



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,  
Complainant,  
v.

PLANET FITNESS,  
Respondent.

OSHRC Docket No. 23-1328

OSHA Inspection No. 1644162

Appearances:

Judson H. Dean, Senior Trial Attorney  
Department of Labor, Office of the Solicitor, Philadelphia, Pennsylvania  
For the Secretary

Travis W. Vance, Esquire  
Nick Hulse, Esquire  
Fisher & Phillips, LLP, Charlotte, North Carolina  
For Respondent

Before:

Carol A. Baumerich  
Administrative Law Judge

**ORDER**  
**DENYING RESPONDENT'S MOTION FOR RELIEF**  
**AND DISMISSING RESPONDENT'S LATE NOTICE OF CONTEST**

This matter is before the Occupational Safety and Health Review Commission (the Commission) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (the Act), to rule on Respondent's Motion for Relief from Judgment, pursuant to Federal Rule of Civil Procedure 60(b)(1). (Rule 60(b)(1)).

Pursuant to section 10(a) of the Act, after receipt of a citation, an employer has "fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed

assessment of penalty.” If the employer fails to file a notice of contest within the fifteen working day period, “the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.” 29 U.S.C. § 659(a). “The Commission has long held that it has the authority under section 10(a) of the Act . . . to grant Rule 60(b) relief from a final order.” *TH Constr. Grp.*, No. 22-0739, 2023 WL 1223909, at \*2 (OSHRC Jan. 24, 2023) (*TH Constr.*) (JX-1, Stips. 12, 13, 14).

On January 18, 2023, the Wilkes Barre, Pennsylvania, Area Office of the Occupational Safety and Health Administration (OSHA) conducted an inspection of Respondent Planet Fitness’s worksite gym, located at 21 Gateway Shopping Center, Edwardsville, Pennsylvania 18704 (Edwardsville’s worksite gym or club). On February 24, 2023, OSHA issued to Respondent, a four-item serious citation, with subparts, and a notification of penalty (citation). (GX-1, JX-1, Stip. 1). The OSHA Area Office sent the citation to Respondent’s Edwardsville worksite gym, by U.S. Postal Service, certified mail, return receipt requested. (JX-1, Stip. 2). The citation was delivered to the Edwardsville worksite gym on February 28, 2023, and the certified mail return receipt (green card) was signed and dated by Respondent front desk associate Grenwis Rivas. (GX-2; JX-1, Stip. 3). Therefore, the 15-working day notice of contest filing period ended on March 21, 2023.

Respondent did not submit a notice of contest, on or before March 21, 2023, the end of the notice of contest filing period. By operation of law the citation was deemed a final order of the Commission. Respondent Counsel submitted a notice of contest to the OSHA Area Director, received by the OSHA Wilkes Barre Area Office, on May 8, 2023. (JX-1, Stips. 6, 7, 8).

On September 5, 2023, Respondent filed with the Commission a Motion for Relief from Judgment, with exhibits,<sup>1</sup> pursuant to Rule 60(b)(1). (Motion) (JX-1, Stip. 9). Respondent contends that it is entitled to relief from judgment, the final order of the Commission, pursuant to Rule 60(b)(1) because its actions constitute “mistake, inadvertence, surprise, or excusable neglect.” (JX-1, Stip. 10).<sup>2</sup> The late notice of contest was received by the Commission on September 5, 2023, and docketed on September 15, 2023.

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<sup>1</sup> Exhibits filed with Respondent’s Motion included, among others, Exhibit D, Respondent’s May 8, 2023, notice of contest.

<sup>2</sup> Respondent does not allege that it is entitled to relief from judgment, pursuant to Federal Rule of Civil Procedure 60(b)(2) through Rule 60(b)(6). (JX-1, Stip. 10).

Complainant, the Acting Secretary of Labor, (Secretary), on October 18, 2023, filed a Response in Opposition to Respondent's Motion (Sec'y Opp'n). The Secretary contends that Respondent, in its Motion, failed to meet its burden of establishing it is entitled to relief pursuant to Rule 60(b). The Secretary contends Respondent's Motion should be denied. On October 26, 2023, Respondent filed a Reply to the Secretary's Opposition to Respondent's Motion, with exhibits, reiterating its request for relief from judgement pursuant to Rule 60(b) (Reply).

A hearing on Respondent's Motion was scheduled for February 2, 2024. The parties engaged in focused written discovery regarding the issues presented in this late notice of contest hearing. *See* November 13, 2023, Notice of Hearing, and Prehearing Order 1-2.

A virtual hearing regarding Respondent's Motion for Relief from Judgment was held on February 2, 2024.<sup>3</sup> The hearing concerned the relevant circumstances surrounding Respondent's late notice of contest, and whether Respondent may receive relief from judgment for the late filed contest, pursuant to Rule 60(b).<sup>4</sup>

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<sup>3</sup> The following witnesses testified at the hearing: former OSHA Compliance Officer (CO) Myron Romanchick; OSHA Wilkes Barre Area Office Director Mary Reynolds; Senior Director of Operations, Process, and Systems for Corporate Clubs Laura Casaletto; Regional Operations Manager Cody Michaels; Edwardsville worksite Club Manager Jessica Rogers; and former Edwardsville worksite front desk associate Grenwis Rivas.

