

FILED
Los Angeles Superior Court

JUL 09 2009

John A. [Signature], Executive Officer/Clerk
Deputy
BY [Signature]
KATHRYN SWAIN

1 **YOKA & SMITH, LLP**
2 **777 South Figueroa Street, Suite 4200**
3 **Los Angeles, California 90017**
4 **Phone: (213) 427-2300**
5 **Fax: (213) 427-2330**

6 **CHRISTOPHER E. FAENZA, Bar #205680; ALICE L. CHEN, Bar #251654**
7 **Attorneys for Defendant, L.A. FITNESS INTERNATIONAL, LLC (erroneously filed and served**
8 **as "L.A. FITNESS INTERNATIONAL, LLC dba L.A. FITNESS- UNIVERSAL CITY")**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11 **ROBERT ROSEN**

12 **Plaintiff,**

13 **vs.**

14 **L.A. FITNESS INTERNATIONAL, LLC dba**
15 **L.A. FITNESS - UNIVERSAL CITY;**
16 **CHRISTOPHER MAURICE BROWN; and**
17 **Does 1 through 100, Inclusive.**

18 **Defendants.**

19 **CASE NO.: BC414549**
20 **[Honorable Conrad R. Aragon, Dept. "49"]**

21 **DEFENDANT L.A. FITNESS**
22 **INTERNATIONAL, LLC'S NOTICE OF**
23 **MOTION AND MOTION TO STRIKE**
24 **PORTIONS OF PLAINTIFF'S**
25 **COMPLAINT; MEMORANDUM OF**
26 **POINTS AND AUTHORITIES;**
27 **[PROPOSED] ORDER**
28 **[Filed concurrently with Defendant's Notice**
of Demurrer and Demurrer to Plaintiff's
Complaint]

DATE: August 31, 2009
TIME: 8:30 a.m.
DEPT: "49"

23 **TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

24 **HEREIN:**

25 **PLEASE TAKE NOTICE** that on August 31, 2009 at 8:30 a.m., or as soon thereafter as
26 **counsel may be heard in Department "49"** of the above-entitled court, defendant, L.A. FITNESS
27 **INTERNATIONAL, LLC will and hereby do move the Court for an order striking the following**
28 **portions of plaintiff's Complaint:**

ORIGINAL

CITY/CASE: 20414549 LEA/DEPT:
RECEIPT #: 2009083100000000
PAID: 08/31/09 10:59:27 AM
RECEIVED: 0310
CHECK: 00.00
CASH: 00.00
CHANGE: 00.00
CARD: 00.00

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The instant action arises from an alleged incident at the Universal City club owned by L.A.
5 FITNESS INTERNATIONAL, LLC (hereinafter "L.A. Fitness"). On or about March 13, 2009,
6 plaintiff ROBERT ROSEN (hereinafter "Plaintiff") went onto the subject premises, under the
7 guise of using his membership, for the improper purpose of photographing defendant
8 CHRISTOPHER MAURICE BROWN (hereinafter "Chris Brown"), thereby violating club rules
9 against photography as well as the privacy rights of L.A. Fitness' members.

10 The complaint alleges that the subject incident occurred when plaintiff, a member of L.A.
11 Fitness, was on the subject premises and took photographs of Chris Brown on the basketball court.
12 When plaintiff's violation of Chris Brown's privacy was discovered, Chris Brown's bodyguard
13 yelled out to him and walked toward him. Plaintiff ran to exit when an L.A. Fitness employee
14 allegedly attempted to block his exit. Plaintiff freed himself and fell as he descended the stairs,
15 causing his initial injury. Plaintiff limped to a chair, then Chris Brown's bodyguard allegedly
16 picked plaintiff up and physically assaulted him, allegedly causing further injuries. Plaintiff yelled
17 to the employees of L.A. Fitness to call 911 because of his injuries. Plaintiff alleges that the
18 physical contact was without provocation or justification, and is despicable, willful, wanton,
19 malicious, illegal and oppressive so as to constitute malice, and the acts were taken with a willful
20 and conscious disregard of the rights and safety of plaintiff. Due to defendants' despicable
21 conduct, plaintiff suffered extreme emotional distress. Plaintiff alleges that defendant L.A. Fitness
22 is liable for the acts of these other defendants because they were either acting within the course
23 and scope of the agency or employment relationship, or that L.A. Fitness ratified their conduct.

