

**Fill in this information to identify the case:**

Debtor 1 GGI Holdings, LLC

Debtor 2  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31318-hdh11

RECEIVED

**FILED**  
AUG 31 2020  
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

Official Form 410

SEP 04 2020

**Proof of Claim**

BMC GROUP

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?

PEGGY GITTINGS SHEPHERD

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor PEGGY GITTINGS SHEPHERD

2. Has this claim been acquired from someone else?

☒ No

☐ Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

PEGGY SHEPHERD

Name

6180 LITTLE JOHNNY DRIVE

Number Street

COLORADO SPRING CO

80918

City State ZIP Code

Contact phone 719-439-2660

Contact email PSHEPHERDHOM@GMAIL.COM

Where should payments to the creditor be sent? (if different)

Name

Number Street

City State ZIP Code

Contact phone \_\_\_\_\_

Contact email \_\_\_\_\_

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known) \_\_\_\_\_

Filed on \_\_\_\_\_  
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☐ No ☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 1 3 2 5

7. How much is the claim? \$ 684,895.32. Does this amount include interest or other charges? ☐ No ☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Employment Discrimination (race, age retaliation)

9. Is all or part of the claim secured? ☒ No ☐ Yes. The claim is secured by a lien on property.

**Nature of property:**

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: \_\_\_\_\_

**Basis for perfection:** \_\_\_\_\_

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %

☐ Fixed

☐ Variable

10. Is this claim based on a lease? ☒ No ☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No ☐ Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.


☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 08/29/2020  
MM / DD / YYYY

 xxx-xx-2763 1962  
Signature

Print the name of the person who is completing and signing this claim:

Name PEGGY GITTINGS SHEPHERD  
First name Middle name Last name

Title \_\_\_\_\_

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 6180 LITTLE JOHNNY DRIVE  
Number Street  
COLORADO SPRINGS CO 80918  
City State ZIP Code

Contact phone 719-439-2660 Email PSHEPHERDHOM@GMAIL.COM

Peggy Shepherd worked for Gold's Gym Rockies, LLC d/b/a Gold's Gym (the Company), and in support thereof states as follows. The Company owes:

1. Earned but unpaid wages:
  - a. The Company withheld and/or failed to pay several hundreds of dollars per pay period in total over at least three months, totaling around at least \$1,000 in commissions.
  - b. Also, the Company has improperly withheld her earned wages, including one week of vacation pay, estimated in the amount of roughly \$525.67.
2. Plaintiff seeks all damages available for recovery based on claims pursuant to Title VII, Section 1981, the ADEA, and the Colorado Wage Claim Act, including the following:
  - a. Past (\$36,462.56) and future lost wages (\$20,000); and
  - b. Past and future benefits valued at \$5,000.
3. All recoverable non-economic damages, including emotional distress damages and punitive damages of \$300,000 (for Title VII/ADEA);
4. All recoverable compensatory, emotional distress, and punitive damages available pursuant to Section 1981 \$300,000 (no cap) ;
5. Plaintiff's reasonable attorneys' fees, as permitted by law, \$40,000; and
6. All damages allowable under the CWCA, including but not limited to, statutory penalties \$1,907.09.

The above referenced claim and damages total **\$684,895.32**. Statutory prejudgment and post-judgment interest not included in this total.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

**PEGGY SHEPHERD**

Plaintiff,

v.

**GOLD'S GYM ROCKIES, LLC d/b/a GOLD'S GYM**

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff, Peggy Shepherd ("Plaintiff"), by and through her attorneys, HKM Employment Attorneys LLP, hereby files her Complaint against Defendant, Gold's Gym Rockies, LLC d/b/a Gold's Gym ("Gold's Gym" or "Defendant"), and in support thereof states as follows:

**PRELIMINARY STATEMENT**

1. As a member of several protected classes under federal anti-discrimination laws and having earned wages improperly withheld and unpaid, Plaintiff suffered discrimination and adverse employment actions (including retaliation) by Plaintiff's employer, Gold's Gym.
  - a. Plaintiff brings this action for damages as a result of Defendant's discrimination against her on the bases of race and age discrimination, and because she spoke up and opposed racial discrimination on behalf of her coworkers and the Gold's Gym's customers. In retaliation for reporting the same and/or due to Plaintiff's protected

classes, Defendant adversely altered the terms and conditions of Plaintiff's employment and subjected Plaintiff to a hostile work environment, in addition to subjecting Plaintiff to materially adverse employment actions, including termination, in violation of federal law. Plaintiff brings claims against Defendant pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"), 42 U.S.C. § 1981 ("Section 1981"), and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 – 634 ("ADEA") ("ADEA").