<sup>4</sup> The hearing was not to determine the merits of the citation items. At the hearing, Respondent had the opportunity to state facts supporting any meritorious defense to the citation items issued in this case, concerning OSHA inspection no. 1644162. *See* November 13, 2023, Notice of Hearing, and Prehearing Order; January 16, 2024, Notice of Hearing, and Partially Revised Prehearing Order. (Tr. 216-17).

Further, this was not a hearing on the February 2, 2024 Order to Show Cause that was issued regarding the Secretary's January 30, 2024, Motion for Order to Show Cause why Respondent should not be sanctioned pursuant to Commission Procedural Rules 32, 104(b)(1) and (c) (Sanctions Motion). (*See* Tr. 177-78, 202-03, 119-21). These Commission Procedural Rules are codified at 29 C.F.R. §§ 2200.32, 2200.104(b)(1) and (c). The Order to Show Cause directed Respondent to file a Response to the Secretary's Sanctions Motion, on or before February 23, 2024. The Order to Show Cause included guidance to the parties regarding witness examination during the hearing.

Regarding identified witnesses who testify at the hearing, the undersigned will permit *limited* questioning regarding facts that concern both whether Rule 60(b) relief may be granted, and fact issues raised in the Secretary's Motion [for Sanctions]. For example, inquiry regarding what information a witness knew and recalled, and when that information was shared with others, and with whom. This *limited* inquiry is relevant to the late notice of contest hearing and may be helpful when evaluating the evidence and making fact and credibility resolutions.

February 2, 2024, Order to Show Cause 4. (emphasis in original). (Tr. 119-21).

The issue presented is whether Respondent may receive relief for the May 8, 2023 untimely filed notice of contest, pursuant to Rule 60(b)(1), due to “mistake, inadvertence, surprise, or excusable neglect.”

The Joint Stipulations and the Secretary’s exhibits, in evidence, establish the Secretary’s initial burden that the citation was timely issued, delivered to Respondent’s inspected Edwardsville worksite gym, and Respondent’s contest was late filed. (Tr. 30-33; JX-1, Stips. 1, 2, 5, 6, 7; GX-1, GX-2). Based on the analysis that follows, pursuant to Rule 60(b)(1), Respondent has not met its burden to establish it is entitled to relief from the Commission final order. Therefore, Respondent’s Motion for Relief is denied, and Respondent’s late notice of contest is dismissed.

### *FINDINGS OF FACT*

#### *Respondent and the Edwardsville worksite gym inspected by OSHA*

Planet Fitness has over 2,000 club locations. Ten percent of Planet Fitness Clubs are owned by the corporation, the other Planet Fitness Clubs are franchise locations. (Tr. 83-84). Respondent’s Senior Director Casaletto testified that the Edwardsville worksite gym, inspected by OSHA, is a Planet Fitness Corporate Club.<sup>5</sup> (Tr. 83). The Secretary and Respondent Planet Fitness stipulated that the employer of the employees working at the Edwardsville, PA, worksite inspected by OSHA, in inspection no. 1644162, is Pla-Fit Franchise, LLC.<sup>6</sup> Pla-Fit Franchise, LLC’s principal office is located at 4 Liberty Lane West, Floor 2, Hampton, New Hampshire 03842. (JX-2, Stips. 1-3. *See* JX-1, Stip. 4).

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<sup>5</sup> In the Planet Fitness system, the Edwardsville worksite gym is known as the Kingston location. (Tr. 88-89). It is referred to as the Kingston location in email messages regarding the OSHA inspection. (R-1, R-3.).

<sup>6</sup> *See* February 13, 2024 Order Receiving in Evidence Joint Exhibit JX-2 and Closing the Late Notice of Contest Hearing Record. It was anticipated that Respondent would file an unopposed motion to amend the citation to identify the correct employer as Pla-Fit Franchise, LLC. (Tr. 273-74; JX 2, n.1; R-1, at 2. *See generally*, Tr. 9, 25, 27, 30-31). On February 12, 2024, a conference call was conducted with Counsel for the Secretary Judson Dean, and Respondent Counsel Nick Hulse. During the call, the parties and the undersigned agreed it was premature for the parties to move to amend Respondent’s name on the citation before an Order regarding Respondent’s Motion for Relief was issued and finally resolved.

The management structure for the Planet Fitness Corporate Clubs, at the club level, includes the Club Manager, an Assistant Club Manager, and at most clubs, a Shift Manager.<sup>7</sup> (Tr. 77). The Club Manager reports to a Regional Operations Manager who, in turn, reports to a Director of Operations. (Tr. 77-78, 163-65). At the time of the OSHA inspection, at Respondent's Edwardsville worksite gym, the Club Manager was Jessica Rogers, the Shift Manager was Natasha Heywood, the Regional Operations Manager was Cody Michaels, the Senior Director of Operations, Process and Systems for Corporate Clubs was Laura Casaletto. (Tr. 77-78, 83-84, 102, 163-65, 169-70, 233-34, 239-40). Senior Director Casaletto reported to Director of Operations Tyler Liebmann, and Senior Vice President of Operations Mary Bradley. (Tr. 164-65).

