EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 20-31318-hdh-11**
	§	
GGI HOLDINGS, LLC, *et al.*	§	**Chapter 11**
	§	
Debtors.	§	**(Jointly Administered)**

DECLARATION OF BRETT T. REYNOLDS
IN SUPPORT OF (I) MOTION TO FOR LEAVE TO (A) FILE LATE
PROOF OF CLAIM AND (B) LIQUIDATE CLAIM IN STATE COURT, AND (II)
MOTION TO EXPEDITE CONSIDERATION OF THE SAME

BRETT T. REYNOLDS pursuant to 28 U.S.C. § 1746, states under penalty of perjury:

1. I am over the age of eighteen (18) years, and I am competent to testify to the matters set forth herein.

2. I am an attorney duly admitted to practice before the courts of the State of Texas. I make this Declaration in support of the Motion for Leave to (a) File Late Proof of Claim and (B) Liquidate Claim in State Court (the "**Motion**") filed by Oscar Tamez ("**Movant**" or "**Tamez**").

3. I am the attorney of record for the Oscar Tamez, the plaintiff in Cause No 2018-CI-13433 pending in the 407th District Court of Bexar County. I am also the President and sole shareholder of Brett Reynolds & Associates, P.C., which at all relevant times to the facts set forth in this declaration employs no associates, and only one secretarial assistant.

4. I am a custodian of the business records of Brett Reynolds & Associates, P.C. and have been at all times relevant to the litigation and bankruptcy case in which this declaration will be filed.

5. The attached **Exhibits 1** through **3** contain and constitute business records of Brett Reynolds & Associates, P.C. The attached records are true and accurate copies of the actual business records of Brett Reynolds & Associates, P.C.

6. The attached exhibits were kept in the course of a regularly conducted business activity. Making the attached records was and is a regular practice of that activity. The records have been kept under my custody and control since the date the records were created or generated or came into the possession of Brett Reynolds & Associates, P.C.

7. On July 20, 2018, Tamez filed Cause No. 2018-CI-13433, styled *Oscar Tamez vs. Gold's Texas Holdings Group, Inc. d/b/a Gold's Hill Country Village, IFC White Rock, Inc. d/b/a Gold's Gyms, Realty Income Texas Properties I, LLC, Maggie Rocha, and Mark Giatarri*, which is currently pending in the 407th Judicial District Court of Bexar County, Texas (the "**State Court Lawsuit**"). A copy of Tamez's Original Petition filed in the State Court Lawsuit is attached hereto as **Exhibit 1**.

8. The State Court Lawsuit arises out of Tamez's exposure to *Legionella* bacteria on or about July 20, 2016 at the (now-former) location of Gold's Gym on 15759 San Pedro Avenue in Hill Country Village, Bexar County, Texas. Four days later, Tamez was hospitalized at Nix Hospital where he nearly died of sepsis as result of the exposure. While at the hospital, he was diagnosed with Legionnaires disease as a result of the exposure. A copy of the report of Dr. David Marks ("**Dr. Marks**") documenting Tamez's medical history taken during Dr. Marks's evaluation of Tamez on October 22, 2018 is attached hereto as **Exhibit 2.**.

9. The Debtors' Plan of Reorganization was confirmed on August 26, 2020, although I was unaware of that fact until after the confirmation.

10. The deadline for filing claims in this case was September 9, 2020, although I was unaware of that deadline until after it had passed.

11. When the COVID-19 pandemic began and led to infections that spread across Texas, my sole assistant, Amy Williams ("**Ms. Williams**"), was forced to quarantine at home unexpectedly

on multiple occasions beginning approximately in March of 2020, due to a COVID-19 infection of the children's babysitter and a lack of additional childcare options considering the circumstances. She has five children, is a divorced single parent, and remained out of the office, unexpectedly, for well over a month during her first leave of absence and for several extended periods of time since, due to a lack of childcare. Initial testing capacity in Pleasanton, Texas was almost non-existent in the early stages of the pandemic, and as such, Ms. Williams was unable to assure herself or the undersigned whether she was negative for this virus, or indeed, whether all five of her children were negative. Ms. Williams has continued to be out whenever one of her children may have been exposed and is in fact is out at the time of filing this declaration, taking care of three children with active COVID-19 infections, including a two-year-old who was in the E.R. several days ago with compromised lung function. She presently positive and undergoing treatment for an active COVID-19 infection, and she will remain out of my offices until she and her children are all determined by accurate testing to be negative for the virus.

12. On June 3, 2020, disaster struck my computer system when I discovered that my system had undergone a ransomware attack, which encrypted all data on the entire network. Efforts to decrypt the server were determined not feasible. As a result of this ransomware attack, through much of June and into July, I was electronically almost blind and could not see or read incoming or outgoing e-mail at my usual e-mail address, btreynolds@btrlaw.com. My assistant was not set up at her home to access the server during her multiple quarantines and was unable to assist during this time. The sole repository for the documents was and is the undersigned's server and the backup drive attached to the server, both which were attacked by the ransomware, due to the negligence of a former IT consultant used by the firm.

13. During the summer of 2020, I operated as necessary through a separate email address. I had no assistant in my office through much of the summer and was forced into "survival mode" to try and meet whatever deadlines I was aware of and to protect my clients' interests. Indeed, I spent seven days a week in the office for a long period of time as the office's system was undergoing reconstruction.

