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STATE OF NORTH CAROLINA ~~NA~~ ~~WE~~ -9 PM 4:47N THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF BUNCOMBE ~~FILED~~ ~~FILE~~ ~~NO.~~ ~~C.S.C.~~ FILE NO. 12 CV ~~12CV~~ 01137

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MICHAEL KEISTER, individually, and)
SUSAN LEWIS-KEISTER, individually,)
and on behalf of all others similarly situated,)

Plaintiffs,)

v.)

NATIONAL COUNCIL OF THE YOUNG)
MEN'S CHRISTIAN ASSOCIATION OF)
THE UNITED STATES OF AMERICA)
d/b/a YMCA OF THE USA, an Illinois not-)
for-profit corporation, and YMCA OF)
WESTERN NORTH CAROLINA, INC., a)
North Carolina corporation, ASHEVILLE)
YMCA, CORPENING MEMORIAL)
YMCA, HENDERSON COUNTY FAMILY)
YMCA, REUTER FAMILY YMCA, and)
NEIGHBORHOOD YMCA AT WOODFIN)

Defendants.)

CLASS ACTION
(Jury Trial Demanded)

Complaint

Plaintiff, MICHAEL KEISTER, individually, and SUSAN LEWIS-KEISTER, his wife, on behalf of all others similarly situated, sue Defendants, NATIONAL COUNCIL OF THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE UNITED STATES OF AMERICA d/b/a YMCA OF THE USA and YMCA OF WESTERN NORTH CAROLINA, INC., and allege as follows:

The Parties

1. Plaintiff, MICHAEL KEISTER ("Keister"), is an individual, at all relevant times, a resident of Buncombe County, North Carolina, and is otherwise *sui juris*.

2. Plaintiff, SUSAN-LEWIS KEISTER (“Lewis”), is an individual, at all relevant times, a resident of Buncombe County, North Carolina, and is otherwise *sui juris*.

3. Defendant, YMCA OF WESTERN NORTH CAROLINA, INC. (“Y-WNC”), is a not-for-profit North Carolina corporation with its principal place of business in Asheville, North Carolina located at 53 Asheland Avenue, Suite 105, Asheville, NC 28801.

4. On information and belief, the Y-WNC does business as a number of YMCA Centers in western North Carolina. These YMCA Centers include: Asheville YMCA, Corpening Memorial YMCA, Henderson County Family YMCA, Reuter Family YMCA, and Neighborhood YMCA at Woodfin. To the extent Y-WNC does not own or control these entities, they are sued independently as separate entities.

5. Defendant, NATIONAL COUNCIL OF YOUNG MEN’S CHRISTIAN ASSOCIATIONS OF THE UNITED STATES OF AMERICAN, doing business under the assumed name of YMCA OF THE USA (“Y-USA”), is an Illinois not-for-profit corporation that is the National Resource Office of YMCAs nationwide. The Y-USA controls, oversees, and operates the YMCA and other “YMCA” facilities in North Carolina and elsewhere through a series of self-governing documents including by-laws, constitutions, and policies and procedures.¹

Jurisdiction and Venue

6. This is an action for damages that exceeds \$10,000.00, exclusive of interest, court costs and attorneys’ fees.

7. Venue is proper in Buncombe County, North Carolina as it is where the parties resided at all relevant times, a substantial part of the events giving rise to Plaintiffs’ claims occurred, and where the causes of action herein alleged accrued.

¹ Together, Y-USA and the YMCA - WNC shall be referred to herein as “YMCA.”

8. This Court has personal jurisdiction over Y-USA pursuant to North Carolina long-arm statute, *N.C. Gen. Stat.* § 1-75.4. As more fully alleged herein, Y-USA is engaged in overseeing and managing “YMCA” facilities throughout North Carolina, conducting substantial marketing and outreach in North Carolina, making payments and contributions to and receiving substantial income from, such facilities and, as a result, Y-USA conducts substantial activity within this State as encompassed by *N.C. Gen. Stat.* § 1-75.4(1)(d).

9. Moreover, Y-USA is subject to specific jurisdiction pursuant to *N.C. Gen. Stat.* § 1-75.4(5)(a-e). Defendant Y-USA, through its national network of YMCA facilities, national campaign and marketing materials, and the myriad documents governing the operation of those facilities, directly and indirectly, have engaged, encouraged, and ratified the conduct complained of herein. As such, Defendant Y-USA purposefully has directed its activities in North Carolina and otherwise invoked the benefits and protections of the laws of North Carolina, as is sufficient to confer jurisdiction pursuant to *N.C. Gen. Stat.* § 1-75.4(5)(a-e).

Factual Allegations

YMCA Membership Benefits and the YMCA Image

10. Plaintiffs, like those similarly situated, decided to purchase gym memberships for their family in order to live healthier lives and connect with the local community.

11. After considering the various fitness memberships in the local area, the Plaintiffs decided to purchase memberships at their local YMCA.

