Fitness does not challenge. The Attorney General's determination of what constitutes an issue of general public importance under the ADA "has been consistently recognized as unreviewable by the courts." *E.g.*, *United States v. Taigen & Sons, Inc.*, 303 F. Supp. 2d 1129, 1133 (D. Idaho 2003); *United States v. Northside Realty Assocs.*, 474 F.2d 1164, 1168 (5th Cir. 1973) and 501 F.2d 181, 182 (5th Cir. 1974) (per curiam); *United States v. City of Philadelphia.*, 838 F. Supp. 223, 227 (E.D. Pa. 1993), *aff'd*, 30 F.3d 1488 (3d Cir. 1994); *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1291 n.9 (S.D.N.Y.1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987). Because it provides an alternative basis for jurisdiction, even if the Court dismisses the United States' pattern or practice allegations, the United States' allegations that the discrimination raises an issue of general public importance would remain. *E.g.*, *Taigen & Sons, Inc.*, 303 F. Supp. 2d at 1139 (holding that the Attorney General could maintain FHA suit because the allegations raised an issue of general public importance, even if they did not amount to a pattern or practice of discrimination).

For these reasons, the United States respectfully requests that the Court deny the Motion. If the Court does not deny the Motion, the United States respectfully requests that the Court grant leave to amend the pattern or practice allegations. *See* Fed. R. Civ. P. 15(a)(2); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[A] district court should grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts." (citation omitted)).

Dated: January 6, 2025

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