14. Additionally, my docket includes certain unusual cases, including the representation of eleven clients with claims against the United States Air Force arising out of the Sutherland Springs mass shooting tragedy, some of whom are extremely and seriously injured. That litigation is pending in the United States District Court for the Western District of Texas under combined Cause No. 5:18-cv-00555-XR and became increasingly and unexpectedly time-consuming and complex throughout 2020, particularly for a solo practitioner in light of the infinite resources available to the U.S. Department of Justice (the "DOJ"). The discovery of additional evidence in the summer of 2020 lead to a protracted period of litigation in federal court, resulting in the undersigned having to prepare and file numerous pleadings in the case. The undersigned has researched, gathered documents, and prepared multiple time-consuming, separate major filings and responses to filings by the DOJ on his own in the last several months. In addition, the plaintiffs' deadline for designation of experts, including reports, was June 1, 2020, and all other parties opposed a continuance of the deadline. While many others represent clients only with wrongful death claims, whose decedents died in the church and have no medical experts, or represent those with only derivative claims and perhaps have one psychological expert, I represent some of the most seriously injured victims in the shooting. I had to obtain outside financing to retain at least nine damage experts and make referrals to certain providers and arrange for obtaining thousands of pages of medical records and imaging to provide to those experts, including vocational rehabilitation, economist, two life-care planners, child

psychologist (for two minor clients), two neurologists for evaluation and development of prognoses for lead poisoning for retained shrapnel (adult and pediatric), urologist, physical medicine and rehabilitation. I had to arrange visits to all providers by these experts, including one in Philadelphia, and coordinate obtaining and producing all reports in the space of three months by the deadline of June 1, 2020. Thereafter, immediate demands began for production of all of my clients for depositions. Separate from my involvement in this very intensive mass tort litigation, as a solo practitioner, I also represents a major truck leasing and rental company and a number of other clients.

15. Although I may have received some envelopes from BMC, I do not recall receiving any notices related to the proof of claim deadline, or any mail indicating the need to file a proof of claim.

16. Also, during the pandemic, my twelve-story building has experienced an increase in mail delivered to me but intended for other suites in my building, and vice versa. I am unaware of any correspondence received from BMC containing a proof of claim form and believe it may have been delivered to another suite in my building. I searched my office approximately three weeks ago when I spoke with the attorney for the Trustee, Mr. Kaufmann, by phone to see if the packet could be found in my small office suite. I was unable to find it. I cannot deny that BMC may have mailed the packet to my suite, as I have received correspondence from BMC, but I do not recall seeing a proof of claim form or deadline to file the same. Additionally, I do not recall ever receiving a solicitation packet.

17. In addition, my adult son, age twenty-seven, suffers from a hereditary disorder that causes serious and ongoing emotional issues and renders him unable to work. He is and has been totally dependent on his parents for financial support at all times since birth, which has prevented me

at all relevant times relevant to the subjects set forth in this declaration from hiring additional office help.

18. When I realized, in October 2020, that Gold's Texas may be disposing of assets during the bankruptcy, I promptly reacted by calling Gold's Texas's outside litigation counsel and requesting, notwithstanding the stay, that Gold's Texas allow an inspection of the wet sauna by myself and Dr. Marks before the gym was sold and the wet sauna became unavailable. That inspection was agreed upon by counsel for Gold's Texas and conducted on November 18, 2020.

19. In November 2020, when I attempted to reach Tamez to advise him of the case status, his brother informed me that he had suffered a severe stroke on October 30, 2020, had been hospitalized in the acute care section of St. Luke's Baptist Hospital, and would likely remain there indefinitely, as a nine-month recovery period was expected from the severe stroke. I knew from Dr. Marks's report and from communications with my client over time that his ability to breathe was compromised, as was his lung capacity. Unfortunately, Tamez was transferred from St. Luke's Hospital to a rehabilitation facility in North San Antonio, the Coronado, due to insufficient health insurance. Tamez's family informed me that permission to visit Tamez was recently denied due to an active COVID-19 outbreak at the facility. Tamez was most recently forced to leave the Coronado, again because of insurance issues, and is desperately in need of full-time home healthcare, due to his inability or reduced ability to speak, walk, and perform basic functions following his stroke. While some therapy services are currently provided to him at home, this includes multiple unknown providers coming to the house, which poses a continued risk of exposure to COVID-19.

20. Due to the compromised condition of his lungs, I believe, as Tamez's attorney and in reliance on the medical information from Dr. Marks, a pulmonologist who has been working almost

non-stop in various ICUs in San Antonio since the pandemic began, that Mr. Tamez's life is in immediate danger if he contracts COVID-19.

21. Dr. Marks issued an additional report following his inspection of the gym that has already been provided to litigation counsel for Gold's Texas. *See* **Exhibit 3**.

22. On or around December 7, 2020, I spoke with Brandon Riley, counsel for creditor David Shipp, regarding the bankruptcy and first learned of the expired claim bar date at that time.

23. On December 7, 2020, I spoke with Mr. Kaufman about the Trustee's position on the requested relief, and I am providing this declaration both in response to his request for the same, following his communications with his client, and also in direct support of the Motion and expedited consideration of the same, with the request that the Court exercise its discretion under these unique circumstances, allow Mr. Tamez's proof of claim to be filed, and allow litigation to continue, so that I may hopefully negotiate a settlement and provide Tamez with the funds to receive home health care on a full-time basis with a regular nurse during his recovery, in a safe place and away from the immediate and ongoing threat posed to his life by COVID-19.

SIGNED AND SWORN TO UNDER THE PENALTIES OF PERJURY this 12th day of January, 2021.

/s/ Brett T. Reynolds
Brett T. Reynolds

EXHIBIT 1

FILED
7/20/2018 4:59 PM
Donna Kay McKinney
Bexar County District Clerk
Accepted By: Michelle Garcia

5 citcml sac2

CAUSE NO. 2018CI13433

OSCAR TAMEZ	§	IN THE DISTRICT COURT
	§	
	§	
VS	§	
	§	
	§	
GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, IFC WHITE ROCK, INC. d/b/a GOLD'S GYMS, REALTY INCOME TEXAS PROPERTIES 1, LLC., MAGGIE ROCHA and MARK GIATARRI	§	407 JUDICIAL DISTRICT
	§	
	§	
	§	
	§	
	§	BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW OSCAR TAMEZ, Plaintiff in the above styled and numbered cause and file this, his Original Petition complaining of GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIATARRI and MAGGIE ROCHA, Defendants, and would respectfully show the Court the following:

I.
DISCOVERY & PARTIES

1.1 Pursuant to Texas Rule of Civil Procedure Rule 190.4, Plaintiff hereby pleads that this cause, and all discovery related thereto, shall be governed by a Level Two Discovery Control Plan.

1.2 Plaintiff OSCAR TAMEZ is a Texas resident who resides in San Antonio, Bexar County, Texas, who has suffered damages as a result of the negligent acts and omissions of the Defendants occurring in Bexar County, Texas.