- b. In addition, Plaintiff asserts a claim for violations of the Colorado Wage Claim Act, C.R.S. § 8-4-101, *et seq.* ("CWCA") because Defendant improperly withheld and/or failed to pay wages and compensation to Plaintiff that were earned.

### **PARTIES**

2. At all relevant times during her employment with Gold's Gym, Plaintiff was an individual who was a resident and domiciliary of Colorado. At all times relevant to this Complaint, Plaintiff is and was a member of a protected class of individuals recognized under 42 U.S.C. § 2000e-2(a)(1) and Section 1981 which prohibit race discrimination.

3. Defendant is a foreign limited liability company, incorporated in Delaware, with its principal office located at 4001 Maple Avenue, Suite 600, Dallas, TX 75219. At all relevant times, Defendant was an employer within the meaning of Title VII.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), (a)(4). This Court also has jurisdiction pursuant to 28 U.S.C. § 1367 for supplemental jurisdiction over Plaintiff's state claim.

5. Jurisdiction is also proper under 28 U.S.C. §§ 1332(a)(1), in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. Venue is proper under 28 U.S.C. § 1391 because the conduct complained of herein occurred in the State of Colorado.

### **ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED**

7. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

8. Plaintiff filed her Charge of Discrimination, Number 541-2019-00593, with the U.S. Equal Employment Opportunity Commission ("EEOC"), for race and age discrimination, and retaliation, on or around July 2, 2019 and it was marked received by the EEOC Denver Field Office on January 8, 2019. Plaintiff was issued a Right to Sue determination from the EEOC on July 18, 2019.

9. The Complaint in this matter is timely filed within 90 days of receipt of the notice of Right to Sue from the EEOC.

10. Plaintiff has met all administrative prerequisites prior to filing this Complaint.

### **GENERAL ALLEGATIONS**

11. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

12. Plaintiff is a Black/African American woman.

13. Plaintiff was born in 1962 and is currently 57 years old.

14. Plaintiff's last position while she was employed by Defendant was Assistant General Manager ("AGM") until she was wrongfully discharged on or about November 9, 2018.

15. Plaintiff worked at several of the Gold's Gym locations in Colorado Springs, Colorado, including the Rustic Hills and Briargate locations.

16. Plaintiff's salary as an AGM, without commissions, was \$35,000.

17. Throughout her time working for Defendant, Plaintiff met or exceeded her employer's legitimate performance expectations.

18. During her employment with Defendant, Plaintiff was subject to harassment and retaliation by management and/or team members, including but not limited to: Heather Racca, General Manager ("GM").

19. From her hire in October 2013 through April 2018, Plaintiff was an Operations Manager.

20. Around April 2018, while Plaintiff was working at the Briargate location, her position was merged with the Sales Manager and she became an AGM.

21. After accepting the position on or around April 24, 2018, Plaintiff was sent over to work at the Rustic Hills location around April 30, 2018.



22. Soon after she became an AGM, it became obvious that she was expected to perform at a different level taking on significant extra duties than her younger, white coworkers, who were in comparable AGM positions.

23. In addition, while working as an AGM at Rustic Hills, she was also covering the GM role for roughly three months-until July 2018 – when the new GM, Ms. Racca, came onto the team as Plaintiff’s supervisor.

24. After Ms. Racca came on board in July 2018, through the last two weeks of August, Ms. Racca was frequently out of the gym because she was in the process of moving from Washington to Colorado.

25. Plaintiff did not have a lot of regular interactions with Ms. Racca until she was fully settled in Colorado around the first week of September 2018, wherein their interactions became much more frequent as Ms. Racca fully ensued the GM role.