12. The stated benefits of a YMCA membership, over and against other gym memberships, as delineated by the YMCA on its website, brochures, and marketing materials, include among other things:

a. “YMCAs provide *safe* and affordable spaces and programs *to help both kids and adults learn, grow and thrive;*”

b. “The YMCA is a not-for-profit organization whose mission is to put *Christian principles into practice through programs that build healthy spirit, mind and body for all;*

c. The YMCA “*promote[s] high ethical standards and Christian values;*”

d. “For more than *150 years the YMCA of Western North Carolina has provided a safe caring environment,* positive role models, creative activities, and the opportunity to serve all ages, races, religions, income levels, and abilities;”

d. “YMCA programs *provide a healthy and safe environment for families* to share experiences, improve relationships, and communicate on a different level;”

e. “YMCAs *advance the holistic development of children and youth, family strengthening, and health and well-being for all;*”

f. “Adults connect with friends, pursue interests and learn how to live healthier;” and

g. “*Parents find a safe, positive environment for children* to learn good values, social skills and behaviors.”

13. Plaintiffs, like all class members, choose the YMCA over other facilities because of the YMCA’s image as a safe place for families and children and as place that champions Christian values, such as decency, kindness, and fairness.

14. Because of the YMCA’s marketing statements and public relations campaigns, the YMCA is in the eyes of the Plaintiffs, those similarly situated, and the public at large, one organization that speaks with one voice. The YMCA knows this and promotes such a unified entity. As reflected in Y-USA’s internal governance documents, “the public does not see hundreds of independent YMCAs; it sees one movement; and how one association acts reflects upon all YMCAs.” And elsewhere in the same document, “Public trust is one of the YMCA movement’s most important assets. It enables YMCAs to recruit volunteers, solicit donations, retain members, and protect and promote our charitable status.”

15. As perceived by the public and acknowledge by Y-USA, the YMCA's unified image of reposing safety and trust for individuals confers substantial benefits on Y-USA and its YMCA member organizations. In fact, the Y-USA guards this image so much so that the YMCA's National Counsel on Membership Standards, through its regional arm, can place YMCA organizations on probation and even expel individual membership associations that do harm to this image.

16. Because of this carefully cultivated image, consumers, like Plaintiff, and others similarly situated, have come to see the YMCA as one safe, decent, caring, and responsible organization that promises to provide parents and their families with a safe place to play and thrive and grow.

17. Unfortunately, as Plaintiffs have come to learn, such representations and assurances are untrue.

The Asheville YMCA and Cruising

18. In Spring 2009, the image of the YMCA as a safe and protected environment came crashing down for Plaintiffs on several separate visits to the facility.

19. After renewing his membership at the facility, Keister experienced his first, in what would eventually become a series of unwanted sexual advances and activity taking place at the Asheville YMCA facility.

20. Keister was showering in the men's locker rooms showers when two men entered the shower area together from the pool. As Keister stood there, only feet away, the shorter of the two men lathered up the other man and began to fondle the taller man's genitals. The showers were open and the visible to anyone in the locker room.

21. When the men noticed the shocked look on Keister's face, the shorter man replied, "What?," with a menacing tone that made it seem as if Keister was the one who was acting inappropriately.

22. "What?!" Keister responded, "Not Appropriate." "It's just not appropriate."

23. Unsettled by what he was seeing, Keister left the shower area immediately, got dressed, and reported the incident to the front desk.

24. The employee responded, "We are aware of this behavior and we're taking steps to address it. You're not the first to complain." The employee assured Keister that it would not happen again.

25. Shortly after this incident, Keister returned to the Asheville YMCA only to be the subjected to yet another inappropriate incident.

26. This time Keister was in the steam room. As members were coming and going, Keister sat alone on the upper deck with his elbows on his thighs and looking down at the floor.

27. When the room had cleared of all but one patron, the man sitting across the room began to clear his throat as if he were trying to get Keister's attention.

28. When Keister looked up at the man, the man revealed his erect penis to Keister and began masturbating energetically while staring at Keister.

29. Keister left the steam room immediately and reported the incident to a female manager on duty, determined to get answers.

30. Like the employee before her, the YMCA manager's response surprised Keister. She acknowledged that the YMCA has had a problem with public sex acts in the men's locker room for years. She assured him that the YMCA would take immediate steps to address the issue and that it was safe for him to continue to use the facilities.

31. Having received this assurance from management, Keister relied on this reassurance and continued to make use of the facility.

32. A short time later, after a workout, Keister entered the sauna. No one else was in the sauna when Keister entered.

33. Soon, another man entered the sauna and sat down while Keister was reading a newspaper.

34. Suddenly, and seemingly out of nowhere, the man reached over and firmly grabbed Keister's penis, yanking on it, and would not let it go.

35. Shocked, Keister grabbed the man's arm, pried the man's hand off his penis and yelled in disbelief.

36. The man ran out of the sauna.

37. Still in shock from what happened, Keister tried to collect himself and chase after the man. He went into the dressing area but could not locate him.