1.3 Defendant GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE is a foreign for-profit corporation registered with the Texas Secretary of State to do business in the State of Texas. GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE was at all times mentioned herein doing business within the jurisdiction of this court. Service of process may be effectuated on GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE by serving its registered agent for service, Corporation Service Company dba CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701. Plaintiff hereby respectfully requests that the clerk issue citation and complete service of process via certified mail on GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE by mailing a copy of the citation and petition by certified mail to its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service Company at the address listed with the Secretary of State at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

1.4 Defendant REALTY INCOME TEXAS PROPERTIES 1, LLC is a foreign limited liability company registered with the Texas Secretary of State to do business in the State of Texas. REALTY INCOME TEXAS PROPERTIES 1, LLC was at all times mentioned herein doing business within the jurisdiction of this court. Service of process may be effectuated on REALTY INCOME TEXAS PROPERTIES 1, LLC by serving its registered agent for service, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701. Plaintiff hereby respectfully requests that the clerk issue citation and complete service of process via certified mail on REALTY INCOME TEXAS PROPERTIES 1, LLC by mailing a copy of the citation and petition by certified mail to its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service

Company at the address listed with the Secretary of State at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

1.5 Defendant IFC WHITE ROCK, INC. d/b/a GOLD'S GYM is a domestic for-profit corporation registered with the Texas Secretary of State to do business in the State of Texas. IFC WHITE ROCK, INC. d/b/a GOLD'S GYM was at all times mentioned herein doing business within the jurisdiction of this court. Service of process may be effectuated on IFC WHITE ROCK, INC. d/b/a GOLD'S GYM by serving its registered agent for service, Corey T. Butcher at 1332 Beltline Road, Garland, Texas 75040. Plaintiff hereby respectfully requests that the clerk issue citation and complete service of process via certified mail on IFC WHITE ROCK, INC. d/b/a GOLD'S GYM by mailing a copy of the citation and petition by certified mail to its registered agent Corey T. Butcher at the address listed with the Secretary of State at 1332 Beltline Road, Garland, Texas 75040.

1.6 Defendant MARK GIARRITTA is a natural person residing in Texas at the time of the incident made the basis of this suit and is also doing business in Texas within the meaning of Section 17.042 (2) of the Civil Practice and Remedies Code. Service of process may be effectuated on MARK GIARRITTA by serving him at the location where he regularly transacts business which is GOLD'S GYM at 7937 Pat Booker Rd, Live Oak, TX 78233. Plaintiff hereby respectfully requests that the clerk issue citation and complete service of process via certified mail on MARK GIARRITTA by mailing a copy of the citation and petition by certified mail to his address where he regularly transacts business at 7937 Pat Booker Rd, Live Oak, TX 78233.

1.7 Defendant MAGGIE ROCHA is a natural person residing in Texas at the time of the incident made the basis of this suit and is also doing business in Texas within the meaning of Section 17.042 (2) of the Civil Practice and Remedies Code. Service of process may be effectuated

on MAGGIE ROCHA by serving her at the location where she regularly transacts business which is GOLD'S GYM HILL COUNTRY VILLAGE at 15759 San Pedro Avenue, San Antonio, Texas 78232. Plaintiff hereby respectfully requests that the clerk issue citation and complete service of process via certified mail on MAGGIE ROCHA by mailing a copy of the citation and petition by certified mail to where she regularly does business at GOLD'S GYM HILL COUNTRY VILLAGE at 15759 San Pedro Avenue, San Antonio, Texas 78232.

II.
JURISDICTION AND VENUE

2.1 The subject matter and amount in controversy meet the minimum jurisdictional requirements for jurisdiction in the Bexar County District Court. Pursuant to Texas Civil Practice and Remedies Codes §15.002, venue is proper in Bexar County, Texas, because all or a substantial part of the events giving rise to Plaintiff's claims occurred in this county.

III.
FACTS

3.1 Approximately several months to July 21, 2016, Plaintiff Oscar Tamez entered into an agreement to purchase the services of one or more of the Defendants in the form of access to the gyms operated by the Defendants in San Antonio, Bexar County. Tamez did so by making money payments in exchange for access to the gyms operated at various locations in Bexar County.

3.2 Mr. Tamez initially visited the Gold's Gym location owned and/or operated and/or managed by the Defendants located at 1246 Austin Highway, San Antonio, Texas

3.3 Mr. Tamez later began visiting and using the gym services and equipment at the Gold's Gym located at 15759 San Pedro Avenue in Hill Country Village, Bexar County Texas.

3.4 Mr. Tamez' use of the gym services and equipment owned and/operated by and/or managed by the defendants, included the use of the wet saunas, which he intended at the time he decided to purchase the defendants' services and which were represented by the defendants to be part of the services and equipment available for use by customers of the defendants.

3.5 Mr. Tamez had no history of respiratory ailments, conditions or diseases prior to purchasing the services from the defendants on or about July 21, 2016.

3.6 Mr. Tamez entered the wet sauna on one or more occasions for the purpose of availing himself of the therapeutic benefits of a steam sauna, which were offered by and sold by the defendants as part of the services offered to Mr. Tamez for use on the premises of the Defendants.

3.7 On July 21, 2016, Mr. Tamez entered the wet sauna at the Gold's Gym at 15759 San Pedro Avenue in Hill Country Village in Bexar County. The sauna was operating, generating steam and available for use by the gym members. Mr. Tamez received no warnings or instructions about any abnormality or danger presented by the sauna to gym users on July 21 or any other date. Indeed, Mr. Tamez relied entirely on the expertise of the defendants to operate a safe wet sauna on the premises with water that the defendants properly stored and conditioned and maintained in a safe manner that posed no health risks to users of the gym.

3.8. Within hours following Mr. Tamez' use of the wet sauna on the aforementioned premise owned by and/or operated by and/or managed by the defendants on July 21, 2018, Mr. Tamez developed a cough followed by a fever. Over the next two days, his symptoms intensified. Mr. Tamez had no idea he had been exposed to legionella bacteria in the steam he breathed into his lungs in the wet sauna on July 21, 2018 nor had Mr. Tamez ever been warned by any of the Defendants that the wet sauna posed any risk whatsoever of transmitting legionella bacteria.