At the time of the OSHA inspection, Regional Manager Michaels was responsible for seven Respondent gym locations, including the Edwardsville worksite gym. (Tr. 169-70). He was responsible for all aspects of the business including hiring managers, training, developing, terminating, reviewing P & L (profit and loss), overseeing daily maintenance, operational goals, safety standard compliance, and member responses. (Tr. 169). Manager Michaels visited the Edwardsville worksite gym between two and four times per month, depending on business needs. (Tr. 170). At a minimum, Manager Michaels visited the Edwardsville worksite gym at least once per month for inspection. *Id.*

At the time of the OSHA inspection, Senior Director Casaletto's job duties included overseeing the systems and processes for the corporate clubs, including for the legal aspects, OSHA inspections. (Tr. 77, 83-84). As safety is considered a part of process, Senior Director Casaletto's team was responsible for safety inspections at the corporate clubs, safety guidance, all training, and guidelines for the clubs. (Tr. 77).

### *The OSHA Inspection*

On January 18, 2023, the OSHA Wilkes Barre Area Office conducted an inspection of the Planet Fitness Edwardsville worksite gym. OSHA Compliance Officer (CO) Myron Romanchick and Assistant Area Director (AAD) James Garringer conducted the inspection. (Tr. 38, 49). At that

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<sup>7</sup> The Planet Fitness Corporate Clubs's management structure, as described by Senior Director Casaletto, is corroborated by Regional Manager Michaels and Club Manager Rogers, and by email messages regarding the OSHA inspection. (R-1, R-3).

time, CO Romanchick was a new OSHA Compliance Officer, and AAD Garringer was training him on the proper way to conduct an inspection. (Tr. 49).

The Edwardsville worksite gym Club Manager Rogers was present when the OSHA CO and AAD (OSHA Compliance Officers) arrived at the gym (Tr. 238). When the OSHA Compliance Officers arrived, Club Manager Rogers contacted Regional Manager Michaels, who promptly arrived at the Edwardsville worksite gym. (Tr. 180-81, 206, 208). Manager Michaels sat down with the OSHA Compliance Officers in the Blackbird Spa and was shown the OSHA complaint. (Tr. 180-81, 206, 208). The focus of the complaint was the worksite back storage room, noting that emergency egress in that room was blocked. (Tr. 181). Manager Michaels took CO Romanchick and AAD Garringer to the back storage room mentioned in the complaint. (180-81, 206, 208). Manager Michaels testified that the storage room is “where we found the violations.” (Tr. 213). CO Romanchick took the inspection photographs and measurements. (Tr. 50). Manager Michaels was present when CO Romanchick measured the large box in the back storage room in front of the exit doors. (Tr. 207-08).

At the end of the January 18, 2023 on-site inspection, Regional Manager Michaels understood from the OSHA Compliance Officers that Respondent would receive the OSHA citation packet, at the earliest, within 15 days or more. (Tr. 186; R-1, at 4. *See* Motion, Ex. C (Casaletto Decl. ¶ 8). Respondent immediately began to address the violations noted and discussed with Respondent’s team, including Manager Michaels, during the OSHA inspection. *Id.* Manager Michaels remedied all the citation items that he could before the OSHA citation packet was received.<sup>8</sup> (Tr. 186). The record reveals this discussion between the OSHA Compliance Officers and Regional Director Michaels, regarding the violations observed and when to expect the OSHA citation packet, was a closing conference.

The OSHA inspection file log of communications, the case diary sheet for inspection no. 1644162, includes the diary entry on January 18, 2023, “[c]onducted inspection of location with the AAD, [o]pening, walkaround, and *closing*. (Tr. 43-44; GX-4) (emphasis added).

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<sup>8</sup> The citation items note “Corrected During Inspection.” (GX-1, at 8-13; R-1, at 4-5). Senior Director Casaletto testified the violations were taken care of within 48 hours of the OSHA inspection. (Tr. 153).

Further, the finding that a closing conference was conducted is supported by contemporaneous email messages exchanged between AAD Garringer and Senior Director Casaletto regarding the OSHA inspection. On the afternoon of the OSHA inspection, January 18, 2023, Senior Director Casaletto sent an email to AAD Garringer stating her understanding from Regional Manager Michaels that Respondent “would not receive a [citation] package for the case for a month and [Respondent] would like to cure any issues at hand immediately.” Further, disclosing that the hazards observed were discussed by the OSHA Compliance Officers with Respondent on January 18, 2023, at the close of the on-site inspection, Senior Director Casaletto’s email states “[w]e do have a Maintenance and Facilities Teams (sic) scheduled to be on site first thing tomorrow to resolve some of the noted violations that were discussed with the team today.” In this email message to AAD Garringer, Senior Director Casaletto also stated, “I would like to work with you directly on this case and will be your main point of contact.” (Tr. 88-90; R-1, at 4-5).

