

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

**24 HOUR FITNESS
WORLDWIDE, INC., et al**

Debtors.¹

Chapter 11

**Case No. 20-11558 (KBO)
(Jointly Administered)**

Re: D.I. 966

**OBJECTION BY MEPT WESTWOOD VILLAGE LLC TO DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) EXTENDING TIME TO ASSUME OR REJECT
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II)
GRANTING RELATED RELIEF**

Relief Requested

MEPT Westwood Village, LLC (“Landlord”) objects to the Debtors’ motion seeking a 90-day extension of its time to assume or reject leases for cause (Dkt. #966). As to the Lease between Landlord and Debtor, Debtor cannot establish cause because it is not paying rent as required by the Code and prior orders in this case. Consequently, Landlord requests that the Court deny the motion as to Landlord’s Lease, or, in the alternative, condition the extension

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are 24 Hour Holdings II LLC (N/A); 24 Hour Fitness Worldwide, Inc. (5690); 24 Hour Fitness United States, Inc. (8376); 24 Hour Fitness USA, Inc. (9899); 24 Hour Fitness Holdings LLC (8902); 24 San Francisco LLC (3542); 24 New York LLC (7033); 24 Denver LLC (6644); RS FIT Holdings LLC (3064); RS FIT CA LLC (7007); and RS FIT NW LLC (9372). The Debtors’ corporate headquarters and service address is 12647 Alcosta Blvd., Suite 500, San Ramon, CA 94583.

on Debtor curing its rent arrearage and providing adequate assurance of timely payment of rent over the 90-day extension period.

Facts Supporting Objection

Landlord and Debtor 24 Hour Fitness USA, Inc. are parties to a nonresidential lease for Debtor’s fitness club located in the Westwood Village Shopping Center in Seattle, Washington (the “Lease”). Debtor has scheduled Landlord’s pre-petition claim that would arise if Debtor rejects the Lease (Dkt #804, p. 344 of 524). As of the date of this Objection, Debtor has not rejected the Lease.

Debtor’s monthly rent payment under the Lease is \$49,912.01. Debtor reopened its club at Westwood Village on August 10, 2020, where up it became an “Open Club” as defined in the Court’s Order Authorizing the Debtor to Obtain Postpetition Financing, *etc.* (Dkt #652) (the “Rent Protection Order”).

Since the Petition Date, the following rent payments have come due from Debtor to Landlord under the Lease.

• Rent from June 16-30:	\$26,619.74
• July Rent:	\$49,912.01
• August Rent:	\$49,912.01
• September Rent:	\$49,912.01
• October Rent:	\$49,912.01
TOTAL:	\$226,267.78

The Rent Protection Order required Debtor to pay “30% of rent reserved . . . from the period of time, if any, from and after July 1, 2020 that such club is a Closed Club . . . provided, that if a Closed Club . . . becomes an Open Club, the Debtors shall timely pay rent of account of such Open Club in accordance with paragraph 48(a) hereof on a prorated basis for the period of time in which such club was or is an Open Club from and after July 1, 2020.” (Dkt #652, p. 55-56). Paragraph 48(a) of the Rent Protection Order requires Debtor to pay all rent reserved under the leases in full for Open Clubs through September 2020. As noted, Debtor’s club at Westwood Village became an Open Club on August 10, 2020.

Thus, the Rent Protection Order required Debtor to make the following payments as of the date of this Objection²:

- July Rent: \$14,973.60³
 - August Rent:
 - 8/1 to 8/9: \$4,347.17⁴
 - 8/9 to 8/31 \$35,421.43⁵
 - September Rent: \$49,912.01
- TOTAL: \$104,654.21

² Per the Rent Protection Order, Landlord’s demand for June and October rent is reserved until November 1.

³ 49,912.01 x .30

⁴ \$49,912.01 ÷ 31(days) = \$1,610.06 (per day)

\$1,610.06 x 9 (days) = \$14,490.58

\$14,490.58 x .3 = **\$4,347.17**

⁵ \$1,610.06 x 22 (days) = **\$35,421.43**

As of the date of this Objection, Debtor has made two payments—one on 8/17 in the amount of \$40,002.90, and one on 9/20 in the amount of \$49,912.01—for a total of \$89,914.91. Debtor is not complying with the terms of the Rent Protection Order.