38. Keister dressed and rushed to the front desk and demanded to speak with the general manager of the Asheville YMCA, Mr. Dana Martin ("Martin").

39. Keister explained to Martin what had happened. Keister began to question whether it was safe to bring his three-year-old son to the YMCA, who had been present in the childcare facility during one of the prior incidents. Keister wondered what other activity might be taking place at the facility, given what had just happened to him.

40. Martin informed Keister that he was newly hired as the manager of the YMCA, but heard about problems with inappropriate behavior coming into the job. Martin informed him that they were going to put up signs and perform periodic locker room checks to combat the

problem. Martin pled with Keister to give the YMCA another chance and assured Keister that he would personally take steps to eradicate the problem.

41. On March 30, 2009, a day after the attack, Martin sent flowers to Keister to express the YMCA's condolences for the attack. Keister refused to receive the flowers.

42. Martin called Keister to ask why he had refused the flowers. Keister told him that he wanted the YMCA to take the problem seriously, not just to send flowers. As Keister was on the phone with Mr. Martin, Keister's landscaper overheard the discussion. The landscaper interrupted Keister as he was talking to Martin and informed Keister that he had experienced the same problem at the YMCA. The landscaper told Keister he had stopped showering at the facility because of what he experienced there. Amazed at what he was hearing, Keister put his landscaper on the phone to tell Martin of his similar experience at the YMCA.

43. Later, Keister returned to the YMCA to ascertain what measures, if any, had been taken. The sole corrective action he observed was a sign in the men's locker room prohibiting inappropriate behavior. On his final visit to the downtown Asheville YMCA center locker room, a man propositioned Mr. Keister for a New Year's Eve date.

44. Since the incidents, Keister has spoken with numerous former employees at downtown YMCA location. The former employees acknowledge that the YMCA was well aware of the problem and that YMCA management takes a "soft approach" to dealing with these issues because it characterizes these activities as consensual.

45. Keister learned from Andrew Young and Joyce Collins, ex-downtown YMCA employees, that there was a prolific problem at the location. One former employee, Clyde Waters, according to these former employees, had taken it upon himself to set up a desk in the

men's locker room to address the problem on his own. Mr. Waters, however, is no longer with the YMCA.

46. Since being assaulted at the YMCA, Keister has learned that a number of others members of the YMCA have been the victims of unwanted sexual advances and similar incidents.

The Y-WNC is a Microcosm of Cruising Statewide

47. In the time following these incidents, Keister was troubled by the way the YMCA discounted his complaints. Unable to comprehend the organization's apparent lack of concern about the assault and its lack of urgency in addressing his complaints, Plaintiff investigated further. In doing so, Keister discovered that the Y-WNC is a microcosm of pervasive cruising² at YMCAs nationwide. Indeed the Y-USA and its subordinate organizations have turned a blind eye towards cruising for decades and has harbored such illicit behaviors, which have now become even more prolific at YMCAs nationwide with the advent of the internet and social networking websites.

48. The YMCA is widely acclaimed nationwide as one of the top cruising spots for men. As the YMCA knows, men who are seeking to "cruise" and have sex in YMCA locker rooms, steam baths and saunas post advertisements around the country on the popular website www.craigslist.com ("Craigslist") and other internet sites daily. There are countless personal ads listed for men seeking men with whom to engage in sex and other sexually explicit activities at the YMCA. The content of such ads, some of which contain some of the most indecent images

² Cruising has been a term of art in YMCA culture and literature for decades. "Cruising" is defined as the "search in public places for a sex partner." Cruisers, in turn, have created their own jargon. "Meat" is used to refer to a man's genitalia. "Rimming" refers to the act of licking, kissing, and sucking the anus. "J/o" is short for the act of jacking off, or masturbating. "BJ" refers to oral sex, a "blow job." "Fisting" is inserting a hand into another man's rear. A "bear" is a built man with a hairy body. A "troll" is an ugly man. "VGL" stands for "very good looking man." An advertisement listing that seeks male interaction is abbreviated "m4m", or "man (looking) for man."

on the web, confirm that “cruising” and public sex is a daily occurrence at YMCAs in North Carolina and around the country.

49. On-line cruising for sex at the YMCA is not limited to Craigslist. The Internet sites www.cruisinggays.com (“Cruising Gays”) and www.squirt.org also contain daily listings for cruising at YMCA facilities.

50. There is a published list of instructions on how to effectively cruise at the YMCA. On Cruising Gays, for example, it is recommended that cruisers “start stroking in the sauna or shower and look for a response.” In addition, Cruising Gays recommends that at YMCAs, cruisers “go in the sauna with just your towel wrapped around you, shift yourself around a few times to see if.” Cruisers also are advised to “[w]ait for a guy to check you out and grab your dick.”

51. The YMCA is known by the “cruising” community to simply “look the other way” or pay mere lip service to preventing cruising. For example, the Cruising Gays website states “[YMCA] Staff doesn’t bother you, they only come in to clean when it’s time to close” and “[YMCA] staff is aware so be careful. They even have posted signs that say please keep this a family oriented atmosphere because they know what’s going on...LOTS of cruising, j/o, blowjobs, and even some fucking, and rimming in the steam room.”