The next day, January 19, 2023, AAD Garringer replied to Senior Director Casaletto’s email, with a copy to CO Romanchick, specifically offering to do *another* closing with Respondent if requested. “I would be happy to do another closing with you [Director Casaletto] or anyone in your company, if that is requested please let me know when and at what number would be best.” (Tr. 159; R-1, at 3.). That same day, January 19, 2023, Senior Director Casaletto replied to AAD Garringer’s email, with a copy to CO Romanchick, providing information and documents requested by OSHA, and stating “I will follow up with another closing if need be.” (Tr. 159; R-1, at 2-3).<sup>9</sup> There is no further email or written communication from Senior Director Casaletto to OSHA “following up” to request another closing.

Senior Director Casaletto’s claim that OSHA never conducted a closing conference regarding this inspection is rejected. (Tr. 91-92). Director Casaletto’s claim that she made an oral

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<sup>9</sup> CO Romanchick recalled communicating through email with Respondent, through Senior Director Casaletto, during the inspection to request documents. He did not recall if he spoke with Director Casaletto on the phone. (Tr. 40). Email messages exchanged between Senior Director Casaletto and AAD Garringer and CO Romanchick, on January 18, 19, and 20, and February 3, 2023, confirm written communication between Senior Director Casaletto and OSHA. (R-1, at 1-5)). The email message at the top of the first page of the email exchange in evidence, between Senior Director Casaletto and AAD Garringer and CO Romanchick, does not include a “sent date.” (R-1, at 1). This email, dated February 3, 2023, also is attached to Respondent’s Motion for Relief, Ex. B, at 1.

request for a closing conference to CO Romanchick is not credited. (Tr. 92). Director Casaletto's testimony in this regard is not corroborated by CO Romanchick<sup>10</sup> or the contemporaneous email correspondence between herself and AAD Garringer, the OSHA representative who offered to conduct another closing. In this proceeding before the Commission, Senior Director Casaletto was an untrustworthy, unreliable witness.<sup>11</sup>

Senior Director Casaletto's claims that she asked CO Romanchick to notify her when the OSHA citation packet was issued, and that CO Romanchick agreed to do so, also are uncorroborated. (Tr. 90-91, 152. *See* Motion, Ex. C (Casaletto Decl. ¶ 7).<sup>12</sup> These claims by Senior Director Casaletto are not credited. As stated above, Director Casaletto's testimony in this proceeding was revealed to be misleading, inaccurate, and untrustworthy.

Senior Director Casaletto's claimed actions after January 18, 2023, disclose her understanding that the OSHA citation had been sent to Respondent's Edwardsville worksite gym, even though she had not received a specific notification from CO Romanchick. Senior Director Casaletto claims she repeatedly inquired of Regional Manager Michaels and Director Liebmann if the OSHA citation packet had been received at the Edwardsville worksite gym. (Tr. 92-94, 153-54). Further, Senior Director Casaletto admits that after the January 18, 2023, on-site OSHA inspection, she did not contact CO Romanchick or anyone from OSHA to inquire whether the

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<sup>10</sup> CO Romanchick testified that he was trained to always conduct a closing conference, so he imagines one was conducted, but he could not be certain. (Tr. 42-43, 53-56, 60-63). At the end of the inspection, before the CO leaves the inspected facility, the CO can choose to do a closing conference or not, to discuss the hazards the CO observed. (Tr. 59-60).

<sup>11</sup> The undersigned observed Senior Director Casaletto testify during the hearing. Her testimony was not direct; it lacked candor. Director Casaletto's testimony was at times evasive, not directly answering the question presented on cross-examination, but rather self-revising the question before answering, and then answering the modified, revised question (Tr. 131, 136-39, 148-49, 153-54) or asking a question in response to a question (Tr. 144-45).

Further, as discussed below in the section entitled Respondent's Motion for Relief from Judgement, Senior Manager Casaletto's August 2023 Declaration included statements that were misleading and inaccurate. Motion, Ex. C (Casaletto Decl. ¶¶ 4, 12).

<sup>12</sup> CO Romanchick testified that OSHA's standard operating procedure was to send the citation to the company in a manila envelope. (Tr. 42). CO Romanchick did not recall if he spoke with Director Casaletto on the phone. (Tr. 40). He did not recall if Director Casaletto asked him to notify her when the OSHA citation was issued. (Tr. 42).



citation had been issued. (Tr. 152). Director Casaletto's failure to do so illustrates Respondent's failure to exercise reasonable diligence to handle and timely respond to the OSHA citation.

### *Condition of the Edwardsville Worksite Gym Back Storage Room*

The Edwardsville worksite gym Club Manager Rogers was present when the OSHA Compliance Officers arrived at the gym on January 18, 2023 (Tr. 238). As Regional Manager Michaels testified the storage room is "where we found the violations." (Tr. 213).