24 On or about May 27, 2009, plaintiff filed the instant case alleging actions for assault and
25 battery, intentional infliction of emotional distress, negligence, negligent hiring, premises liability,
26 and false imprisonment. Defendant L.A. Fitness hereby moves this court to strike all conclusory
27 allegations of malicious conduct, ratification and prayer for punitive damages.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

**THE COURT HAS AUTHORITY TO GRANT THIS MOTION TO STRIKE AS A
MATTER OF LAW**

Code of Civil Procedure § 435 provides, in pertinent part:

(b)(1) Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. . . .

Code of Civil Procedure § 436 provides:

The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper;

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or any order of the court.

Thus, it is proper for the court to strike irrelevant, false or improper matters from any pleading, provided appropriate notice requirements have been met. In the instant case, plaintiff's claims of intentional misconduct and ratification by a corporate defendant should be stricken as a matter of law as the Complaint is completely void of facts to support such claims.

III.

**PLAINTIFF'S PRAYER FOR PUNITIVE DAMAGES AND THE CONCLUSORY
LANGUAGE PLED IN SUPPORT THEREOF SHOULD BE STRICKEN AS THEY ARE
IMPROPER AND UNDULY PREJUDICIAL**

It is well settled that a complaint seeking punitive damages must be pled with particularity, and any right to punitive damages must be shown by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice. See Civil Code § 3294. In keeping with this extraordinary burden of proof, Civil Code § 3294 sets forth exacting hurdles, which a plaintiff must satisfy:

(1) "Malice" means conduct which is *intended* by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a *willful and conscious disregard* of the rights or safety of others.

1 (2) "Oppression" means despicable conduct that subjects a person to
2 cruel and unjust hardship and conscious disregard of that person's
3 rights.

4 (3) "Fraud" means an intentional misrepresentation, deceit, or
5 concealment of a material fact known to the defendant with the
6 intention on the part of the defendant of thereby depriving a person
7 of property or legal rights or otherwise causing injury. (Emphasis
8 added.)

9 The definition of malice clearly requires that the defendant be guilty of conduct of a
10 "despicable nature" and establishes that punitive damages are only recoverable when a plaintiff
11 has plead and proven "animus malice" or evil motive. See *G.D. Searle & Co. v. Superior Ct.*
12 (1975) 49 Cal.App. 3d 22, 30. Courts have long held that a party seeking punitive damages *must*
13 *plead specific facts* to support such a claim. As the court in *Searle, supra*, explained:

14 When the plaintiff alleges an intentional wrong, a prayer for exemplary
15 damages must be supported by pleading that the wrong was committed
16 willfully or with design to injure. When non-deliberate injury is charged,
17 allegations that the defendant's conduct was wrongful, willful, wanton,
18 reckless, or unlawful do not support a claim for exemplary damages; such
19 allegations do not charge malice. When a defendant must produce evidence
20 in defense of an exemplary damages claim, fairness demand that he receive
21 adequate notice of the kind of conduct charged against. *Id.*

22 Nowhere in plaintiff's Complaint are there specific facts to support the allegation that
23 defendants' conduct amounted to "wrongful, willful, wanton, reckless, or unlawful" conduct, as
24 required by the Court in *Searle, supra*. As discussed in the accompanying demurrer, plaintiff's
25 Complaint fails to include any facts to indicate that defendants intended to harm plaintiff. Rather,
26 the facts establish only that defendant L.A. Fitness and its employees intended to conduct an
27 investigation regarding plaintiff's violation of another member's right to privacy. The actions
28 taken by L.A. Fitness and its employees do not support plaintiff's actions for assault and battery,
intentional infliction of emotional distress, and false imprisonment. The sheer absence of facts to
establish anything to the contrary is in stark contrast to those specific facts that are required to
recover punitive damages.

Conclusory claims that actions were done willfully or maliciously, such as those contained
in the instant Complaint, do not meet the burden of proof of clear and convincing evidence to

1 show either intent to cause injury to plaintiff, or despicable conduct, as outlined in *Civ. Code* §
2 3294. Accordingly, defendants respectfully request that this Court strike all references to willful,
3 malicious, and despicable conduct as outlined in the attached Notice of Motion to Strike, as well
4 as plaintiff's prayer, which includes relief for punitive damages.