26. At this time, the discrimination by Ms. Racca against Plaintiff markedly increased.

27. From April 2018 through Plaintiff’s termination, Plaintiff endured a pattern of harassment based on her age and/or race, involving demeaning, offensive, and threatening comments. In addition, she was not even considered for several GM positions that were open for which she was qualified. Some examples, that are non-exhaustive, are included below:

- (a) With respect to age, Ms. Racca constantly commented to Plaintiff: “Well, you are the oldest one working.”
- (b) With respect to African American customers and against herself, Mr. Racca frequently made discriminatory comments that African Americans were

poor. For example, she stated, “I’m just gonna give them the day to work out, I don’t think they can afford the membership.”

- (c) The comment in (b) above was also made about Hispanic customers, which was insulting not only to Plaintiff but also to other staff members who witnessed racially charged comments, such as Franco Huerta.
- (d) Ms. Racca directed a threat to Frances Hernandez and other minorities that she “would be firing 90% of the people that worked there.”
- (e) Several GM positions were open while Plaintiff was employed at Gold’s Gym, and for which she was qualified.
- (f) Though qualified for the position and making it known that she would like to be considered, the Company overlooked Plaintiff and interviewed younger, white employees for the GM positions.
- (g) Specifically, the Company hired Kristin Arenas (white, and upon information and belief in her 30s), for the GM position at Security even though she started at Gold’s Gym after Ms. Shepherd and had less experience than Plaintiff (who even participated in Ms. Arenas’ training).
- (h) On July 12, 2018, Plaintiff interviewed for the GM position at Briargate with Jeff Peel (white, upon information and belief mid 30s), the Regional Director.
  - i. During the interview, Mr. Peel expressed surprise that Plaintiff applied for the job.

- ii. Plaintiff told him that she applied for the job to get a face to face with him that going forward she expected to be given the opportunity to become a GM.
- iii. Mr. Peel told Plaintiff that he would tell Ms. Racca to help develop her for the GM role.
- iv. Plaintiff was passed up for the Briargate GM position.
- (i) Around September 2018, Ms. Arenas (the GM at Security), wanted to transfer to Briargate. Ms. Arenas was not given the position and she left the Company.
- (j) During this time, Security and Briargate locations did not have GMs.
- (k) Plaintiff filled in as GM at the Briargate location to perform those duties, until Randall Pfaff (white, upon information and belief younger than Plaintiff), was hired for the Briargate GM position.
- (l) Despite already performing the job duties in the interim, Plaintiff was never considered for the Briargate GM position.
- (m) In November 2018, Ms. Arenas returned to Gold's Gym and she was given back her position as GM at Security.
- (n) Plaintiff was never considered for the Security GM position.

28. During Plaintiff's employment from April 2018 through her termination, she was subjected to less favorable terms and conditions of employment, including, without limitation, being treated differently than her similarly situated co-workers. Some examples, that are non-exhaustive, are included below:

- (a) Plaintiff was required to work more hours at the front desk than other AGMs.
- (b) Every AGM was supposed to work the front desk for two hours per day; however, the “policy” was only enforced as to Plaintiff.
- (c) Plaintiff was required to work upwards of 5-7 hours per day at the front desk, while her white, younger, AGM coworkers were not required to do so.
- (d) Plaintiff was also required to give up her weekend day off to work on Saturdays as Manager on Duty and work at the front desk.
- (e) Plaintiff’s white, younger, AGM coworkers were not required to give up their weekend days off to work similarly on Saturdays.
- (f) Gold’s Gym’s policies regarding AGM front desk and weekend work was imposed and enforced upon Plaintiff by Ms. Racca and management, and not upon her white, younger, AGM coworkers.
- (g) Ms. Racca also discriminated against Plaintiff and intentionally made it more difficult for Plaintiff to make commissions based on her age and/or race by requiring her to handle Silver Sneaker members and memberships.
- (h) Silver Sneaker members are typically older customers, and Plaintiff was required to handle them because she was the oldest team member.
- (i) In addition, Ms. Racca knew that Silver Sneaker customers did not typically purchase personal training, and their memberships for the gym were free, so Plaintiff would not make commissions on them.

- (j) Ms. Racca intentionally harmed Plaintiff's ability to earn commissions based on her age and race.