At the time of the OSHA inspection in the worksite back storage room, Club Manager Rogers recalls a large box obstructing the emergency exit doors that had been there for a week and a half.<sup>13</sup> (Tr. 238). Manager Michaels recalled that there was a brief period, between December 2022 and January 2023, when the egress pathway from the back storage room was blocked with belongings, equipment, and some tanning bulbs. (Tr. 184-85, 207). At the time of the OSHA inspection, Manager Michaels was aware that for a couple of weeks, between December 2022 and January 2023, there was a large box, 42 inches by 87 inches, in the back storage room in front of the exit doors. (Tr. 207-09). The large box in the back storage room was part of equipment that had arrived - Synrgy 360. *Id.* Manager Michaels testified that by OSHA standards "it was not a clear, straight path, to the back door egress." (Tr. 184-85). Manager Michaels testified, at that time, employees could still go around to another adjacent back door or exit for egress. (Tr. 185, 207).

Regarding the boxes in the back storage room during the inspection, Club Manager Rogers and Regional Manager Michaels recalled working to get the boxes removed. (Tr. 211, 247). Before the hearing, no one from Respondent asked Club Manager Rogers or Shift Manager Natasha Heywood whether, before the OSHA inspection, they knew there was a large box in front of the exit doors.<sup>14</sup> (Tr. 157, 240, 241).

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<sup>13</sup> In January 2023, Club Manager Rogers and Shift Manager Heywood went into the storage room each day, for about ten minutes. (Tr. 239-40). During the OSHA inspection, Manager Michaels recalled telling the OSHA Compliance Officers that Respondent employees, and management employees, sometimes performed tasks in the back storage room, such as receiving incoming drink shipments and restocking the drink cooler at least once per shift. (Tr. 215-16, 223-24). Restocking the drink cooler took about ten minutes, three to five times a day. (Tr. 216, 224). Manager Michaels told the OSHA Compliance Officers that, at the time of the inspection, he walked through the back storage room probably once a week or once every other week. (Tr. 222).

<sup>14</sup> Senior Director Casaletto knew one of the alleged violations in the citation concerned a large box in front of the storage room exit doors. (Tr. 154). Director Casaletto recalled meeting with Manager Michaels to

At the time of the January 2023 OSHA inspection, Club Manager Rogers and Regional Manager Michaels recalled that a box containing fluorescent light bulbs or tanning light bulbs was present in front of the electrical panels. (Tr. 210-11, 238-39). Manager Michaels was aware that the box containing tanning bulbs had been in front of the electrical panels for over two months. (Tr. 210-11). Manager Michaels knew there was not three feet of clearance in front of the electrical panels. (Tr. 213-14; R-5, at ¶ 3(a)).

### *The OSHA Citation*

On February 24, 2023, OSHA issued to Respondent, a four-item serious citation, with subparts, and a notification of penalty (citation). (GX-1, JX-1, Stip. 1). The citation stated the location of the alleged OSHA violations was the worksite back storage room. The citation items alleged violations of OSHA standards and employee exposure to fire hazards due to the alleged noncompliant width of exit routes, and obstruction of exit routes.<sup>15</sup> The citation items also alleged violations of OSHA standards and employee exposure to electrical hazards, including missing screws on the front cover of the main circuit breaker panel, a breaker slot covered by tape, the main circuit breaker panel not legibly marked, boxes placed in front of the main circuit breaker panel impacting sufficient access and working space about electric equipment, and an unused opening not effectively closed on the B circuit breaker panel.<sup>16</sup> All serious citation items state “Corrected During Inspection.” (GX-1, at 8-13). The total penalty proposed was \$30,134.00. (GX-1, at 8-14). The parties stipulated that the citation was properly and timely issued. (JX-1, Stip. 5).

The OSHA Area Office sent the citation to Respondent’s Edwardsville worksite gym, by U. S. Postal Service, certified mail, return receipt requested. (JX-1, Stip. 2). Respondent knew that the citation would be sent to the Respondent’s Edwardsville worksite gym. (Tr. 90-91). The citation was delivered to Respondent’s Edwardsville worksite gym, on February 28, 2023, and the certified mail return receipt (green card) was signed and dated, by Respondent front desk associate Grenwis

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discuss the citations, during which they discussed the length of time the large box was in front of the exit doors before the OSHA inspection. (Tr. 156-58).

<sup>15</sup> Citation 1, Items 1(a) and 1(b) alleged violations of 29 C.F.R. § 1910.36(g)(2) and 29 C.F.R. § 1910.37(a)(3).

<sup>16</sup> Citation 1, Items 2(a) and 2(b) alleged violations of 29 C.F.R. § 1910.303(b)(2) and 29 C.F.R. § 1910.303(f)(2). Citation I, Item 3 alleged a violation of 29 C.F.R. § 1910.303(g)(1). Citation 1, Item 4 alleged a violation of 29 C.F.R. § 1910.305(b)(1)(ii).

Rivas. (Tr. 257-58, 269-70; GX-2; JX-1, Stip. 3; *See also* Tr. 68-69.).<sup>17</sup> Therefore, the 15-working day notice of contest filing period ended on March 21, 2023.

*After Receipt, the Citation is Misplaced at the Edwardsville Worksite Gym*

On February 28, 2023, when front desk associate Rivas signed for and received the mail containing the OSHA citation, he placed the mail on the back of the circular front desk, where he observed mail was placed. Thereafter, the mail containing the OSHA citation (the citation packet), ended up in the manager's cabinet on a three-tier rack, disregarded, and forgotten in the cabinet, under other documents Club Manager Rogers retained for future reference. (Tr. 197-98, 235-37; R-3).