5 IV.

6 **PLAINTIFF'S CONCLUSORY STATEMENTS THAT L.A. FITNESS**
7 **INTERNATIONAL, LLC RATIFIED EACH OF THE OTHER DEFENDANTS'**
8 **CONDUCT SHOULD BE STRICKEN FROM THE COMPLAINT AS THEY ARE**
9 **IMPROPER AND UNDULY PREJUDICIAL**

10 While an employer may be held liable for an employee's tort under the doctrine of
11 *respondeat superior*, he is not responsible for punitive damages where he neither directed nor
12 ratified the act. *Ebaugh v. Rabkin* (1972) 22 Cal. App.3d 891, 895, citing from *Warner v. South*
13 *Pacific Co.* (1896) 113 Cal. 105.

14 *Civil Code* § 3294 outlines very specifically what is required to hold an employer liable for
15 intentional conduct of an employee.

16 *Civ. Code* § 3294 (b), provides in pertinent part:

17 "[A]n employer shall not be liable for damages pursuant to subdivision
18 (a), based upon acts of an employee of the employer, unless the employer
19 had *advance knowledge of the unfitness of the employee* and employed
20 him or her with a *conscious disregard of the rights or safety of others or*
21 *authorized or ratified the wrongful conduct* for which the damages are
22 awarded or was *personally guilty of oppression, fraud or malice*. With
23 respect to the corporate employer, the advanced knowledge and
conscious disregard, authorization, ratification or act of oppression,
fraud, or malice must be on the part of an officer, director, or managing
agent of the corporation." (Emphasis added.)

24 In an attempt to comply with the foregoing requirements, plaintiff makes conclusory
25 allegations that DOE 1 through 30 were the agent, servant, employee, independent contractor
26 and/or other agent of defendant L.A. FITNESS INTERNATIONAL, LLC... and were acting
27 within the scope of such agency or employment. (Complaint ¶4, 8, 14, 30, 45, 55.) Plaintiff
28 further alleges that defendant L.A. Fitness ratified the acts of these other defendants which were

1 done with knowledge of injury to plaintiff and a wanton and reckless disregard of the
2 consequences to plaintiff. (Complaint ¶ 22) These conclusory statements in plaintiff's Complaint
3 serve to highlight the absence of facts to support a claim of ratification or agency. By the plain
4 language of the statute, it is clear that the legislature intended to avoid such meritless claims when
5 drafting *Civil Code* section 3294. Due to plaintiff's failure to plead facts of ratification on the part
6 of L.A. Fitness, all punitive damages should be stricken in their entirety as to this defendant.
7 Additionally, the language concluding that L.A. Fitness ratified or directed the conduct of all other
8 defendants should be stricken, as indicated in the Notice of Motion to Strike.

9 V.

10 **CONCLUSION**

11 Based on the foregoing, defendant L.A. FITNESS INTERNATIONAL, LLC respectfully
12 request that this Court grant the instant Motion to Strike Portions of Plaintiff's Complaint.

13
14
15 DATED: June 30, 2009

YOKA & SMITH, LLP

16
17 By: 

CHRISTOPHER E. FAENZA
ALICE L. CHEN

Attorneys for Defendant, L.A.
FITNESS INTERNATIONAL, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

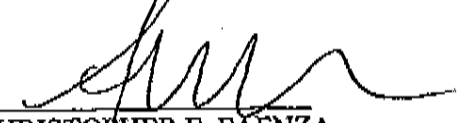
1. Plaintiff's Complaint fails to allege sufficient facts to state the First Cause of Action for Assault and Battery;
2. Plaintiff's Complaint fails to allege sufficient facts to state the Second Cause of Action for Intentional Infliction of Emotional Distress;
3. Plaintiff's Complaint fails to allege sufficient facts to state the Sixth Cause of Action for False Imprisonment.

Wherefore, this demurring defendant prays that this Demurrer to plaintiff's First, Second, and Sixth Causes of Action be sustained without leave to amend, and for other such relief as the court may deem just and proper.

This Demurrer will be based upon this Notice, the attached Memorandum of Points and Authorities, all records, pleadings, documents and papers filed herein, and on such oral and documentary evidence as may be introduced at the time of the hearing of this motion.