3.9 Mr. Tamez continued to deteriorate until he fell due to weakness and respiratory distress on July 25, 2016 and urgently visited his physician Raul Gaona, Jr. at the Nix Hospital in San Antonio. Dr. Gaona admitted him and, after appropriate testing, determined and diagnosed that Mr. Tamez had contracted legionella bacterial infection also commonly known as legionnaires disease. Mr. Tamez was admitted into the Nix hospital and remained hospitalized and acutely ill until the infection was treated and ultimately allowed him to return home.

3.10 He subsequently and at all times since then has suffered from permanent lung and other physical damage as a result of the effects of the legionella bacteria and the disease process. Mr. Tamez has not recovered from those effects and still suffers from permanent and life threatening lung damage. In the event of any subsequent infection, Mr. Tamez is at risk of acute disease and/or death due to greatly diminished lung capacity. The effects of the lung damage suffered from the legionnaires disease are expected to remain with Mr. Tamez for the rest of his life.

3.11 Mr. Tamez also likely suffers from a shortened life expectancy due to this disease.

IV.
NEGLIENCE OF GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIARRITTA and MAGGIE ROCHA

4.1 GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIARRITTA and MAGGIE ROCHA were negligent in various acts and omissions which proximately caused the incident in question. Such acts and omissions include but are not limited to the following:

a. Failing to use ordinary care in the testing, monitoring and storage of the water supplied to the wet sauna for the conversion into steam. The defendants owned and/or operated and/or managed the gym at 15759 San Pedro Avenue and, the fixtures on the premises

knew or should have known that the operation of the wet sauna requires maintenance of the water that is converted into steam above a certain critical PH limit. The defendants further knew or should have known the water must maintain a certain concentration of chlorine (CL2) or other CDC-approved antimicrobial agents approved for use in public facilities operating pools, spas or saunas.

4.2 The defendants were further negligent in that they failed to properly train, hire or employ appropriate personnel to monitor, test and maintain the water supply to the wet sauna in a safe, pure and uninfected form before exposing the paying customers and invitees of the gym in a foreseeable manner to the effects of any microbial agents, including legionella bacteria, in the steam to which they knowingly converted the water for the benefit of business invitees such as Mr. Tamez.

4.3 The defendants further failed to disinfect, maintain, chlorinate and monitor any and all reservoirs supplying water to the wet sauna within the premises of the gym located at the aforementioned address in Hill Country Village visited by Mr. Tamez on July 21, 2016.

4.4 To the extent that any such tanks and/or reservoirs on the premise were attached as fixtures to the real estate, the owners of the premise, by failing to properly maintain the reservoir affixed to the premises containing the water supply to the wet sauna created a defect on the premises of the Gold's Gym in Hill Country Village when they knew or should have known of the defect on the premise created by their failure to maintain this condition of the premise.

4.5 The defendants further failed to warn of or take any steps to correct the defect on the premise in the form of the unsafe water contaminated with legionella bacteria and thereby exposed Plaintiff Oscar Tamez to this hidden defect on the premise. Neither Tamez nor any other user of the wet sauna knew or could have known in the use of ordinary care that they were

exposed or would be exposed to contaminated steam containing a deadly bacterial agent that, upon aspiration into their lungs would and did cause a potentially fatal and permanently damaging infection.

4.6 As a direct and proximate result of the negligence of GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIATARRI and MAGGIE ROCHA as described above, plaintiff OSCAR TAMEZ sustained severe and permanent injuries.

V.
RES IPSA LOQUITUR

5.1 Further, Defendants exclusively controlled and supervised the water supply provided to the wet sauna at the gym at all times relevant to the exposure of Oscar Tamez to the legionella bacteria. Plaintiff therefore invokes the evidentiary inference resulting therefrom, under application of the doctrine of *res ipsa loquitor.*

VI.
RESPONDEAT SUPERIOR

6.1 Plaintiffs would show that at the time of the incident described herein, employees, agents and representatives of defendants GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM including but not limited to MARK GIATARRI and MAGGIE ROCHA, were in fact the agents of servants and representatives of defendant of GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and were acting within the course and scope of their employment and

agency of agents, servants and representatives of defendants GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIATARRI and MAGGIE ROCHA

6.2 Plaintiff further shows that MARK GIATARRI and MAGGIE ROCHA were acting both as principles in the manage merit of the operation of the gym and/or as agents of defendants GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM in the supervision of the operation under the control and with the knowledge, consent, direction and actual permission and/or implied permission of defendant GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM, which is liable for plaintiff's damages under the doctrine of *respondeat superior* because the negligence of GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIATARRI and MAGGIE ROCHA was a proximate cause of the incident and resulting damages as described herein.

VII.
PROXIMATE CAUSE

7.1 Plaintiff alleges that Defendants' acts and omissions, whether taken independently or collectively, constitute a direct proximate cause of the injuries and damages sustained by Plaintiff. Defendants' acts and omissions, in a natural and continuous sequence, produced Plaintiff's injuries and without these acts and omissions, Plaintiff's injuries would not have

occurred. Defendants' acts and omissions were of a nature that a person using ordinary care would have foreseen that the accident or a similar accident might reasonably result therefrom.

VIII.
DAMAGES

8.1 As a direct and proximate cause of the Defendant's negligence, OSCAR TAMEZ has suffered serious bodily injuries. Additionally, OSCAR TAMEZ suffered damages in the form of medical and other expenses associated with the treatment of his injuries and losses. As a result of those injuries, Plaintiff has incurred damages as follows:

a) The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiff OSCAR TAMEZ'S injuries for the date of the accident to the time of trial;

b) The reasonable value of medical expenses that will necessarily be incurred in the treatment of Plaintiff OSCAR TAMEZ'S injuries in the future beyond the time of trial;

c) The physical pain and suffering Plaintiff OSCAR TAMEZ'S experienced from the date of the accident through the time of trial;

d) The physical pain and suffering the Plaintiff OSCAR TAMEZ will experience in the future beyond the time of trial;

e) The mental anguish suffered by the Plaintiff OSCAR TAMEZ from the date of the accident through the time of trial;

f) The mental anguish the Plaintiff OSCAR TAMEZ will suffer in the future beyond the time of trial;

g) Damages resulting from physical impairment suffered by the Plaintiff OSCAR TAMEZ from the date of the accident through the time of trial; and

h) Damages resulting from physical impairment the Plaintiff OSCAR TAMEZ will continue to suffer in the future and the resulting inability to perform those activities they would have been able to perform in the future beyond the time of trial.

i) Damages resulting from the lost earning capacity experienced by OSCAR TAMEZ from July 21 for the duration of his work life.