OSHA Wilkes-Barre Area Director Reynolds sent a letter to Respondent at the Edwardsville worksite gym, dated April 25, 2023, advising that the penalties assessed in the OSHA citation, issued on February 24, 2023, had not been paid and were deemed delinquent. (GX-3). Receipt of the OSHA delinquency letter prompted Club Manager Rogers to look for the OSHA citation at the worksite. (Tr. 196-97, 219, 242-43; GX-3; R-3).

When Club Manager Rogers received the April 25, 2023, OSHA delinquency letter and found the citation packet "hiding in a pile of papers, that [she had] looked over," on May 4, 2023, Manager Rogers in an email sent the citation packet, and the letter from OSHA saying that the penalties were due, to Regional Manager Michaels, as email attachments. (Tr. 185, 195-97, 218-19, 242-43; GX-1; GX-4; R-3). That date, May 4, 2023, Manager Michaels thanked Club Manager Rogers for locating the citation packet, in an email message, with attachments, copied to Director of Operations Tyler Liebmann and Senior Director Laura Casaletto. (Tr. 100-01, 186, 218-22, 236-37, 242-43; GX-1; GX-4; R-3).

Before Club Manager Rogers found the citation packet in the Edwardsville worksite gym manager's cabinet on May 4, 2023, no one had directed her to carefully look everywhere in the gym to see if the OSHA citation had been received and misplaced; she was never directed "to comb the entire gym and look high and low to see if the citation [had] been misplaced somewhere." (Tr. 250).

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<sup>17</sup> The parties stipulated that the signed and dated certified mail receipt (green card), for the mail containing the OSHA citation packet, was not provided by the Secretary to Respondent until after the Motion for Relief was filed in September 2023. (Tr. 141-42, 202; GX-2).

Respondent's failure to direct Club Manager Rogers to do so further illustrates Respondent's failure to exercise reasonable diligence to handle and timely respond to the OSHA citation.

Regional Manager Michaels's testimony that following the January OSHA inspection he would periodically check with Club Manager Rogers to say "hey, have we received anything," is not credited. (Tr. 186).<sup>18</sup> This statement is contradicted by Club Manager Rogers credited testimony that she had not been directed to look for the OSHA citation prior to May 4, 2023. (Tr. 250). In fact, Manager Michaels agreed that receipt of the OSHA delinquency letter was the "trigger" that prompted Club Manager Rogers to search for the OSHA citation. (Tr. 196-97). While Regional Manager Michaels, Senior Director Casaletto, and Director of Operations Liebmann may have been "looking out" for the citation packet, this was not communicated to the Edwardsville worksite gym Club Manager or employees. (Tr. 86, 92-94, 186, 153-54).

After sending the citation packet and the delinquency letter to Manager Michaels, Club Manager Rogers credibly testified that she did not investigate how the citation had "ended-up" in the manager's cabinet.<sup>19</sup> (Tr. 236-37).

Similarly, when Regional Manager Michaels learned that former front desk associate Rivas received the OSHA citation packet and signed the certified mail return receipt (green card), he did not follow-up with Mr. Rivas to learn what happened when the mail containing the citation packet was received at the Edwardsville worksite gym. (Tr. 205-06).

Likewise, once Senior Director Casaletto learned that former front desk associate Rivas signed the certified mail return receipt (green card), when the OSHA citation packet was received

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<sup>18</sup> Regional Manager Michaels's testimony is rejected that following the OSHA inspection employees at the Edwardsville worksite gym "were aware, like, you know, [to] let us know" when the citation packet was received. (Tr. 186). Review of the testimony of Club Manager Rogers and former front desk associate Rivas contradicts this testimony.

Likewise, also rejected is Manager Michaels's hearsay testimony that Club Manager Rogers told him she "informed every employee to be on the lookout" for the citation packet. (Tr. 200-01). Again, Review of the testimony of Club Manager Rogers and former front desk associate Rivas contradicts this testimony.

<sup>19</sup> Also rejected is Manager Michaels's testimony that he took affirmative steps to investigate how the OSHA citation packet "ended up" in the Club Manager's personal "manager's cabinet," by speaking to Club Manager Rogers who allegedly stated "[s]he had asked if anybody had received it or anything like that, direct hand with it" (Tr. 199), as Club Manager Rogers credibly testified she did not conduct an investigation. (Tr. 236-37).

at the Edwardsville worksite gym, she did not make any effort to speak with Mr. Rivas to learn what he did with the OSHA citation mail. (Tr. 148-49, 263). At that time, Director Casaletto had Mr. Rivas's phone number and email address. (Tr. 148-49, 263-64). She did not feel it was necessary to contact Mr. Rivas as Respondent had the citation packet, wanted to address it, and move forward. (Tr. 149).

#### *How Mail was Handled at the Edwardsville Worksite Gym*

Only two witnesses who testified at the hearing were familiar with the actual workplace mail handling training and practices at the Edwardsville worksite gym, Club Manager Rogers, and former front desk associate Rivas. (Tr. 260-63, 267-70).