DATED: June 30, 2009

YOKA & SMITH, LLP

By: 
CHRISTOPHER E. FAENZA
ALICE L. CHEN
Attorneys for Defendant, L.A.
FITNESS INTERNATIONAL, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The instant action arises from an alleged incident at the Universal City club owned by L.A.
5 FITNESS INTERNATIONAL, LLC (hereinafter "L.A. Fitness"). On or about March 13, 2009,
6 plaintiff ROBERT ROSEN (hereinafter "Plaintiff") went onto the subject premises, under the
7 guise of using his membership, for the improper purpose of photographing defendant
8 CHRISTOPHER MAURICE BROWN (hereinafter "Chris Brown"), thereby violating club rules
9 against photography as well as the privacy rights of L.A. Fitness' members.

10 The complaint alleges that the subject incident occurred when plaintiff, a member of L.A.
11 Fitness, was on the subject premises and took photographs of Chris Brown on the basketball court.
12 When plaintiff's acts were discovered, Chris Brown's bodyguard yelled out to him and walked
13 toward him. Plaintiff ran to exit when an L.A. Fitness employee allegedly attempted to block his
14 exit. Plaintiff freed himself and fell as he descended the stairs, causing his initial injury. Plaintiff
15 limped to a chair, then Chris Brown's bodyguard allegedly picked plaintiff up and physically
16 assaulted him, allegedly causing further injuries. Plaintiff yelled to the employees of L.A. Fitness
17 to call 911 because of his injuries. Plaintiff alleges that the physical contact was without
18 provocation or justification, and is despicable, willful, wanton, malicious, illegal and oppressive so
19 as to constitute malice, and the acts were taken with a willful and conscious disregard of the rights
20 and safety of plaintiff. Due to defendants' despicable conduct, plaintiff suffered extreme
21 emotional distress.

22 On or about May 27, 2009, plaintiff filed the instant case alleging actions for assault and
23 battery, intentional infliction of emotional distress, negligence, negligent hiring, premises liability,
24 and false imprisonment. Defendant L.A. Fitness hereby demurs to plaintiff's actions for assault
25 and battery, intentional infliction of emotional distress, and false imprisonment herein and
26 concurrently moves this court to strike all conclusory allegations of malicious conduct and prayer
27 for punitive damages in the concurrently filed motion to strike.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

**A COMPLAINT, OR ANY COUNT ALLEGED THEREIN, IS DEMURRABLE WHERE
DEFECTS APPEAR ON THE FACE OF THE COMPLAINT**

Pursuant to *Cal. Civ. Proc. Code* § 430.10, et seq., a defendant may demur to a complaint, or any count alleged therein, where defects appear on the face of the complaint. The grounds upon which a defendant may demur are found in *Cal. Civ. Proc. Code* § 430.10, which provides in pertinent part:

The party against whom a complaint . . . has been filed may object, by demurrer or answer as provided in section 430.30, to the pleading on any one or more of the following grounds:

* * *

(e) The pleading does not state facts sufficient to constitute a cause of action.

As discussed below, the Complaint fails to state facts sufficient to constitute plaintiff's Causes of Action for assault and battery, intentional infliction of emotional distress and false imprisonment as currently alleged.

III.

**PLAINTIFF'S COMPLAINT FAILS TO SET FORTH SUFFICIENT FACTS TO
CONSTITUTE A CAUSE OF ACTION FOR ASSAULT AND BATTERY.**

The elements of civil battery are: (1) defendant intentionally performed an act that resulted in a harmful or offensive contact with the plaintiff's person; (2) plaintiff did not consent to the contact; and (3) the harmful or offensive contact caused injury, damage, loss or harm to plaintiff. *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 526-527.

The essential elements of a cause of action for assault are: (1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3)

1 plaintiff did not consent to defendant's conduct; (4) plaintiff was harmed; and (5) defendant's
2 conduct was a substantial factor in causing plaintiff's harm. (CACI No. 1301.)