Furthermore, Debtor is not performing under the Lease. As of the date of this Objection, Debtor has failed to pay rent for October, as required by the Code.

Legal Authority

11 U.S.C. §365(d)(4) requires a debtor to assume or reject unexpired leases of nonresidential property within 120 days after the petition date. This period may be extended up to 90 days “for cause.” In determining “cause” courts have traditionally weighed various factors including: (i) whether the debtor is current on the lease obligation; (ii) whether the lease is a primary asset of the debtor; (iii) whether the debtor has failed to evaluate the lease and/or propose a plan of reorganization within a reasonable period of time; and (iv) whether the lessor will be damaged beyond compensation available under the Bankruptcy Code due to the debtor's continued occupation of the lease. *In re Beautyco*, 307 B.R. 225, 231 (Bankr. N.D. Okla. 2004) (citing *In re Burger Boys, Inc.*, 94 F.3d 755, 761 (2nd Cir. 1996)).

Here, as demonstrated, the Debtor is not current on its Lease obligation. With respect to this particular Lease, Debtor has had adequate time to evaluate whether to assume or reject it. Landlord will be severely damaged by Debtor’s continue failure to pay rent from October through January, especially if the Lease is ultimately rejected and Landlord is left with only

an administrative claim. Under the Burger Boys factors, Debtor has not demonstrated cause to delay a decision on rejection/assumption as to this particular Lease.

Accordingly, Landlord requests that the Court deny the Motion as to Landlord, or in the alternative, condition the extension as to Landlord on Debtor's timely payment of rent during the extension period.

DATED: October 6, 2020

Respectfully submitted,

By: /s/ James Tobia

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-and-

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Attorneys for MEPT Westwood Village, LLC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

**24 HOUR FITNESS
WORLDWIDE, INC., *et al***

Debtors.¹

Chapter 11

Case No. 20-11558 (KBO)

(Jointly Administered)

**DECLARATION OF ALEXIS GALLARDO IN SUPPORT OF OBJECTION BY
MEPT WESTWOOD VILLAGE LLC TO DEBTORS' MOTION FOR ENTRY OF AN
ORDER (I) EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY AND (II) GRANTING RELATED
RELIEF**

Alexis Gallardo declares as follows:

1. I am over the age of 18, competent to testify, and make this declaration based upon my personal knowledge.
2. I am the Assistant Property Manage for the Westwood Village Shopping Center in Seattle, Washington (the "Center").

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are 24 Hour Holdings II LLC (N/A); 24 Hour Fitness Worldwide, Inc. (5690); 24 Hour Fitness United States, Inc. (8376); 24 Hour Fitness USA, Inc. (9899); 24 Hour Fitness Holdings LLC (8902); 24 San Francisco LLC (3542); 24 New York LLC (7033); 24 Denver LLC (6644); RS FIT Holdings LLC (3064); RS FIT CA LLC (7007); and RS FIT NW LLC (9372). The Debtors' corporate headquarters and service address is 12647 Alcosta Blvd., Suite 500, San Ramon, CA 94583.

3. 24 Hour Fitness USA, Inc. (“Debtor”) is a tenant in the Center pursuant to a lease dated May 6, 1993, as amended (the “Lease”). MEPT Westwood Village, LLC is the owner of the Center and the counterparty to the Lease (“Landlord”).

4. The monthly rent and additional rent under the Lease is \$49,912.01. At the time it filed bankruptcy, 24 hours was in arrears on its lease payment. Since June 15, 2020, the following amounts became due and owing under the Lease, exclusive of interest and late fees:

- a. Rent from June 16-30: \$26,619.74
- b. July Rent: \$49,912.01
- c. August Rent: \$49,912.01
- d. September Rent: \$49,912.01
- e. October Rent: \$49,912.01

TOTAL: \$226,267.78

5. As of the date of this declaration, Landlord has received two payments from Debtor — one on 8/17 in the amount of \$40,002.90, and one on 9/20 in the amount of \$49,912.01— for a total of \$89,914.91. The attached Exhibit A is a true and correct copy of the Center’s business record showing aged delinquencies for Debtor’s account and includes the two payments received from Debtor.