Senior Director Casaletto had no firsthand knowledge whether the Edwardsville worksite gym employees had received mail handling training. (Tr. 143-47, 151-52). Likewise, Regional Manager Michaels was not involved in mail handling training at the Edwardsville worksite gym. (Tr. 189, 193-94). Manager Michaels had no knowledge whether mail handling procedures were followed or not regarding the OSHA citation packet. (Tr. 199). Manager Michaels had no knowledge whether anyone at the Edwardsville worksite gym was trained regarding what to do if an OSHA envelope came in the mail. (Tr. 200).

During visits to the Edwardsville worksite gym, approximately ten times prior to the OSHA inspection, Manager Michaels observed the mail carrier come in the worksite gym front doors and hand mail to a team member – a manager or an employee <sup>20</sup>– who then placed the mail on the back counter, in the same location, by the Purple Book. (Tr. 191-93).

Mr. Rivas credibly testified that during the time he worked at the Edwardsville worksite gym, as a front desk associate, he never received any training on specific mail handling procedures.<sup>21</sup> (Tr. 262). He never received training that some kinds of mail were more important than other kinds of mail and should be handled differently. He was never told that mail from OSHA

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<sup>20</sup> Senior Director Casaletto testified that managers and employees, at the corporate club locations, are referred to as “team members.” (Tr. 136-37, 146, 162).

<sup>21</sup> In the summer of 2023, Mr. Rivas left employment at Respondent's Edwardsville worksite gym on good terms. (Tr. 258, 265). When he testified, Mr. Rivas was a former employee of Respondent. (Tr. 257). Mr. Rivas was a credible, careful, thoughtful witness. Mr. Rivas did not exaggerate, guess, or speculate when answering questions on direct or cross-examination. His testimony is fully credited.

or the federal government should be handled differently. In fact, in February 2023 when the citation packet was received at the Edwardsville worksite gym, Mr. Rivas did not know what OSHA was. Mr. Rivas had no recollection of receiving mail, with an envelope from OSHA or the Department of Labor. (Tr. 262-63, 267).

As Mr. Rivas had not received training on mail handling procedures, he picked up how to handle the mail from observing what other employees did when receiving mail. (Tr. 262). Mr. Rivas described how he handled mail, when he worked at the Edwardsville worksite gym front desk. When a mail carrier came into the Edwardsville worksite gym, the mail carrier would hand the mail to the first person at the front desk. Mr. Rivas, or another front desk employee, would put the mail in the same spot, where everyone could see it, on the back of the circular front desk. (Tr. 260-63). Mr. Rivas placed the mail each time in the same location. (Tr. 267).

Club Manager Rogers's description of the "on-hand" training regarding mail handling, for Edwardsville worksite gym employees behind the desk, was very general. (Tr. 234). Club Manager Rogers described this general "on-hand" training regarding mail as follows:

when the mailman brings the mail in . . . we do tell them when you receive mail, if it's a letter from a member, we can go ahead and open it and cancel the membership, because those are time-sensitive. Everything else gets put on our back counter for management to sort through to make sure we know it's going to where it needs to go or, if it's junk mail, to get thrown out and things like that.

(Tr. 234. *See* Tr. 237-38). Member letters are identifiable as they are hand-written. (Tr. 237-38).

Prior to the inspection at the Edwardsville worksite gym, Manager Michaels did not see "a basket or a box or some sort of intake container where mail was placed by team members." (Tr. 191). This testimony is corroborated by Club Manager Rogers and former front desk associate Rivas who both testified that mail was simply piled on the back counter of the front desk, with no mention of a basket, box, or intake container. (Tr. 234, 237-38, 260-63, 267). Senior Director Casaletto's contrary testimony that she "personally saw the mail collection bin" at the Edwardsville worksite gym, prior to the OSHA inspection, is rejected as not credible. (Tr. 99-100).

To summarize, the general "on-hand" training was to pile all mail on the back counter of the front desk, including junk mail, with the sole exception of handwritten letters to cancel membership. There was no instruction regarding how to handle important mail, such as mail from

the government, OSHA, or the Department of Labor. Club Manager Rogers would go through the mail on the back counter, including the junk mail that she would throw out. (Tr. 237-38).

Even this very general “on-hand” discussion regarding mail handling was not provided to all front desk associates at the Edwardsville worksite gym. As stated above, former front desk associate Rivas credibly testified that he received no mail handling training while working at the Edwardsville worksite gym. Mr. Rivas’s testimony is un rebutted. (Tr. 262). Respondent did not call any employee or management witness to corroborate Club Manager Rogers’s testimony that this very general “on-hand” mail-handing training had been provided. The undersigned finds that all Edwardsville worksite team members – employees and managers – did not receive this very general “on-hand” mail-handling training. As all team members did not receive, even this general “on-hand” mail-handling training, it was foreseeable that important mail such as the OSHA citation packet would be misplaced, overlooked.

Respondent’s narrowly targeted question<sup>22</sup> to Club Manager Rogers whether “an employee [had ever] place[d] mail in the manager’s cabinet” is unhelpful.<sup>23</sup> (Tr. 234). A far more relevant question would have been whether in the three years she worked as the Edwardsville Club Manager, important mail such as letters or documents from government agencies, or legal documents, had been misplaced, lost, or forgotten, causing Respondent’s delayed response to the mail received. That inquiry was not asked or answered.