8.2 Accordingly, OSCAR TAMEZ seeks recovery for any and all damages permitted by law or in equity as a consequence of the above-described accident and resultant damages, to which Plaintiff may justly and equitably shows himself entitled. Plaintiff herein asserts that Defendants are liable to his for all losses sustained as a result of the Defendants' negligence and any other recovery to which Plaintiff may show himself justly and equitably entitled.

8.3 The damages sought by Plaintiff OSCAR TAMEZ are within the jurisdictional limits of the court. Plaintiff seeks damages in the form of monetary relief, prejudgment and post-judgment interest in an excess of $1,000,000 in accord with Rule 190.2 and Rule 169.

IX.
PRAYER

9.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff OSCAR TAMEZ respectfully prays that citation be issued and served upon GOLD'S TEXAS HOLDINGS GROUP, INC. d/b/a GOLD'S GYM HILL COUNTRY VILLAGE, REALTY INCOME TEXAS PROPERTIES 1, LLC and IFC WHITE ROCK, INC. d/b/a GOLD'S GYM and MARK GIATARRI and MAGGIE ROCHA and that upon a trial of this cause, the Court render judgment against the Defendants for all damages described herein, pre-judgment and post-judgment interest, costs of suit, and for any such other and further relief in law or in equity to which Plaintiff may show himself justly and equitably entitled.

X.
JURY TRIAL

10.1 Plaintiff hereby requests that this cause be tried before a jury.

XI.
PLAINTIFF'S REQUEST FOR DISCLOSURE

11.1 Pursuant to Texas Rule of Civil Procedure 194, Defendants are requested to disclose within fifty (50) days of service of this Request the information or material described in Rule 194.2(a) through (l)

Respectfully submitted,

BRETT T. REYNOLDS
State Bar No. 16795500
BRETT REYNOLDS & ASSOCIATES, P.C.
1250 N.E. Loop 410, Suite 310
San Antonio, Texas 78209
(210) 805-9799 – Telephone
(210) 455-2434 – Facsimile
btreynolds@btrlaw.com - Email
ATTORNEYS FOR PLAINTIFF,
OSCAR TAMEZ

EXHIBIT 2

Medical Evaluation Report

Patient Identification:

Tamez, Oscar, Date of birth 09/06/1964

Problem List:

1. Legionella Pneumonia, associated with sepsis and necrotizing pneumonia, resolved
2. Bibasilar pulmonary scarring, chronic
3. Chronic left pleuritic chest pain
4. Chronic exertional dyspnea
5. Recurrent bronchitis
6. Recurrent hemoptysis
7. Chronic fatigue

Medical Data Reviewed:

1. Complete hospital medical records for Nix Hospital (Date of admission 7/25/2016, Date of discharge 08/01/2016).
2. Independent medical evaluation 10/22/2018
3. 2 View Chest X-ray 07/30/2018 (Baptist M&S Imaging)
4. Pulmonary Function Testing 10/22/2018 (Pulmonary and Sleep Institute)

Summary:

Mr. Oscar Tamez is a 54-year-old Hispanic male who presents for independent medical evaluation on 10/22/2018 to evaluate possible chronic medical effects after exposure and diagnosis of necrotizing pneumonia with sepsis due to Legionella infection. At the time of incident, he was age 51 and had baseline medical comorbidity of obesity, osteoarthritis, hypertension, and metabolic syndrome. He was noted to deny previous history of aspiration, recurrent sinus/pulmonary infection, known pulmonary dysfunction, or history of tobacco abuse or other significant inhalational exposures. He reports feeling usual state of health and utilizing a wet sauna at a local Golds Gym on July 21, 2016. He reports estimated total exposure of 30-40 minutes. He reports no other significant exposure prior or immediately following above exposure. On July 25, 2016 he presented to his primary care's office with complaints of productive cough, shortness of breath, chest pain, malaise, and hemoptysis. He felt ill for approximately 3 days prior to seeking medical attention. Due to the severity of his medical condition, he was immediately admitted to the Nix Hospital. Upon admission he was noted to be acutely ill with a temperature of 101.6 and the resting pulse oximetry of 93%. On clinical exam he was noted to have bibasilar rhonchi. Initial laboratory assessment was remarkable for a sodium of 123, serum lactic level of 2.9, elevation of liver function testing, white blood count of 12.4 with 80% neutrophil predominance and a chest x-ray showing left basilar infiltrate. He underwent a pulmonary medicine consultation and subsequently a CT chest was completed which revealed a large necrotizing left basilar pneumonia and right basilar pneumonia associated with reactive mediastinal and hilar adenopathy. The patient underwent bronchoscopy which revealed airway inflammation. Diagnostic testing was significant for a positive urine Legionella antigen. He was treated with broad-spectrum antibiotic therapy

initially intravenously and subsequently transitioned to oral route. He improved to a certain point and was subsequently discharged to complete a course of oral antibiotics.

Since that event, Mr. Tamez continues to suffer from multiple complaints. Specifically, he reports ongoing issues with excessive fatigue that was not present prior to infection. He reports ongoing intermittent left pleuritic chest pain that is triggered by moderate activity and cold air exposure. He reports cognitive dysfunction specifically with issues with long-term memory. He reports since initial infection, he has had recurrent episodes of recurrent bronchitis manifested by increasing cough and shortness of breath with scant hemoptysis that is treated by his PCP with antibiotics.

A 2-view chest x-ray dated July 30, 2018 was personally reviewed. It demonstrates left greater than right bibasilar scarring.

Pulmonary function testing from October 22, 2018 reveals a total lung capacity of 74% and a diffusion capacity of 61%. Overall impression is mild pulmonary restriction with a mild reduction in diffusion capacity with associated normal spirometry.

On clinical exam significant findings included diminished breath sounds with rhonchi to the left base.