29. Plaintiff spoke up to Ms. Racca on repeated occasions about her discriminatory comments and unequal treatment that was imposed upon her and not her similarly situated coworkers. As a result of speaking up, Ms. Racca's retaliatory conduct increased. Some examples, that are non-exhaustive, of the times that Plaintiff spoke up are included below:

- (a) Towards the end of September 2018, Plaintiff stood up to Ms. Racca and told her to stop making discriminatory comments about African American and Hispanic customers. Plaintiff told Ms. Racca "being Black doesn't mean they can't afford it (referring to the gym membership)."
- (b) Also, towards the end of September 2018, Plaintiff told Ms. Racca that she was not being treated equally regarding the front desk work. Ms. Racca claimed that she would equally enforce the policy, but never actually did for white, younger AGMs (e.g. Will Smith and Tyler Guynn).
- (c) Plaintiff reported to Ms. Racca that the unequal treatment deprived her from conducting sales calls.
- (d) Shortly thereafter and in retaliation for speaking up again, Ms. Racca sent an email to Plaintiff on September 10, 2018 identifying areas of improvement for Plaintiff to work on.
- (e) After receiving that email, Plaintiff reported again to Ms. Racca and told her that she was being "singled out."

- (f) In October 2018, Plaintiff reported to Ms. Racca that another minority, Mr. Huerta, felt singled out by her because of his race.
- (g) During this time, Ms. Racca made false allegations in an apparent attempt to terminate Mr. Huerta, and Plaintiff spoke out against the discrimination.
- (h) Plaintiff's repeated reports and opposition to discrimination, spurred additional retaliation by Ms. Racca, including refusing to train her on the sales aspect of the AGM position and ultimately placing Plaintiff on a Performance Improvement Plan ("PIP") on or around October 16, 2018.
- (i) Upon information and belief, the standards that were imposed upon Plaintiff in her PIP were not equally imposed upon the other AGMs.
- (j) Plaintiff had never had a written or verbal warning about performance until Ms. Racca became her supervisor.

30. Supporting Plaintiff's contention that Ms. Racca was making discriminatory comments about Hispanic customers, Gold's Gym's Yelp review shows a comment about Ms. Racca making a comment about "fat, dirty, Mexicans" on or around November 4, 2018.

31. On November 9, 2018, Plaintiff was terminated by Ms. Racca and told that she was not meeting sales goals.

32. Upon information and belief, other employees (who had not spoken up regarding discriminatory practices, were white, and/or younger) were not meeting sales expectations but were not terminated.

33. Joelle Wright was not meeting sales expectations on November 9, 2018 but was not terminated on or before November 9, 2018.

34. Furthermore, when Plaintiff was terminated, Ms. Racca promoted Ms. Wright to AGM.

35. In addition, to the foregoing discriminatory and retaliatory conduct, Ms. Racca was taking credit for Plaintiff's and Mr. Huerta's sales commissions.

36. Upon information and belief, Ms. Racca would take credit for new members that Plaintiff and Mr. Huerta had reached out to by claiming that they were walk-ins.

37. In addition, Ms. Racca went into Salesforce and transferred sales from Plaintiff to herself.

38. The Company withheld and/or failed to pay several hundreds of dollars per pay period in total over at least three months, totaling around at least \$1,000 in commissions.

39. Also, the Company has improperly withheld her earned wages, including one week of vacation pay, estimated in the amount of roughly \$525.67.

40. Pursuant to the CWCA, C.R.S. § 8-4-101, *et seq.*, Plaintiff is entitled to (i) unpaid wages that were not timely paid upon Plaintiff's termination, (ii) statutory penalties for Defendant's willful failure to pay Plaintiff's unpaid wages, and (iii) attorneys' fees and costs Plaintiff incurs in bringing this action.

41. Upon Plaintiff's termination from the Company, Plaintiff should have been paid all earned wages and compensation under the CWCA.

#### **FIRST CLAIM FOR RELIEF**

#### **Discrimination and Hostile Work Environment Based on Race in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII")**

42. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

43. Plaintiff is an “employee” as defined in 42 U.S.C. § 2000e(f).
44. Defendant is an “employer” as defined in 42 U.S.C. §§ 2000e(b).
45. Title VII prohibits discrimination based on race in employment.
46. Based on the above-described acts, practices, and omissions, Defendant engaged in unlawful discrimination under Title VII based on Plaintiff’s race (Black/African American).
47. Defendant’s harassment of Plaintiff was aimed at Plaintiff because of her race, resulting in adverse impacts to the terms and conditions of Plaintiff’s employment and further subjecting Plaintiff to a severe and/or pervasive hostile work environment.
48. Defendant’s conduct was sufficiently severe or pervasive that a reasonable person in Plaintiff’s position would find Plaintiff’s work environment to be hostile or abusive.
49. At the time the above-described conduct occurred and as a result of such conduct, Plaintiff believed her work environment to be hostile or abusive.
50. Defendant knew or should have known of the abusive conduct and failed to take any prompt or appropriate remedial action to stop such conduct.
51. As such, Defendant violated 42 U.S.C. § 2000e-2(a) and discriminated against Plaintiff by not only subjecting her to sufficiently severe or pervasive harassment based on her race so as to alter the conditions and terms of Plaintiff’s employment, but also by failing to act and condoning or tolerating such harassment, subjecting Plaintiff to less favorable terms and conditions of employment by the following, non-exhaustive list:
- (a) Imposing heightened scrutiny and disproportionate rules, demands, and policies on Plaintiff including requiring her to perform more duties,



including working more hours at the front desk and working on Saturdays, than similarly situated AGMs;

- (b) Altering Plaintiff's job duties, including handling Silver Sneaker memberships, during and after reporting and opposing discrimination;
- (c) Requiring Plaintiff to meet sales goals more strictly than other similarly situated AGMs and/or coworkers;
- (d) Writing up and placing Plaintiff on a PIP for conduct that other employees engaged in without them similarly being written up or placed on a PIP;
- (e) Failing to consider Plaintiff for all available GM positions, while considering and hiring others that were white, younger, and/or less qualified than Plaintiff;
- (f) Retaliating against Plaintiff for opposing discrimination against herself, her coworkers, and customers of Gold's Gym;
- (g) Failing to hire Plaintiff for all open GM positions; and,
- (h) Ultimately, terminating Plaintiff due to her race and/or in retaliation for speaking up about discrimination.

52. Plaintiff's race was a motivating factor for the Defendant's action.

53. The reasons Defendant may submit for its adverse treatment towards Plaintiff including her termination, if any, are false and pretext for unlawful discrimination.

54. In unlawfully discriminating against Plaintiff, Defendant acted willfully, wantonly, and/or with malice or with conscious and/or reckless indifference to Plaintiff's equal rights under law, thereby necessitating the imposition of exemplary damages.

55. As a result of Defendant's above-described conduct, Plaintiff has suffered loss of income, emotional pain and suffering, embarrassment, and inconvenience, and she is entitled to general and special damages, and economic damages including front and back pay. Plaintiff is also entitled to and seeks her attorneys' fees and costs as permitted by law.

**SECOND CLAIM FOR RELIEF**  
**Retaliation in Violation of Title VII, 42 U.S.C. § 2000e, *et seq.***

56. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

57. Plaintiff's opposition and complaints regarding Defendant's discriminatory conduct and dissimilar and unequal treatment were protected activities within the meaning of Title VII.

58. Defendant unlawfully retaliated against Plaintiff in the terms and conditions of her employment and subjected Plaintiff to further harassment because she engaged in the above-described statutorily protected activities. For example, Defendant, among other things, subjected Plaintiff to less favorable terms and conditions of employment by the following, non-exhaustive list:

- (a) Imposing heightened scrutiny and disproportionate rules, demands, and policies on Plaintiff including requiring her to perform more duties, including working more hours at the front desk and working on Saturdays, than similarly situated AGMs;
- (b) Altering Plaintiff's job duties, including handling Silver Sneaker memberships, during and after reporting and opposing discrimination;

- (c) Requiring Plaintiff to meet sales goals more strictly than other similarly situated AGMs and/or coworkers;
- (d) Writing up and placing Plaintiff on a PIP for conduct that other employees engaged in without them similarly being written up or placed on a PIP;
- (e) Failing to consider Plaintiff for all available GM positions, while considering and hiring others that were white, younger, and/or less qualified than Plaintiff;
- (f) Retaliating against Plaintiff for opposing discrimination against herself, her coworkers, and customers of Gold's Gym;
- (g) Failing to hire Plaintiff for all open GM positions; and,
- (h) Ultimately, terminating Plaintiff due to her race and/or in retaliation for speaking up about discrimination.