52. Many of the advertisements posted by the cruising community about men seeking sex at the YMCA are on internet sites catering to the general public and are not on adult-oriented or membership-only specialty sites.

53. A substantial part of the cruising listings concerning the YMCA are available to any person accessing the internet and these listings notoriously and prominently feature the words “YMCA” in their title.

54. The advertisements and listings from cruising community participants seeking to engage in sex at the YMCA are so predominant that internet search engines such as Google, Bing, etc. routinely feature these listings when terms such as YMCA or, in this particular case, terms such as YMCA Asheville, YMCA, Charlotte, YMCA Raleigh, etc. are submitted to an internet search.

55. A simple internet search reveals the extent and proliferation of cruising at YMCAs. Of the Y-WNC's Asheville YMCA, the Cruising Gays website proclaims that "[t]his cruisy facility is busy at lunchtime and again mid-afternoon until early evening. The activity is mostly in the sauna and steam room. Bear Heaven." Below are representative of countless listings reporting recent activity at YMCAs in North Carolina alone:

Raleigh Central YMCA

"The men's area is all pit showers (3 of them), a hot tub (great for mutual j/o), a large sauna & steam (great for exhibitionism and voyeurism). Also has a massage area for members (\$). The staff know what is going on and ignore it. I've j/o another guy in the shower with a straight guy there who kept his back to us. Very permissive environment."

Wilkes' Family YMCA:

"[T]he steam room is secluded and dimly lit. The hot tub has lights, but inside. Room all of its own, so still private. They are both inside the men's locker room and cruised by naked men."

Charlotte Central YMCA

"THIS IS ONE OF THE BEST AND EASIEST PLACES TO CRUISE THAT I'VE COME ACROSS. EVEN IF YOU'RE ONLY INTERESTED IN SOME EYE CANDY. I'VE GONE DOWN ON A COUPLE VERY QUICKLY IN THE STALLS SIMPLY BY SITTING ATOP OF THE COMMODORE TANK WITH THE OTHER PARTY STANDING IN FRONT OF . . . IN THE SAUNA YOU CAN JUST SIT THERE WITH NO TOWEL

IF YOU WANT TO AND IF THEY LOOK THEN IT'S ON. ONE GUY THERE LIKES TO JUST SEE ME STROKE IN THE SAUNA AND THAT'S IT. I WANNA FUCK HIS BRAINS OUT THOUGH OR HIM DO ME. HELL, IT DON'T MATTER."

Lexington YMCA

"No police, no guards. Been there a few times, a few hot men in the locker room. Hot tub, open shower. Great potential. Muscle, bears Thursday evenings 7-9."

Uptown Charlotte YMCA

› "...it is a great place to cruise and have sex, especially in the sauna. A couple of the latin / hispanic custodians there mess around too, if you catch them alone in or near the sauna, especially at closing time, or even near the back corners of the locker room while closing up. They like to get sucked and a couple of them will fuck you. LOTS of action going on in the dry sauna with the weight lifter / muscle men."

› "Hot hairy cock always available. Sucking and jacking in sauna and steam."

› "You can stand on guard at the chest high window and get fucked . . . or fist or finger fucked. One draw back is the newly installed glass door. Still, the window is a great place to get pounded and still stand watchout. The gym is attached to the Uptown Hilton.

› "Cruisest Spots: This is one of the best places in Charlotte to cruise hot guys. The suana is the best place to hook up at this Y."

NC Area YMCA

"I would try the surrounding area older YMCA's first. The ones that still have separate facilities such as steam rooms, saunas and hot tubs for MEN ONLY. So you can still go and sit in them NAKED and cruise. Like Winston-Salem's Central YMCA in the neighborhood of/close to Baptist Hospital. [O]r Charlotte's Dowd/south blvd. YMCA and many others in Charlotte. They mostly have men or women separate facilities. Another good one, not too far away is Hickory's CVCC YMCA on hwy 70 across from old Kmart, just one block from CVCC college on hwy 70.

One that has steam room ONLY for men's locker room is the Statesville YMCA just off hwy 115.

56. Classified-style ads that appear merely by entering the term "YMCA" on Craigslist illustrate the extent and prevalence of the problem. The following posts, taken directly from Craigslist, exemplify cruising activity statewide:

01-20-2012 – Uptown Childress Klein YMCA - 27 (Uptown)

Shout out to all the new hotties at the Uptown y. Workout in the evenings until close. And Saturdays. Any new inshape guys on the down low. Hit me up. Looking for discrete Jack off and bj;

02/17/2012 – Steam Room - 50 (Cary)

Lets enjoy some steam room fun at the Cary YMCA. Come in play with your cock a little and I will do the same that way we will know the other is interested. As you get hard and I get hard, walk over and stick your nice cock in my moth and play with my cock while I suck you. If you want to suck me all the better, I have a 6" uncut cock. I will be there in about an hour for about an hour or so. Come and join the fun. Uncut moves to the top; and

02/23/2010 – "Hot Guy at the YMCA-m4m-19 (Charlotte)

We met in the shower room. You were hot and naked and noticing my dick, and I noticed yours, too. You took me to the bathroom and you sucked my dick. I came all over your face and you then made me lick it off. After, you shoved your sweet lovemeat into my asshole. It was beautiful. After you pumped my ass, you took a shit on my chest. If you remember me, meet me in the same staff this Friday at 6:00 I miss you."