Assessment:

In my medical opinion, it is more likely than not that Mr. Tamez has suffered chronic and ongoing medical effects due to Legionella pneumonia. He had the classic symptoms to include extra pulmonary involvement noted for hyponatremia and elevation of hepatic transaminases. His overall disease severity was severe secondary to sepsis and necrotizing infiltrate of the left lower lobe and infiltrate right lower lobe. Despite a mortality rate of 1-10%, he did have improvement and was subsequently discharged to complete a course of oral antibiotics. He denied known exposure prior to infection except to wet sauna. Legionella is a known causative agent associated with contaminated water sources such as a wet sauna. He lacked significant patient risk factors to include older age, smoking status, chronic lung, cardiovascular or kidney impairment. He has no known history of being immunocompromised. Diagnosis was confirmed with the urine Legionella antigen test which detects *L. pneumophila serotype 1* with a sensitivity of 70-80% at a specificity approaching 100%. Positive urine testing can be detected as early as one day after symptom onset. Symptoms of Legionella pneumonia typically arise to 2 days to 10 days after exposure to contaminated water.

It is found that potential long-term side effects of Legionella pneumonia include fatigue, neurologic symptoms, and pulmonary is symptoms. Patient's will relate to a diminished health-related quality of life due to infection. He certainly has evidence of pulmonary dysfunction on pulmonary function testing and his chest x-ray demonstrates left greater than right bibasilar scarring which is more likely than not secondary to his severe/necrotizing pneumonia. This is most likely contributing to his intermittent pleuritic chest pain with recurrent bouts of bronchitis with scant hemoptysis. While obtaining a CT chest would be helpful to assess the degree of parenchymal involvement, this will not affect his overall plan of care. I suspect the duration of his pulmonary involvement to be lifelong. He will be at higher risk for development of recurrent

pulmonary infections. I have recommended semiannual annual pulmonary follow-up with consideration of obtaining CT chest to evaluate for postinfectious bronchiectasis. He does not need specific targeted inhaled therapy at this point however would potentially require antibiotics for recurrent pulmonary infections.

Health Consequence:

Based upon medical assessment and available diagnostic testing, Mr. Tamez is unlikely to need regular use of inhalational therapy unless dealing with acute infection. Typically, individuals are prescribed albuterol inhaler versus albuterol nebulizers, which are used every 6 hours for approximately 1-2 weeks during acute illness. Cost of medications vary but typically a single inhaler with 200 puffs will cost over $50.00. During acute illness, he would most likely need to be on antibiotics from 7-10 days. Cost of antibiotics and medical care are variable, but I would anticipate over $300 per each episode based upon physician visit and medications. Based upon current history I anticipate this at least twice a year. No further imaging of chest is needed unless dealing with an acute infection. As far as physician care, I have advised a pulmonary follow-up at least twice a year. In average visit runs approximately $150 a visit. It is unlikely that he will require oxygen therapy based upon current evidence. In my opinion, there is a shortened work life expectancy given recurrent infections however, there is unlikely a shortened life expectancy.

My opinions are based on my education, training, and background is board certified pulmonary medicine. They are also based on complete review of all medical records supply demand this matter. A reasonable degree of medical probability was utilized to arrive at these opinions.

I reserve the right to amend these opinions should additional information be made available to me.

Sincerely,

David A. Marks, MD, FCCP, FAASM

Internal Medicine, Pulmonary Medicine, Critical Care Medicine, Sleep Medicine

Major, TX ANG 149th MDG-Det 1, Flight Surgeon

EXHIBIT 3

Dr. David Marks

December 24, 2020

To Whom it May Concern:

I am a licensed medical doctor specializing in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. I am also a Major in the Texas Air National Guard 149th MDG-Det 1, Flight Surgeon. I am board certified in pulmonary, critical care and sleep medicine. I operate the Pulmonary & Sleep Institute, P.A. located at 115 Gallery Circle Suite 102, San Antonio, Tx. 78258.

I graduated from the University of Texas Health Science Center Medical School in San Antonio in 2001. I was selected for membership in the medical honor society known as AOA during medical school. I completed my internal medicine residency in 2004 at the University of Texas Health Science Center in San Antonio. I completed a pulmonary/critical care/sleep fellowship in 2007 at the University of Texas Health Science Center S.A.

During the course of my medical practice, I have diagnosed, evaluated and treated patients for infections, including pulmonary infections caused by legionella bacteria and their effects and related complications. I have provided and continue to provide ongoing care to patients who have suffered ongoing and permanent effects of such infections. I have treated patients for outbreaks of legionella at certain facilities, such as the Northeast Baptist Hospital complex. That outbreak was traced to a source in the air conditioning system at the hospital. I have treated another patient for a legionella infection who reported exposure at another Gold's Gym location in San Antonio. I did not investigate that alleged exposure.

I am familiar with and have expertise in analyzing potential sources of exposure to legionella bacteria and the environments necessary for the propagation and growth of legionella bacteria and for the transmission of *Legionella* in air, and air mixed with water vapor and/or steam. *Legionella* bacterium occurs naturally in the environment and grows best in environments with a temperature range between 77 degrees and 108 degrees Fahrenheit. (Source CDC "*Legionella*" on-line, among other sources). I agree with the CDC's guidance in that same article: "Maintaining and operating your building's equipment effectively will help prevent biofilm, organic debris, and corrosion from contaminating your water system; all of these provide a habitat and nutrients for *Legionella*." I also agree with the CDC's guidance in the same article about preventing stagnation: "When water does not flow well, the resulting areas of stagnation encourage biofilm growth, reduce water temperatures to levels that allow *Legionella* to grow and reduced levels of disinfectant. It is important to understand the flow of water in your building in order to identify areas of risk where water may become stagnant." I also agree with the CDC's observation and guidance that *Legionella* can grow "in many parts of building water systems that are continually wet, and certain devices can then spread contaminated water droplets." Faucets, pipes, fittings, spigots, humidifiers and steam generators in saunas are only a few examples among many examples of devices where *Legionella* can grow through aerosolization and spread. *Legionella* causes infections when water droplets or vapor contaminated with that bacterium are inhaled into the lungs.