59. Defendant further failed and refused to take corrective action that would prevent Plaintiff from being subjected to further harassment and retaliatory treatment, and instead terminated Plaintiff.

60. A causal connection exists between Plaintiff's protected activities and Defendant's unlawful retaliation.

61. Defendant would not have taken adverse employment action against Plaintiff but for the Plaintiff's protected activity.

62. Defendant's above-described retaliatory conduct, including its termination of Plaintiff, is of the type that would be materially adverse to a reasonable employee and chill such

employee's willingness to engage in protected activity, such as opposing discrimination by making internal reports of same to management for Defendant.

63. In unlawfully discriminating and retaliating against Plaintiff, Defendant acted willfully, wantonly, and/or with malice or with the conscious and/or reckless indifference to Plaintiff's equal rights under law, thereby necessitating the imposition of exemplary damages.

64. As a result of Defendant's retaliatory conduct, Plaintiff has suffered loss of income, emotional pain and suffering, embarrassment, and inconvenience, and she is entitled to general and special damages, and economic damages including front and back pay. Plaintiff is also entitled to and seeks her attorneys' fees and costs pursuant to 42 U.S.C. § 2000e-5(k).

**THIRD CLAIM FOR RELIEF**  
**Discrimination and Hostile Work Environment Based on Race in Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981")**

65. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

66. Section 1981 prohibits discrimination in the making and enforcement of contracts and is designed to include a remedy against discrimination in employment on the basis of race.

67. Under Section 1981, all persons have the same right to make and enforce contracts and to enjoy full and equal benefit of all laws.

68. Employment contracts are among those contracts protected by Section 1981.

69. Defendant entered into a contract with Plaintiff that is subject to Section 1981.

70. Plaintiff was treated differently by Defendant than similarly situated employees who did not share Plaintiff's race and/or Plaintiff's other protected characteristics under Section 1981.

71. Defendant treated Plaintiff differently, terminated Plaintiff and denied Plaintiff full and equal benefit of all laws based on her race, unlike similar situated employees outside of Plaintiff's protected classes.

72. Based on the above-described acts, practices, and omissions, Defendant engaged in unlawful discrimination under Section 1981 based on Plaintiff's race.

73. Defendant's harassment and disparate treatment toward Plaintiff was aimed at Plaintiff because of her race and resulted in adverse impacts to the terms and conditions of Plaintiff's employment and further subjected Plaintiff to harassment and a hostile work environment.

74. At the time the above-described conduct occurred and as a result of such conduct, Plaintiff believed her work environment to be hostile or abusive.

75. Defendant knew or should have known of the objectively abusive conduct by Gold's Gym's employees and management, and failed to take any prompt, or appropriate remedial action to stop its conduct. Moreover, Defendant is directly liable for the hostile work environment created and maintained by its supervisory level employees, including but not limited to, Ms. Racca and/or Mr. Peel.

76. As such, Defendant violated 42 U.S.C. § 1981 and discriminated against Plaintiff by denying her full and equal benefit of all laws, subjecting her to sufficiently severe or pervasive harassment based on her race so as to alter the conditions and terms of Plaintiff's employment; and by failing to act and condoning or tolerating such harassment, subjecting Plaintiff to less favorable terms and conditions of employment by the following, non-exhaustive list:

- (a) Imposing heightened scrutiny and disproportionate rules, demands, and policies on Plaintiff including requiring her to perform more duties, including working more hours at the front desk and working on Saturdays, than similarly situated AGMs;
- (b) Altering Plaintiff's job duties, including handling Silver Sneaker memberships, during and after reporting and opposing discrimination;
- (c) Requiring Plaintiff to meet sales goals more strictly than other similarly situated AGMs and/or coworkers;
- (d) Writing up and placing Plaintiff on a PIP for conduct that other employees engaged in without them similarly being written up or placed on a PIP;
- (e) Failing to consider Plaintiff for all available GM positions, while considering and hiring others that were white, younger, and/or less qualified than Plaintiff;
- (f) Retaliating against Plaintiff for opposing discrimination against herself, her coworkers, and customers of Gold's Gym;
- (g) Failing to hire Plaintiff for all open GM positions; and,
- (h) Ultimately, terminating Plaintiff due to her race and/or in retaliation for speaking up about discrimination.