57. With the advent of the Internet and social networking sites like Craigslist, Cruising Gays, and others, Cruising at YMCAs has become prevalent.

Cruising's Place in YMCA History

58. The YMCA is not only aware that cruising is taking place at its facilities, it has known of it for decades and, upon information and belief, the YMCA tacitly promotes it. There is a long history of cruising at YMCAs dating back to the origin of the organization.

59. It is reported in John D. Gustav-Wrathall's book, Take the Young Stranger by the Hand that, as early as 1912 in Portland Oregon, over 50 men and young boys were involved in orgy-style sex at the YMCA and that this occurrence drew YMCA leaders' attention to the lack of supervision in YMCA facilities nationwide. In Take the Young Stranger by the Hand, it is further learned that:

a. In the 1960s, the YMCA attempted to curtail cruising only because its image began to suffer under accusations that the organization was ... "unsafe for children." Here, too, the YMCA's efforts fell short. According to Paul McGuinness (an interviewee in the book) the YMCA in the 1970s was "like a sex place, a sexual frenzy, people masturbating naked, people tied up, people in uniforms, cowboys, a man wearing a leash like a dog, there were some men who just lived on the toilet seat."

b. The YMCA is a refuge for "cruising."

c. The YMCA's National Council appointed a committee to study and "find positive ways to deal with cruising." But the problems persisted.

d. In 1991, the YMCA closed the steam room at its downtown Minneapolis facility because of its inability to control "cruising."

e. In 1992, author Sam Steward stated: The "*YMCA is the biggest Christian whorehouse in the world.*"

60. Far from distancing itself from Take the Young Stranger by the Hand, the Y-USA actually has listed the book as a ***resource*** and ***recommended reading*** on its resource website for YMCA associations.

61. Upon information and belief, YMCAs around the country and in North Carolina, in particular, are currently being used as brothels for cruising, with the YMCA's knowledge and implicit consent. This poses inordinate and unforeseen risks to the YMCA's non-cruising members and guests.

62. Notwithstanding, the YMCA continues to represent to Plaintiffs and the public at large that the YMCA "promote[s] high ethical standards and Christian values" and "programs provide a healthy and safe environment for families to share experiences, improve relationships, and communicate on a different level."

63. Such claims are misleading, incomplete, and deceptive. The YMCA has a long history and awareness of cruising and its "soft approach" and tacit approval of cruising is putting its members, guests, and consumers in harm's way.

64. There is not one warning of the current proliferation of cruising posted anywhere in YMCA brochures or promotional materials. Instead of warning prospective patrons and guests of widespread criminal activity occurring in their locker rooms nationwide, YMCAs, like the Y-WNC's facilities, turn a blind-eye toward the practices.

65. YMCA actions, such as creating family changing rooms as alternative to single sex locker rooms, are tacit admissions of the existence of cruising and are veiled attempts to address the problem. However, such remedial action, rather than correcting the problem, only further creates a false sense of security for members at YMCA facilities. Without full disclosure

of the existence and scope of the problem, Patrons will continue to be witness of or subjected to unwanted, public, sexual advances and activity.

66. Fundamentally, members, such as Plaintiffs, and their families cannot engage in routine lavatory behavior at YMCAs without “cruising” men assuming they are signaling a desire for sex. Patrons are unknowingly answering ‘yes’ to solicitations for sexual interaction with strangers while being oblivious to the fact that the question is being posed to them. Its patrons, thus, are the unwitting targets and victims of sexual crimes, such as the ones suffered by Plaintiff Keister. Aside from its good deeds, the YMCA’s stance on and tolerance of cruising is, in effect, abetting criminal activity at its facilities at the same time that the YMCA aggressively markets its facilities and lures families and young children to become members with false promises of safety, protection, and decency.

Class Allegations

67. This action is brought as a Class Action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a representative of the following proposed Class (“Class” or “Class Members”):

Class 1: All individuals who have purchased and maintain membership at YMCA facilities in the State of North Carolina. Excluded from the class are: (a) members of the “WNC Class”, below; (b) willing participants in cruising activity; (c) officers, directors, agents and employees of YMCA associations statewide; and (d) all person who properly execute and file a timely request for exclusion from the Class. (The “Statewide Class”).

Class 2: All individuals who have purchased and maintain membership with any of the Y- WNC facilities. Excluded from the class are: (a) members of the “Statewide Class;” (b) willing participants in cruising activity; (c) officers, directors, agents and employees of YMCA associations statewide; and (d) all person who properly execute and file a timely request for exclusion from the Class.(The “WNC Class”).