On November 18, 2020, I inspected a tiled room with an outlet for steam that appeared to have been used when the building was in operation as a wet sauna. I also inspected an immediately adjacent equipment room containing a Thermasol brand steam generator with a control panel and various plumbing and electrical connections designed to provide water and electricity to create the steam necessary to service the adjacent wet sauna room. These two rooms were located in a building occupied or formerly occupied by an entity that operated Gold's Gym located at 15759 San Pedro Avenue in Hill Country Village, Texas. I did so at the request of Brett Reynolds, who I understand to be counsel for Mr. Oscar Tamez. I previously authored a medical report in November of 2018 at the request of Mr. Reynolds regarding my evaluation of Oscar Tamez on October 22, 2018. Refer to that report (attached) for my medical opinions regarding my evaluation of Mr. Tamez and his medical history at that time, although I understand that his medical condition has changed since that time.

In addition to the inspection, I have reviewed the deposition testimony of Oscar Tamez and a number of photographs taken by Mr. Reynolds, who was present at the inspection and which were furnished to me thereafter by Mr. Reynolds. I have also reviewed the Defendant Gold Texas Holdings Group d/b/a Gold's Gym Hill Country Village's answer to Interrogatory #5, relating to the alleged procedure in effect by Gold's regarding the operation of the Power Flush system and Responses to Requests for Admission.

The inspection revealed a Thermasol "Superduty" Steam Generator model SD-600-240-01011 present in the equipment room adjacent to the wet sauna. (See attached photos #003036-003038). I assumed for the purpose of my inspection and for the purpose of the analysis and opinions expressed here that the incoming water supply to the steam generator was protected by an adequate concentration of chloramine, which is the standard method of protecting public water supplies. Chloramine bonds to water molecules and remains in the water much longer than chlorine after the water is exposed to air and heat and therefore is widely used as a disinfectant by public water suppliers.

However, even chloramine separates from water molecules when the water is converted by application of heat from a liquid to gas (steam). Condensation of the water following this separation of chloramine from the water leaves the water unprotected by disinfectant. The condensation of unchlorinated water creates a medium if this water is allowed to stand unprotected for bacteria and other organisms to grow in the water, including Legionella if the water is within the temperature parameters indicated above.

Inspection of the equipment room revealed a flexible metal tube or pipe leading out of the top of the steam generator (photo #003039) where it connects with a copper metal pipe that then runs horizontally along the length of the back wall of the equipment room (see photos #003040-003042). That tube quite obviously carried the steam from the steam generator to the wet sauna room because that tube connected directly to the copper pipe that led directly to the hole in the common wall, which ended in a spigot inside the adjacent wet sauna. That copper pipe to which the tube from the steam generator connected at one time was covered with black insulating material because traces of the insulation remain visible, although almost all of the material has either melted or worn off of the exterior of the copper pipe. (photos #003041 through #003043). The appearance indicates to me the copper pipe carrying the steam to the wet sauna room has been in place for many years. The pipe leads to a joint that connects at a ninety-degree angle to a copper pipe of the same diameter that runs across the left wall of the equipment room, which is the common wall with the wet sauna. (photo #003043). The

insulation similarly has worn off of that pipe, suggesting it has also been in place for a long time. When the pipe reaches the front of the common wall, a joint connects that pipe to another copper pipe that descends vertically down the common wall to a point approximately a foot above the floor of the equipment room. (photo #003043-003045). A joint then connects the vertical pipe to a short length of pipe that enters a penetration in the common wall and enters the wet sauna. (Photo #003045).

That pipe then connects to a larger diameter pipe that ends in what I would term a "spigot", through which the steam is discharged into the wet sauna when the steam generator is in operation. (Photo # 003050).

The inspection also revealed a control module for the steam generator mounted adjacent to the common wall of the equipment room. (photo # 003046) The control module was affixed to a horizontal wood beam. Above the control panel was a metal plate with the name "Thermasol" engraved into the metal and a red and black placard affixed to the metal plate with the words "Quick Reference Control Setup" appearing at the top of the placard. (Photos #003047--#003049). The Quick Reference Control Setup placard contained a list of subheadings starting with "Set Clock". The list includes several headings thereafter, and eventually reaches a heading identified as follows:

"SETUP AVAILABLE TIME FOR MAINTENANCE POWER FLUSH. ROOM IS TO BE UNOCCUPIED DURING THIS TIME: Use the SET button, navigate to "SYSTEM POWER FLUSH", adjust the start time of the Power Flush after or before the facility's public operating hours; set with UP and DOWN arrows. To adjust specific days for power flush starting times, simply change the day using the "DAY" button. Press the SET button again until "d--X" is displayed. X is the number of days remaining until the next PF cycle is due to commence. To change, press and hold the set button until the Power Flush LED starts to blink. Release the button and adjust the number of days as needed. Press SET to complete."

Two other headings follow, ending with "SYSTEM PAUSE"

I interpret the clear instructions on the control module placard for setting the Power Flush function to mean that at least one day will elapse between Power Flush cycles when set in accordance with the instructions for automatic operation, because "X" must be set at 1 or higher and "X" represents a full day. I have also reviewed Interrogatory #5 in the answers given by Gold's Texas Holdings. The pertinent part of the answer to my analysis states:

"Approximately every 16 hours of usage, the steam generator performs a power flush, and the water is replaced. Therefore, no periodic testing is required as the water tested at any given point will no longer be in the system a few hours later."

The instructions do not allow the user to set "X" at less than one, so the Power Flush cycle cannot be set to function automatically based on hours of usage. The sworn answer by Gold's appears to indicate and imply that employees of Gold's were manually activating the Power Flush since the answer indicates they were monitoring hours of usage—not intervals of days—to flush the system. The Power Flush feature likely was designed to function automatically to avoid human error given the importance of flushing the water to maintain a clean system. Yet to operate the system by monitoring hours of usage manually creates what I believe is a dangerous condition by disregarding the automatic operation of the Power Flush

function designed into the operation of the steam generator. Disregarding the instructions and disabling the automatic operation of the Power Flush feature creates a dangerous condition because the water is allowed to remain stagnant in the long series of copper pipes between the steam generator and the spigot completely without disinfectant if an employee forgets to activate the Power Flush system on any given day. In my opinion, that condition is dangerous because the perfect environment then exists for *Legionella* and other bacteria to grow in the condensation that remains in the horizontal copper pipes. When the steam generator is then re-activated, that bacteria then departs the pipes in contaminated water vapor and poses an immediate danger to anyone in the wet sauna who inhales the contaminated steam.