77. Plaintiff's race was a motivating factor for the Defendant's action.

78. The reasons that Defendant may submit for changing the terms and conditions of Plaintiff's employment and terminating her, if any, are false and pretext for unlawful discrimination.

79. The reasons that Defendant may submit for its adverse treatment towards Plaintiff including her termination, if any, are false and pretext for unlawful discrimination.

80. In unlawfully discriminating against Plaintiff, Defendant acted intentionally or in the face of a perceived risk that its decisions would violate federal law, thereby necessitating the imposition of punitive damages.

81. As a result of Defendant's above-described conduct, Plaintiff has suffered loss of income, emotional pain and suffering, embarrassment, and inconvenience, and she is entitled to general and special damages, and economic damages including front and back pay. Plaintiff is also entitled to and seeks her attorneys' fees and costs (including expert witness costs) pursuant to 42 U.S.C. § 1988(b) and (c).

**FOURTH CLAIM FOR RELIEF**  
**Retaliation in Violation of Section 1981**

82. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately stated herein.

83. Plaintiff's opposition and complaints regarding Defendant's illegal practices were protected activities within the meaning of Section 1981.

84. Defendant unlawfully retaliated against Plaintiff in the terms and conditions of her employment and subjected Plaintiff to further harassment because she engaged in the above-described statutorily protected activities. For example, Defendant, among other things, subjected Plaintiff to less favorable terms and conditions of employment by the following, non-exhaustive list:

- (a) Imposing heightened scrutiny and disproportionate rules, demands, and policies on Plaintiff including requiring her to perform more duties,

including working more hours at the front desk and working on Saturdays, than similarly situated AGMs;

- (b) Altering Plaintiff's job duties, including handling Silver Sneaker memberships, during and after reporting and opposing discrimination;
- (c) Requiring Plaintiff to meet sales goals more strictly than other similarly situated AGMs and/or coworkers;
- (d) Writing up and placing Plaintiff on a PIP for conduct that other employees engaged in without them similarly being written up or placed on a PIP;
- (e) Failing to consider Plaintiff for all available GM positions, while considering and hiring others that were white, younger, and/or less qualified than Plaintiff;
- (f) Retaliating against Plaintiff for opposing discrimination against herself, her coworkers, and customers of Gold's Gym;
- (g) Failing to hire Plaintiff for all open GM positions; and,
- (h) Ultimately, terminating Plaintiff due to her race and/or in retaliation for speaking up about discrimination.

85. A causal connection exists between Plaintiff's protected activities and Defendant's unlawful retaliation.

86. Defendant would not have taken adverse employment action against Plaintiff but for the Plaintiff's protected activity.



87. In unlawfully discriminating and retaliating against Plaintiff, Defendant acted intentionally or in the face of a perceived risk that its decisions would violate federal law, thereby necessitating the imposition of punitive damages.

88. As a result of Defendant's retaliatory conduct, Plaintiff has suffered loss of income, emotional pain and suffering, embarrassment, and inconvenience, and she is entitled to general and special damages, and economic damages including front and back pay. Plaintiff is also entitled to and seeks her attorneys' fees and costs (including expert witness costs) pursuant to 42 U.S.C. § 1988(b) and (c).

#### **FIFTH CLAIM FOR RELIEF**

#### **Discrimination and Wrongful Termination in Violation of the Age Discrimination in Employment Act ("ADEA")**

89. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately set forth herein.

90. At all times relevant to this case, Plaintiff has been at least 40 years of age and therefore protected by the ADEA, 29 U.S.C. §§ 621 – 634.

91. At all times relevant to this case, Defendant was an "employer" within the meaning of the ADEA, 29 U.S.C. § 630(b).

92. Although Plaintiff at all relevant times successfully performed her job, she was terminated because of her age and, upon information and belief, replaced by a younger employee.

93. As a result of Defendant's above-described conduct, Defendant violated the ADEA and discriminated against Plaintiff by, *inter alia*, terminating her due to her age.

94. Defendant's above-described conduct and wrongful termination of Plaintiff was intentional and was motivated by Plaintiff's age.

95. Defendant knowingly and willfully engaged in the above-described conduct and discriminatory termination of Plaintiff on the basis of her age.