68. Common questions of law and fact exist as to all members of the Class, and they predominate over any questions that affect only individual Class Members. The questions of law and fact that are common to the Class, and which predominate over any individualized issues, include but are not limited to the following:

a. Whether Defendants' statements describing and marketing the YMCA as a "safe place" and one where members are "protected" and where "Christian" principles and values, such as decency, are practiced are false, deceptive or misleading;

b. Whether the Defendants engaged in conduct designed to lead the Plaintiff and Class Members to repose confidence and trust in the YMCA organization as a place that bestows safety and protection on members and their families;

c. Whether the Defendants breached their fiduciary duties toward Plaintiff and Class members based on, among other things, their failure to warn of cruising in their facilities;

d. Whether the Defendants breached their promises to Plaintiffs and Class members by failing to provide facilities that are safe and protected and instead subject Class members to unreasonably high degree of risk of sexual assault and battery;

e. Whether Defendants breached their contractual obligations toward Plaintiffs and Class Members by failing to provide facilities in the manner and in the condition offered;

f. Whether the Defendant's conduct constitutes unfair and/or deceptive acts or practices, in or affecting commerce, in violation of Chapter 75 of the North Carolina General Statutes;

g. Whether the Plaintiffs and Class Members are entitled to injunctive relief and damages, and the amount of damages for each member;

h. Whether the Plaintiffs and Class Members are entitled to an award of treble damages; and

i. Whether the Plaintiffs and Class Members are entitled to an award of their reasonable attorneys' fees, expert witness fees, pre-judgment interest, post-judgment interest, and costs of suit.

69. The Plaintiffs will fairly and adequately represent the interests of the absent Class Members, in that the Plaintiffs have no conflicts with any other Class Members that would interfere with his zealous pursuit of these claims on behalf of Class Members and have a genuine personal interest in the outcome of the litigation. Furthermore, the Plaintiffs have retained competent counsel experienced in complex litigation involving consumer fraud.

70. This action seeks relief as stated at the close of this Complaint and is expressly not intended to seek any recovery for personal injury.

71. The Class Members are so numerous, and so geographically dispersed, that the individual joinder of all members is impracticable. While the exact number of Class Members is unknown to the Plaintiffs at this time, it is ascertainable through appropriate discovery. Based upon the nature of the commerce and trade involved, the Plaintiffs are informed and believe that thousands of persons throughout North Carolina purchased memberships at YMCA facilities.

72. The Plaintiffs claims are typical of the claims of all Class Members, in that the Plaintiffs purchased a membership for their family at their local YMCA based on representations that the YMCA was a place where "Christian values" were fostered and as a safe and protected place for them and their young son, and they seek the return of their membership fees as a result

of the actions complained of. For similar reasons, Plaintiffs also seek the disgorgement of all fees paid to the Y-USA by YMCA facilities statewide. Consequently, the Plaintiffs' legal claims are the same as those of any other Class Member, and the relief they seek is the same as that of any other Class Member.

73. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy described herein, because it permits a large number of injured persons to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence and effort. Class treatment will also permit the adjudication of claims by Class Members who could not afford to individually litigate these claims against a prominent national organization.

STATEWIDE CLASS CLAIMS

Count One – Violations of N.C. Gen. Stat. §75.1-1. *(Against Y-USA)*

74. The allegations of paragraphs 1 - 73 are realleged and incorporated fully.

75. Y-USA's marketing misconduct, as described above, was deceptive, immoral, unethical, oppressive, or unscrupulous, in violation of N.C. Gen. Stat. § 75-1.1.

76. Y-USA's marketing, resource, financial support of and from individual YMCAs within this state are acts in or affecting commerce.

77. Y-USA markets membership at YMCA facilities nationwide as a safe place for families and one that protects its members and promotes Christian values.

78. The Y-USA knew or should have known that cruising and illicit sexual activity was prevalent in YMCA facilities and that such activities pose a risk of harm to members and the public.

79. Despite knowledge that YMCA facilities pose a substantial risk of harm to members, Y-USA continues to promote and market the YMCA to Plaintiffs and Class Members in a deceptive manner.

80. On information and belief, Y-USA has benefited greatly from this deceptive marketing campaign. Not only is the YMCA held in high esteem in the communities nationwide, but this image also generates substantial revenue from membership dues, corporate donations and large national grants. Y-USA is directly responsible for the marketing of the YMCA brand and is uniquely positioned to address the problem through its National and Regional Counsel on Membership Standards. Rather than jeopardize the goodwill it has created through false and misleading statements, the Y-USA has chosen not to respond appropriately to the threats members face nationwide.

81. As a result of the Y-USA's violations of the North Carolina Unfair and Deceptive Trade Practices Act as described herein, Plaintiffs and Class Members have suffered actual harm and seek recovery as provided by the North Carolina Unfair and Deceptive Trade Practices Act, including but not limited to disgorgement of dues from individual associations, actual damages caused to Plaintiffs and Class members and all damages recoverable at law and attorney's fees and costs.

