IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **11-cv-03195-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,
Plaintiff,
v.
BRIAN ABEYTA,
Defendant.

Civil Action No. **11-cv-3196-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,
Plaintiff,
v.
ERIN ADDESSO,
Defendant.

Civil Action No. **11-cv-3197-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,
Plaintiff,
v.
OSKAR BERCEDONI,
Defendant.

Civil Action No. **11-cv-3199-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,
Plaintiff,
v.
AARON BUTLER,
Defendant.

Civil Action No. **11-cv-3200-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,
Plaintiff,
v.
ERIC CONRY,
Defendant.

Civil Action No. **11-cv-3201-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

TRAVIS ESTEY,

Defendant.

Civil Action No. **11-cv-3202-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

IAN LENTZ,

Defendant.

Civil Action No. **11-cv-3203-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

DAN LINDSTROM,

Defendant.

Civil Action No. **11-cv-3204-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

CHRISTIE MASONE,

Defendant.

Civil Action No. **11-cv-3205-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

JASON McDONALD,

Defendant.

Civil Action No. **11-cv-3206-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

DUSTIN MOBLEY,

Defendant.

Civil Action No. **11-cv-3207-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

JOHN PERRY,

Defendant.

Civil Action No. **11-cv-3208-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

EMMANUEL MARCHICA,

Defendant.

Civil Action No. **11-cv-3209-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

MEGAN RODRIGUEZ-HOEPER,

Defendant.

Civil Action No. **11-cv-3218-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

MARK SCHMUKAL,

Defendant.

Civil Action No. **11-cv-3219-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

SARAH SHANAHAN,

Defendant.

Civil Action No. **11-cv-3221-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

SHANNON SIDWELL,

Defendant.

Civil Action No. **11-cv-3226-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

LANCE SMITH,

Defendant.

Civil Action No. **11-cv-3227-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

MARYBETH VANHORN,

Defendant.

Civil Action No. **11-cv-3229-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

BRADFORD WILSON,

Defendant.

Civil Action No. **11-cv-3230-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

JENNIFER YENTES,

Defendant.

Civil Action No. **11-cv-3284-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

JOHN KOBBEMAN,

Defendant.

Civil Action No. **11-cv-3285-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

ROBERT SUREN,

Defendant.

Civil Action No. **11-cv-3374-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

JACQUELINE BLAZIER,

Defendant.

Civil Action No. **11-cv-3375-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

MICHAEL ALAN STONEHOUSE,

Defendant.

Civil Action No. **12-cv-114-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

MATTHEW POPELKA,

Defendant.

Civil Action No. **12-cv-115-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

NICHOLE RAE,

Defendant.

Civil Action No. **12-cv-122-JLK**

24 HOUR FITNESS, USA, INC., a California corporation d/b/a 24 HOUR FITNESS,

Plaintiff,

v.

KRISTIN HARMAN,

Defendant.

ORDER DENYING RECONSIDERATION OF ATTORNEY FEE AWARD

Kane, J.

Before me is LITTLER MENDELSON'S MOTION TO RECONSIDER SEPTEMBER 24, 2012 ORDER OR, ALTERNATIVELY, TO PROVIDE RELIEF FROM ORDER in the above-captioned cases. Littler Mendelson organizes its motion into three issues, each of which I will address in turn.

First, considering, as Littler Mendelson correctly points out, the three-day mailing rule still applies even where documents are not "mailed" at all but rather electronically filed, my

September 24, 2012 Order is revised to delete the finding that the Response to the Motion was untimely filed.

Second, though the Response was indeed timely filed, its content, like that of the instant motion, is unpersuasive. Accordingly, the Order awarding attorney fees stands, both as against the firm and as against Mr. Kirkpatrick individually. Quite simply, Mr. Kirkpatrick is counsel of record in this case, and, as such, he is obligated to comply with the Colorado Rules of Professional Conduct. [1] *See* D.C. Colo. L.CivR 83.4.

Third, the Order applies only to the 28 cases pending in this court. Courts elsewhere can take whatever action or inaction each deems appropriate. The only instance in which actions taken in other courts would warrant sanctions in this court is if such actions were taken in violation of an order of this court. No such order was entered in this case. With the revision to show the Response as timely filed, and adding the foregoing clarification, the September 24, 2012 Order stands.

Dated: November 2, 2012

BY THE COURT:

/s/John L. Kane
Senior U.S. District Court Judge

[1] Mr. Kirkpatrick is especially advised to review Colorado Rule of Professional Conduct 3.2 and its comment, duplicated below for counsel's convenience.

> RULE 3.2. EXPEDITING LITIGATION
> A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
> COMMENT
> [1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.