6. As of the date of this declaration, Debtor has not paid any rent for October.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT

EXECUTED THIS 5th DAY OF OCTOBER, 2020 AT SEATTLE, WASHINGTON

Alexis Gallardo

Alexis Gallardo

EXHIBIT A

Database: BKUSLP	Aged Delinquencies Bentall Kennedy (U.S.) LP	Page: 1 Date: 9/30/2020 Time: 12:57 PM
Date: 9/30/2020		

Invoice Date	Category	Source	Amount	Current	30	60	90	120
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P0300B01-M20086824 Hour Fitness			Master Occupant Id: M2002021-4		Day Due: 1	Delq Day: 5			
			B-7	Current	Last Payment:	8/31/2020	49,912.01		
3/15/2020	ACM	Actual CAM Recon	NC	-325.63	0.00	0.00	0.00	0.00	-325.63
3/15/2020	AIN	Actual Ins Recon	CH	205.66	0.00	0.00	0.00	0.00	205.66
3/15/2020	ATX	Actual RE Tax Recon	NC	-8,994.46	0.00	0.00	0.00	0.00	-8,994.46
4/1/2020	BRT	Base Rent	CH	33,874.10	0.00	0.00	0.00	0.00	33,874.10
4/1/2020	ECM	Estimated CAM	CH	10,614.72	0.00	0.00	0.00	0.00	10,614.72
4/1/2020	EIN	Estimated Insurance	CH	451.78	0.00	0.00	0.00	0.00	451.78
4/1/2020	ETX	Estimated RE Tax	CH	4,190.41	0.00	0.00	0.00	0.00	4,190.41
4/1/2020	MER	Merchant Assoc Dues	CH	781.00	0.00	0.00	0.00	0.00	781.00
5/1/2020	BRT	Base Rent	CH	33,874.10	0.00	0.00	0.00	0.00	33,874.10
5/1/2020	ECM	Estimated CAM	CH	10,614.72	0.00	0.00	0.00	0.00	10,614.72
5/1/2020	EIN	Estimated Insurance	CH	451.78	0.00	0.00	0.00	0.00	451.78
5/1/2020	ETX	Estimated RE Tax	CH	4,190.41	0.00	0.00	0.00	0.00	4,190.41
5/1/2020	MER	Merchant Assoc Dues	CH	781.00	0.00	0.00	0.00	0.00	781.00
6/1/2020	BRT	Base Rent	CH	33,874.10	0.00	0.00	0.00	33,874.10	0.00
6/1/2020	ECM	Estimated CAM	CH	10,614.72	0.00	0.00	0.00	10,614.72	0.00
6/1/2020	EIN	Estimated Insurance	CH	451.78	0.00	0.00	0.00	451.78	0.00
6/1/2020	ETX	Estimated RE Tax	CH	4,190.41	0.00	0.00	0.00	4,190.41	0.00
6/1/2020	MER	Merchant Assoc Dues	CH	781.00	0.00	0.00	0.00	781.00	0.00
7/1/2020	BRT	Base Rent	CH	33,874.10	0.00	0.00	33,874.10	0.00	0.00
7/1/2020	ECM	Estimated CAM	CH	10,614.72	0.00	0.00	10,614.72	0.00	0.00
7/1/2020	EIN	Estimated Insurance	CH	451.78	0.00	0.00	451.78	0.00	0.00
7/1/2020	ETX	Estimated RE Tax	CH	4,190.41	0.00	0.00	4,190.41	0.00	0.00
7/1/2020	MER	Merchant Assoc Dues	CH	781.00	0.00	0.00	781.00	0.00	0.00
8/1/2020	BRT	Base Rent	CH	33,874.10	0.00	33,874.10	0.00	0.00	0.00
8/1/2020	ECM	Estimated CAM	CH	10,614.72	0.00	10,614.72	0.00	0.00	0.00
8/1/2020	EIN	Estimated Insurance	CH	451.78	0.00	451.78	0.00	0.00	0.00
8/1/2020	ETX	Estimated RE Tax	CH	4,190.41	0.00	4,190.41	0.00	0.00	0.00
8/1/2020	MER	Merchant Assoc Dues	CH	781.00	0.00	781.00	0.00	0.00	0.00
8/17/2020	PPD	Prepaid Rent	CR	-40,002.90	0.00	-40,002.90	0.00	0.00	0.00
8/31/2020	PPD	Prepaid Rent	CR	-49,912.01	-49,912.01	0.00	0.00	0.00	0.00
9/1/2020	BRT	Base Rent	CH	33,874.10	33,874.10	0.00	0.00	0.00	0.00
9/1/2020	ECM	Estimated CAM	CH	10,614.72	10,614.72	0.00	0.00	0.00	0.00
9/1/2020	EIN	Estimated Insurance	CH	451.78	451.78	0.00	0.00	0.00	0.00
9/1/2020	ETX	Estimated RE Tax	CH	4,190.41	4,190.41	0.00	0.00	0.00	0.00
9/1/2020	MER	Merchant Assoc Dues	CH	781.00	781.00	0.00	0.00	0.00	0.00
24 Hour Fitness Total:				200,442.72	0.00	9,909.11	49,912.01	49,912.01	90,709.59
Grand Total:				200,442.72	0.00	9,909.11	49,912.01	49,912.01	90,709.59