Count Two – Breach of Fiduciary Duty
(Against Y-USA)

82. The allegations of paragraphs 1 - 73 are realleged and incorporated fully.

83. The Y-USA stands in a fiduciary relationship with YMCA members nationwide. YMCA members, like Plaintiffs, placed special confidence and repose in the YMCA as an organization based on the Y-USA representations stated above. As the Y-USA has acknowledged, Plaintiffs, and those similarly situated, do not see the YMCA as “hundreds of

independent YMCAs,” but instead see the YMCA as one organization and movement. The Y-USA, as caretaker and cultivator of this organization, is directly liable to Plaintiff and Class Members for the trust and repose Class Members have placed in it and its organizations.

84. By undertaking to protect children and families and to provide a safe and protective environment for them within which to thrive and develop, the Y-USA in equity and in good conscience is bound to act in good faith and with due regard for the interests of Plaintiffs and Class Members.

85. This relationship imposes on the Y-USA a duty to advise, counsel, and protect its YMCA members and, importantly, to disclose and reveal facts that would be considered important to them.

86. The Y-USA breached its fiduciary duty to Plaintiffs and Class Members by, among other things:

- a. Failing to uphold the standards of the YMCA constitution and bylaws;
- b. Conspiring to conceal the perverse truth and dangers taking place at its facilities from YMCA members;
- c. Failing to protect members, their families and children from unreasonable risk of sexual assault and battery;
- d. Exposing members, their families and children to unreasonable risk of harm; and
- e. Marketing YMCA facilities nationwide as a safe place for families and children and a place guided by Christian values while knowing such representations were untruthful and misleading.

87. As a result of such conduct, Plaintiffs and Class Members have suffered, and will continue to suffer, irreparable harm and substantial damages.

Count Three – Breach of Implied-in-Fact Contract
(Against Y-USA)

88. The allegations of paragraphs 1 - 73 are realleged and incorporated fully.

89. Plaintiffs and Class Members entered into contracts for membership services at various YMCA facilities. Implicit in such agreements was the understanding that the YMCA would undertake to provide a safe and protective environment for the members and their families at YMCA facilities, as promised, in exchange for membership fees and dues.

90. Plaintiffs and Class Members accepted membership at the YMCA over other facilities on the promises and assurances described above. These representations were made in the Y-USA's and individual YMCA associations' websites and marketing materials and, under the circumstances in which they were made, became a basis of the bargain with Plaintiffs and Class Members.

91. The YMCA breached these contracts by providing facilities that were unsafe for children and families and exposed members to illicit sexual activity. Such breaches include, but are not limited to:

- a. Providing facilities that subjected members to witness illegal, public sex acts;
- b. Providing facilities that exposed members to an environment where they are propositioned to engage in sex acts;
- c. Providing facilities that exposed members to becoming unwitting victims of sexual assault; and

d. Providing facilities that posed great health risk to members through unnecessary exposure to sexual body fluids.

92. Y-USA is thus directly liable for such breaches. In addition, YMCA organizations are apparent agents or agents by estoppel of the Y-USA. As alleged above, the Y-USA purposefully fosters a unified image and standard for the operation of YMCAs nationwide and requires adherence to such standard by its member associations.

93. Y-USA's contractual breach has caused Plaintiffs and Class Members economic injury and other damages. Contrary to the Y-USA's claims, its members are not joining a safe, family-friendly organization and are entitled to the return of their consideration paid for their memberships, including return of their membership fees and other related costs, and the diminution in value of such memberships' value.

WESTERN NORTH CAROLINA YMCA CLASS CLAIMS

Count Four – Violations of N.C. Gen. Stat. §75.1-1. *(Against All Defendants)*

94. The allegations of paragraphs 1 - 73 are realleged and incorporated fully.

95. Defendants' marketing misconduct, as described above, was deceptive, immoral, unethical, oppressive, or unscrupulous, in violation of N.C. Gen. Stat. § 75-1.1.

96. Y-USA's marketing, resource, financial support of and from individual YMCAs within this state are acts in or affecting commerce.

97. Y-WNC operates multiple YMCA facilities in western North Carolina and engages in acts in or affecting commerce.

98. Y- USA and Y-WNC market membership at YMCA facilities as a safe place for families and one that promotes Christian values.

99. The Y-USA and Y-WNC knew or should have known that illicit sexual activity was prevalent in YMCA facilities. Y-WNC employees have admitted, “that stuff like that happens all the time here.”

100. Despite knowledge that YMCA facilities pose a substantial risk to members of being a witness to or victims of illicit sexual activity at, Y-USA and Y-WNC continued to market the condition of YMCA facilities to Plaintiffs and Class Members in a deceptive manner.

101. On information and belief, Y-USA and Y-WNC have benefited greatly from this deceptive marketing campaign. Not only is the YMCA held in high esteem in the community, but this image also generates substantial revenue from membership dues and corporate donations.