The configuration of the pipes between the Thermasol steam generator and the steam outlet in the wet sauna is not part of the Thermasol generator. Instead, that configuration apparently was chosen by the gym operator or chosen to remain by the gym operator if it took over the operation of the gym and decided to keep this configuration of pipes in use. I understand the operator to be Gold's and/or Realty Income. That pipe configuration consisted of at least six feet of horizontal pipe along the back wall of the equipment room and another four feet or more of pipe along the side wall before the pipe descended vertically down to the penetration leading into the steam room.

When the steam generator ceased operation at any given time, steam therefore would condense back into water and remain in the lower half of the long horizontal combination of pipes until either the Power Flush was activated, or the steam generator was turned on again to generate steam and pump the steam into the wet sauna. All of the water in that ten-foot combination (or longer) of horizontal pipe contained no disinfectant to stop the growth of bacteria or biofilm because the conversion to steam separated the chloramine from the water molecules. I can see no reason to believe that Thermasol knew or approved of the use of a long combination of horizontal pipes, chosen by Gold's or Realty Income, to transport and hold the water and steam between the steam generator outlet and the spigot in the wet sauna room. If the steam generator, which was portable and equipped with wheels, had been placed against the common wall of the two rooms, the flexible metal pipe exiting the steam generator could have attached directly to a pipe descending vertically down to the hole connecting to the steam room. That configuration would have eliminated the long horizontal pipe and prevented water from accumulating by condensation and remaining unchlorinated and stagnant in a long pipe for varying lengths of time after the steam generator was turned off. No water would have accumulated in a short vertical pipe because gravity would cause it to run down to the bottom of the pipe. And the vertical pipe would only have been about three feet long to connect to the spigot at one end and the steam generator outlet tube at the other end.

In my opinion based on a reasonable degree of medical and scientific probability, I believe the configuration of the pipes chosen by Gold's and Realty Income between the steam generator and the spigot in the steam room caused the water to accumulate in the pipes and allowed *Legionella* and other bacteria to grow in the pipes and then transmit in water vapor into the wet sauna when Gold's personnel turned on the sauna at some point on the day of Mr. Tamez' visit to Gold's Gym about four days before his hospitalization on July 25, 2016. Had Gold's chosen not to use and maintain a long horizontal series of pipes in which it knew or should have known steam would condense and remain unchlorinated and instead had placed the steam generator immediately adjacent to the common wall with a short vertical pipe descending down directly to the spigot, I believe Mr. Tamez would not have been exposed to *Legionella* because no reservoir would have existed for the unchlorinated water to accumulate in between

the steam generator and the wet sauna room and serve as a medium for bacterial growth. In addition, in my opinion the apparent choice by Gold's not to use the automatic Power Flush setting in accordance with the instructions on the "System Power Flush" on the instruction placard contributed to cause Mr. Tamez' exposure because the system was designed to automatically flush the steam generator instead of rely on manual operation and thereby avoid human error. Had the system been set to operate at an interval of only one day by setting "x" at one, instead of manually counting hours and relying on employees to remember to activate the Power Flush manually after what Gold's says was every sixteen hours of operation, I believe the growth of Legionella would have been much less likely, although given the chosen configuration by Gold's to use the long horizontal pipe acting as a reservoir for condensed unchlorinated water when the steam generator was turned off, Legionella may still been able to grow between Power Flush cycles. The equipment room was very small and the uninsulated pipes no doubt generated heat that remained in the room for a significant time after the steam generator was turned off. I am therefore of the opinion that the temperature range of the room likely was well within the ideal range to create the conditions for Legionella to grow if present in an unchlorinated pool of condensed water in the horizontal pipes.

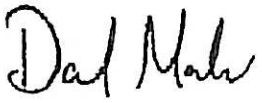
I used the following definition of Ordinary Care: That degree of care that a reasonably prudent gym owner operator would exercise under the same or similar circumstances.

I used the following definition of Negligence: The failure by a gym owner/operator to use ordinary care in the operation and maintenance of the wet sauna in the Gold's Gym in question.

Based on these definitions, my inspection, my review of the answer to interrogatory #5 and the review of Mr. Tamez' testimony and the photographs taken during the inspection and noted above, my opinion based on a reasonable degree of medical and scientific probability is that Gold's Texas Holdings and Realty Income were negligent in the operation and maintenance of the wet sauna in the Gold's Gym during the days and weeks leading up to and including the date of the visit by Oscar Tamez to the gym on or about July 21, 2016; and that the negligent configuration of the pipes described above combined with the apparent failure to abide by the instructions of the manufacturer of the Thermasol steam generator by setting "X" at one or greater to allow an automatic Power Flush to assure that the system flushed regularly and automatically caused Legionella bacteria to grown in the wet sauna and exposed Mr. Tamez to the bacteria. My further opinion is that Gold's Gym knew or should have known that Legionella was likely to grow at some point since it failure to use ordinary care and abide by the readily available CDC guidelines relating to prevention of Legionella As such, my opinion is that Gold's Texas Holdings' negligent conduct caused Oscar Tamez to be exposed to the Legionella bacteria on or about July 21, 2020 and suffer permanent damage to his lungs as described in his records and in my medical evaluation report. I also hold the opinion that the above-described facts relating to the configuration of the pipes leading between the steam generator and the wet sauna created an unreasonably dangerous condition on the premise of the gym relating specifically to the wet sauna because of the likelihood as described above that unchlorinated water would stand in the pipes would condense and remain stagnant in the wet sauna.

It is also my opinion that Mr. Tamez had no way to know that he was being exposed to Legionella bacteria in the wet sauna of the Gold's Gym on July 21, 2016 and therefore did not in any way contribute to cause his Legionella infection. Gold's Texas Holdings and possibly Realty Income as the owner/operator of the gym facility were the cause of Mr. Tamez contracting the

I reserve the right to modify my opinions based on additional information provided to me if any after the date of this report.



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