96. Defendant would not have terminated Plaintiff but for the Plaintiff's age.

97. As a direct and proximate result of Defendant's above-described actions, Plaintiff has suffered damages, including lost wages and benefits, emotional pain and suffering, embarrassment, and inconvenience; and she is entitled to such general and special damages, economic damages, punitive damages and attorneys' fees and costs as permitted by law.

**SIXTH CLAIM FOR RELIEF**  
**Violations of the Colorado Wage Claim Act ("CWCA")**

98. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully and separately set forth herein.

99. Defendant was an employer as defined under C.R.S. § 8-4-101(5) during Plaintiff's employment.

100. Plaintiff was an employee for Defendant as defined under C.R.S. § 8-4-101(4).

101. Plaintiff earned wages as defined under C.R.S. § 8-4-101(8)(a) and Defendant failed to pay those wages.

102. Plaintiff demands Defendant to pay her earned and unpaid wages and compensation as stated herein.

103. Defendant has not yet paid Plaintiff her unpaid compensation.

104. Under Colorado law, the Company must pay a terminated employee all of her earned wages immediately upon termination.

105. Plaintiff is entitled to relief under the CWCA for Defendant's failure to pay wages.

106. Under the CWCA, §§ 8-4-101, *et seq.*, Plaintiff was entitled to receive all of her wages and compensation.

107. Defendant's violation(s) of the CWCA are willful and/or intentional.

108. Defendant's violation of the CWCA was and is willful because it knew or showed reckless disregard for whether it complied with the law by willfully withholding Plaintiff's earned and owed compensation.

109. As a result of Defendant's above-described acts and omissions, Plaintiff has been damaged in amounts to be proven at trial.

110. Plaintiff is entitled to all unpaid wages, statutory penalties, pre and post judgment interest at the applicable legal rate, and attorneys' fees and costs, in an amount to be determined at trial.

111. As a result of Defendant's willful violations of the CWCA, compensation has been unlawfully withheld by Defendant from Plaintiff, for which Defendant is liable with an additional equal amount as liquidated damages, pre- and post-judgment interest, reasonable attorney's fees, and costs of this action.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor against Defendant and order all economic and noneconomic damages including the following relief as allowed by law:

A. Compensatory damages, including but not limited to those for emotional distress, inconvenience, mental anguish, and loss of enjoyment of life;

B. Back pay and benefits;

- C. Front pay and benefits;
- D. Punitive damages and exemplary damages, as permitted by law;
- E. All damages allowable under the CWCA, including but not limited to, statutory penalties and liquidated damages;
- F. Attorneys' fees and costs of this action (including expert witness fees), as permitted by law;
- G. Pre-judgment and post-judgment interest at the highest lawful rate; and
- H. Such further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all issues so triable to at least six (6) persons.

Respectfully submitted this 15th day of October, 2019.

**HKM EMPLOYMENT ATTORNEYS LLP**

By: s/ Sarah A. Schreiber

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6180 Little Johnny Drive  
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SVGB: STANDARD OVERN

ORIGIN ID:AVXA (214) 753-2068  
ATTN: MARCEY OKAFOR  
DALLAS BANKRUPTCY COURT  
1100 COMMERCE STREET, RM 1254

DALLAS, TX 75242  
UNITED STATES US

SHIP DATE: 21MAY20  
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BMC GROUP, INC.  
3732 W 120 TH ST

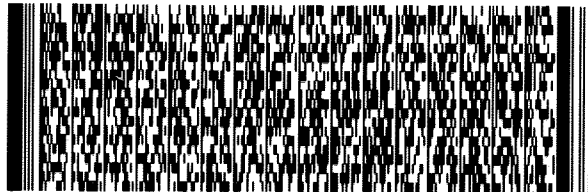
HAWTHORNE CA 90250

(310) 321-6666

REF: GGI HOLDINGS AND RELATED CASES

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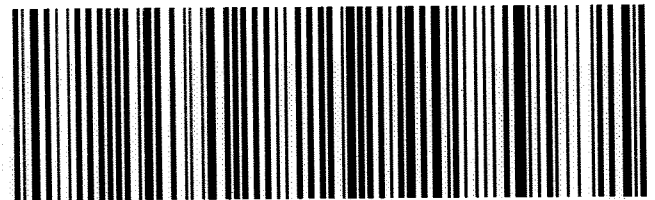
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