102. As a result of Y-USA and Y-WNC’s violations of the North Carolina Unfair and Deceptive Trade Practices Act as described herein, Plaintiffs and Class Members have suffered actual harm and seek recovery as provided by the North Carolina Unfair and Deceptive Trade Practices Act, including but not limited to disgorgement of dues from individual associations, all damages recoverable at law and attorney’s fees and costs.

Count Five – Breach of Fiduciary Duty
(Against All Defendants)

103. The allegations of paragraphs 1 - 73 are realleged and incorporated fully.

104. The Y-USA and Y-WNC stand in a fiduciary relationship with YMCA members at the Y-WNC facilities. YMCA members, like Plaintiffs, placed special confidence and repose in both organizations based on their representations stated above. As the Y-USA has acknowledged, Plaintiffs, and those similarly situated, do not see the YMCA as “hundreds of independent YMCAs,” but instead see the YMCA as one organization. The Y-USA, as caretaker

and cultivator of this image, is directly liable to Plaintiff and Class Members for the trust and repose Class Members have placed in it.

105. By undertaking to protect children and families and to provide a safe and protective environment for them within which to thrive and develop, the Y-USA and Y-WNC in equity and in good conscience are bound to act in good faith and with due regard for the interests of Plaintiffs and Class Members.

106. This relationship imposes on the Y-USA and Y-WNC a duty to advise, counsel, and protect its YMCA members and, importantly, to disclose and reveal facts that would be considered important to them.

107. The Y-USA and Y-WNC breached their fiduciary duties to Plaintiffs and Class Members by, among other things:

- a. Failing to uphold the standards of the YMCA constitution and bylaws;
- b. Conspiring to conceal the perverse truth and dangers taking place at its facilities from YMCA members;
- c. Failing to protect members, their families and children from unreasonable risk of sexual assault and battery;
- d. Exposing members, their families and children to unreasonable risk of illicit sexual activity; and
- e. Marketing YMCA facilities as a safe place for families and children and a place guided by Christian values while knowing such representations were untruthful and misleading.

108. As a result of such conduct, Plaintiffs and Class Members have suffered, and will continue to suffer, irreparable harm and substantial damages.

Count Six – Breach of Implied-in-Fact Contract
(Against All Defendants)

109. The allegations of paragraphs 1 - 71 are realleged and incorporated fully.

110. Plaintiffs and Class Members entered into contracts for membership services at Y-WNC facilities and at all times performed their obligations under the contracts. Implicit in such agreements was the understanding that the Defendants would undertake to provide a safe and protective environment for its members and their families at YMCA facilities, as promised, in exchange for membership fees and dues.

111. Plaintiffs and Class Members chose the Y-WNC facilities over other workout facilities based upon the promises and assurances described in the paragraphs above. These representations were made in the Y-USA's and in the Y-WNC's websites and marketing materials and, based on the circumstances alleged, became a basis of the bargain with Plaintiffs and Class Members.

112. Y-WNC breached these contracts by providing facilities that were unsafe for children and families and exposed members to illicit sexual activity. Such breaches include, but are not limited to:

- a. Providing facilities that subjected members to witness illegal, public sex acts;
- b. Providing facilities that exposed members to an environment where they are propositioned to engage in sex acts;
- c. Providing facilities that exposed members to becoming unwitting victims of sexual assault; and
- d. Providing facilities that posed great health risk to members through unnecessary exposure to sexual body fluids.

113. Y-USA is liable for the breaches of Y-WNC. The Y-WNC is an apparent agent or agent by estoppel of the Y-USA. As alleged above, the Y-USA purposefully fosters a unified image of YMCAs nationwide and requires individual associations to protect this image.

114. Y-USA and Y-WNC's contractual breaches have caused Plaintiffs and Class Members economic injury and other damages. Contrary to the Y-USA's claims, its members are not joining a safe, family-friendly organization and are entitled to the return of their consideration paid for their memberships, including return of their membership fees and other related costs.

Prayer For Relief

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated asks the Court for the following relief:

1. An order certifying this case as a class action and appointing Plaintiff and his counsel to represent the Class;
2. Restitution and disgorgement of all amounts obtained by Defendants as a result of its misconduct;
3. Actual damages for the injuries suffered by Plaintiff and the Class;
4. An order requiring Defendants to immediately cease its wrongful conduct as set forth; enjoining Defendant from continuing to falsely market and advertise its membership services and from concealing material information regarding those services; and ordering Defendants to engage in a corrective notice campaign containing adequate warnings about the prevalence of cruising at its facilities.
5. Punitive damages;
6. Attorney's fees and costs; and


7. For any other relief this Court deems appropriate.

Jury Demand

Plaintiff demands a trial by jury.

This the 9th day of March, 2012.

CAPUA LAW FIRM, P.A.
Attorneys for Plaintiff
The Greenhouse
164 South Depot Street
Boone, NC 28607
(828) 264-0260
(828) 265-5650 facsimile

By: 
Paul A. Capua
NC Bar No. 40239
Michael J. Volpe
NC Bar No. 40148