3 Here, plaintiff alleges that defendant L.A. Fitness' employees, while in the course and
4 scope of their employment, attempted to physically block plaintiff's exit and grabbed his clothing
5 and body. (Complaint, ¶14, 15.) Plaintiff did not allege any injury, damage, loss or harm from
6 this alleged physical contact. Plaintiff suffered an injury thereafter when he fell while descending
7 the stairs. (Complaint, ¶15.) Plaintiff alleges that the contact caused him to be severely injured
8 and disabled, and continue to suffer from pain, suffering, worry and anxiety. (Complaint, ¶17.)

9 Plaintiff cannot state actions for assault and battery as to defendant L.A. Fitness or its
10 employees. First, this action turns on whether or not the alleged contact was harmful or offensive.
11 The right of individuals to privacy is an inalienable constitutional right. West's Ann.Cal.Const.
12 Art. 1, § 1. In accordance to this constitutional right to privacy, photography is not permitted
13 inside any L.A. Fitness clubs. In addition, this is a commonly acknowledged rule for health clubs.
14 In a situation such as this, where defendant L.A. Fitness and its employees were acting to stop
15 plaintiff from fleeing because he had violated the gym policy and the privacy rights of others by
16 taking unauthorized and unpermitted photographs on the premises of L.A. Fitness, attempting to
17 stop plaintiff to conduct an investigation should not constitute harmful or offensive conduct.
18 Second, plaintiff was injured not as a result of the alleged assault and battery, but because he fell
19 down the stairs after he ran past the employee. Plaintiff fails to explain the causation of his
20 injuries in his action. Therefore, plaintiff did not specifically suffer any harm from the alleged
21 contact by the L.A. Fitness employee.

22 Based on the foregoing, the instant demurrer to plaintiff's first cause of action should be
23 sustained as a matter of law.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

**PLAINTIFF'S COMPLAINT FAILS TO SET FORTH SUFFICIENT FACTS TO
CONSTITUTE A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS.**

In order to state such a cause of action, plaintiff must show the following: (1) defendant's conduct was outrageous; (2) defendant intended to cause plaintiff emotional distress, or defendant acted with reckless disregard of the probability that plaintiff would suffer emotional distress; (3) plaintiff suffered severe emotional distress; and (4) defendant's conduct was a substantial factor in causing plaintiff's severe emotional distress. CACI 1600; *Christensen v. Superior Court* (1991) 54 Cal. 3d 868, 903. As discussed below, plaintiff's complaint fails to satisfy the elements of the Second Cause of Action for Intentional Infliction of Emotional Distress.

A. Defendant's Conduct Was Not Outrageous.

Outrageous conduct is conduct that is so extreme that it goes beyond all possible bounds of decency. CACI 1602. "Conduct to be outrageous must be so extreme as to exceed all bounds of decency that usually tolerated in a civilized community." *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209. Behavior may be considered outrageous if a defendant abuses a position that gives him power to damage the plaintiff's interests, or if defendant is aware that plaintiff is vulnerable to injury through mental distress, or if defendant acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1122. Such conduct does not include "mere insults, indignities, threats, annoyances, petty oppressions, hurt feelings, or other trivialities." *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946, quoting *Rest.2d Torts*, § 46, *com. d.*, overruled on other grounds in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 579-580.

In this case, the conduct of L.A. Fitness through its employees is not outrageous, as they acted to stop a person from fleeing, who violated gym policies and L.A. Fitness members' privacy rights. The right of individuals to privacy is an inalienable constitutional right. West's Ann.Cal.Const. Art. 1, § 1. Stopping a photographer in violation of another member's privacy rights is not so outrageous and extreme as to exceed all bounds of decency. Further, L.A. Fitness

1 did not abuse its position of power, as it and its employees merely acted appropriately to enforce
2 its rules inside the club to protect its members. Plaintiff, admittedly a member of L.A. Fitness,
3 cannot inure from the benefit of his membership but willfully violate the rules of his membership.
4 No reasonable jury will find that L.A. Fitness' attempt to stop plaintiff from fleeing the scene is
5 outrageous conduct.

6 **B. There Are No Facts to Establish the Requisite Intent on the Part of**
7 **Defendant's Employee.**

8 In order to properly plead a cause of action for Intentional Infliction of Emotional Distress,
9 plaintiff must set forth facts to show that defendant L.A. Fitness *intended* to cause plaintiff
10 emotional distress, or that defendant acted with *reckless disregard* of the probability that plaintiff
11 would suffer emotional distress. CACI 1600, 1603.