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)		
In re:))	Chapter 11
))	
24 HOUR FITNESS WORLDWIDE, INC., et al.))	Case No. 20-11558 (KBO)
))	
Debtors.))	Jointly Administered
))	

CERTIFICATE OF SERVICE

I, James Tobia, hereby certify that on October 6, 2020, I caused the foregoing Objection By MEPT Westwood Village LLC to Debtors’ Motion for Entry of an Order (I) Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Granting Related Relief to be electronically filed with the Clerk of Court using CM/ECF which will electronically transmit notification of such filing to CM/ECF participants in the above referenced case. I further certify that on October 6, 2020 I also served the foregoing Objection By MEPT Westwood Village LLC to Debtors’ Motion for Entry of an Order (I) Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Granting Related Relief by email to:

(i) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com), Ryan Preston Dahl, Esq. (ryan.dahl@weil.com), Kevin Bostel, Esq. (kevin.bostel@weil.com), and Kyle R. Satterfield, Esq. (kyle.satterfield@weil.com), and (b) Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com);

(ii) counsel to the DIP Agent, (a) Covington & Burling LLP, Attn: Ronald Hewitt, Esq. (rhewitt@cov.com), and (b) Troutman Pepper Hamilton Sanders LLP, Attn: David M. Fournier, Esq. ([david.fournier@troutman.com](mailto: david.fournier@troutman.com));

(iii) counsel to the Ad Hoc Group, (a) O’Melveny & Myers LLP, Attn: Daniel S. Shamah, Esq. (dshamah@omm.com), Diana M. Perez, Esq. (dperez@omm.com), and Adam P. Haberkorn, Esq. (ahaberkorn@omm.com), and (b) Richards, Layton & Finger, P.A., Attn: Mark

D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and David T. Queroli, Esq. (queroli@rlf.com);

(iv) the Office of The United States Trustee, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); and

(v) counsel to the Official Committee of Unsecured Creditors: (a) Cooley LLP, Attn: Cathy Hershcopf, Esq. (chershcopf@cooley.com), Michael Klein, Esq. (mklein@cooley.com), Lauren A. Reichardt, Esq. (lreichardt@cooley.com), Cullen D. Speckhart, Esq. (cspeckhart@cooley.com) and Olya Antle, Esq. (oantle@cooley.com), and (b) Morris James LLP, Attn: Eric J. Monzo, Esq. (emonzo@morrisjames.com) and Brya M. Keilson, Esq. (bkeilson@morrisjames.com).

/s/ James Tobia
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Dated: October 6, 2020