12 In this case, L.A. Fitness acted with intent to stop plaintiff from fleeing after he violated
13 gym rules and privacy rights of others. L.A. Fitness did not act with intent to cause plaintiff
14 emotional distress. Plaintiff makes conclusory allegations without supporting facts. Indeed, L.A.
15 Fitness also did not act with reckless disregard, because it acted appropriately in order to protect
16 the privacy rights of its members.

17 **C. There Are No Facts to Evidence Severe Emotional Distress Suffered by**
18 **Plaintiff as a Result of Defendant's Actions.**

19 The requisite degree of "*severe* emotional distress" required to establish this cause of
20 action has been described as "emotional distress of such *substantial or enduring quality* that no
21 reasonable person in a civilized society should be expected to endure it." *Girard v. Ball* (1981)
22 125 Cal.App.3d 772, 787-788 [emphasis added]. "It is for the court to determine whether on the
23 evidence *severe* emotional distress can be found." *Fletcher v. Western National Life Ins. Co.*
24 (1970) 10 Cal.App.3d 376, 397 [emphasis added].

25 In the present action, plaintiff makes conclusory allegations that he suffered severe
26 emotional distress. "It is for the court to determine whether on the evidence severe emotional
27 distress can be found; it is for the jury to determine whether, on the evidence, it has in fact
28

1 existed." *Fletcher v. Western National Life Insurance Co.*, (1970) 10 Cal.App.3d 376, 397. Here,
2 plaintiff has not alleged sufficient facts regarding the severe nature of his emotional distress.

3 Based on the foregoing, the court should sustain the demurrer to plaintiff's second cause of
4 action without leave to amend.

5 V.

6 **PLAINTIFF'S COMPLAINT FAILS TO SET FORTH SUFFICIENT FACTS TO**
7 **CONSTITUTE A CAUSE OF ACTION FOR FALSE IMPRISONMENT.**

8 Regarding the definition of false imprisonment, it is defined in the Penal Code as "the
9 unlawful violation of the personal liberty of another." *Pen. Code*, § 236. The Penal Code
10 definition applies in both civil and criminal actions. *Parrott v. Bank of America* (1950) 97
11 Cal.App.2d 14, 22. "The elements of a tortious claim of false imprisonment are: (1) the
12 nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an
13 appreciable period of time, however brief." *Easton v. Sutter Coast Hospital* (2000) 80 Cal.App.4th
14 485, 496.

15 In order to state a cause of action for False Imprisonment, plaintiff must set forth facts
16 sufficient to establish that defendant intentionally deprived plaintiff of her freedom of movement
17 without the plaintiff's consent. CACI 1400.

18 Here, plaintiff alleges that L.A. Fitness employee attempted to block his exit and grabbed
19 his clothing and body. However, the complaint is also clear that plaintiff got away and ran down
20 the stairs. Later, plaintiff limped to a chair and sat down and asked for help and for someone to
21 call the police and 911. (Complaint ¶ 15.)

22 First, there are no facts to show actual confinement. There is no cause of action for false
23 imprisonment for a failed attempt by L.A. Fitness employees stop plaintiff. Plaintiff clearly got
24 away. Later, plaintiff impliedly consented to stay inside the subject premises when he sat down in
25 a chair and asked L.A. Fitness' employees to call the police and 911. Whatever time that plaintiff
26 spent inside L.A. Fitness was of his own volition. Further, L.A. Fitness was acting within its right
27 to investigate an alleged violation of defendant Chris Brown's privacy that occurred on its
28 premises. Plaintiff cannot violate another individual's constitutional right to privacy then state an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

action against L.A. Fitness for false imprisonment. Based on these facts and circumstances, the demurrer should be sustained without leave to amend.

VI.

CONCLUSION

Based on the foregoing, defendant L.A. FITNESS INTERNATIONAL, LLC respectfully requests that this Court sustain the instant demurrer to the First, Second, and Sixth Causes of Action in plaintiff's Complaint without leave to amend in the interests of time, justice, and economy.

DATED: June 30, 2009

YOKA & SMITH, LLP

By: 

CHRISTOPHER E. FAENZA
ALICE L. CHEN
Attorneys for Defendant, L.A.
FITNESS INTERNATIONAL, LLC