#### *Respondent’s Guidance Regarding OSHA Inspections and Corporate Club Correspondence*

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<sup>22</sup> Respondent asked Director Casaletto a similar narrowly targeted question. The question asked of Director Casaletto was “has there ever been a piece of mail from a government agency that was *lost like the packet in this case*.” (Tr. 102, emphasis added). The question’s purposeful focus “*lost like the packet in this case*,” mirrors the Respondent’s narrowly targeted question to Club Manager Rogers discussed in the text above. (Tr. 234). The far more relevant question regarding whether important mail had been misplaced, lost, or forgotten, causing Respondent’s delayed response to the mail received, was not asked of Director Casaletto or Club Manager Rogers. This purposefully limited testimony is unhelpful. As discussed above, Director Casaletto was an untrustworthy, unreliable witness.

<sup>23</sup> When Club Manager Rogers engaged in a search for the OSHA citation packet, the packet was found in the manager’s cabinet, where Club Manager Rogers keeps her personal belongings. (Tr. 252-53). It was Club Manager Rogers’s idea to search the three-tier rack in the manager’s cabinet where she retained documents for future reference, as a likely location for the misplaced OSHA citation packet. (Tr. 197-98, 235-36; R-3). Club Manager Rogers testified that “really just the Shift Leader, Assistant Manager, and [Club Manager]” have personal belongings in the manager’s cabinet. (Tr. 252-53). “[N]obody really goes in there for anything because it’s just [the Club Manager’s] personal belongings.” (Tr. 253).

The Purple Book<sup>24</sup> is a printed, spiral-bound, communication book delivered quarterly to each corporate club location, including the Edwardsville worksite gym. All Regional Managers and Club Managers have this book. (Tr. 79-80, 82-83, 85, 161, 178, 251). The Purple Book is used to train managers. (Tr. 82, 86). Included in the Purple Book is a section named A Guide for OSHA Inspections: What Happens When? (Tr. 78-79; R-7). Senior Director Casaletto testified that Regional Managers and Club Managers receive training on handling OSHA inspections. (Tr. 78). This OSHA Inspection Guide provides no instruction or guidance regarding OSHA citations, or the receipt of OSHA mail or citation packets. (Tr. 160; R-7).

Also included in the Purple Book is a page entitled Corporate Club Legal Correspondence Guidelines, which discusses letters from attorneys, bankruptcy notices, and court documents, including subpoenas and lawsuit complaints. (Tr. 84-86; R-6). Senior Director Casaletto testified this correspondence guideline also concerns member cancellation letters. *Id.* Director Casaletto testified that these corporate level mail handling procedures had been in place since before the OSHA inspection in January 2023. (Tr. 102). Director Casaletto could not confirm that this document was shared with employees at the Edwardsville worksite gym, as she was not at the worksite and had no firsthand knowledge. (Tr. 159-60). During on-boarding, Club Managers receive training on this document. (Tr. 86). The Corporate Club Legal Correspondence Guidelines document does not mention correspondence from OSHA or the Department of Labor, or receipt of OSHA citations. (R-6).

#### *Edwardsville Worksite Gym Monthly Safety Evaluations*

In 2022 and 2023 Club Manager Rogers conducted a Safety Evaluation of the Edwardsville workplace each month, typically during the first week.<sup>25</sup> (Tr. 172-76, 243-45. *See* Tr. 170, 177-78). Club Manager Rogers would walk through the Club and complete a basic checklist on the monthly Safety Evaluation. (Tr. 244-45; R-5). Respondent submitted into evidence a “sample” or exemplar, blank July [year unstated] Safety Evaluation form. (Tr. 170-79, 244-47, 251; R-5). The sample blank Safety Evaluation form is from the Purple Book, kept at Respondent’s corporate locations.

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<sup>24</sup> The Purple Book pages, at the bottom, contain the notation Manager’s Red Book, identifying the company that creates the documents for Respondent included in the Purple Book. (Tr. 251; R-5, R-6, R-7).

<sup>25</sup> Club Manager Rogers conducted ninety percent of the monthly Safety Evaluations, occasionally, the Club Assistant Manager or Shift Leader conducted the Safety Evaluation. (Tr. 245).



(Tr. 170-80; R-5). Respondent offered the blank form into evidence to support Respondent's claim regarding "the defenses that the company would have to show lack of constructive knowledge and / or actual knowledge of any alleged violations or hazards." (Tr. 175).

The monthly Safety Evaluation form includes evaluation of Emergency Exits (Section 6) and Electrical and IT Rooms, including three feet of clearance in front of electrical panels, circuit breakers properly identified and labeled, and cover plates on junction boxes (Section 3, items a, d, and e). (Tr. 246-49; R-5). Club Manager Rogers testified that when completing the monthly Safety Evaluations, she did not open the electrical panels, as it was potentially unsafe, as she did not know anything about electricity.<sup>26</sup> (Tr. 249). She did make sure there wasn't anything in front of the electrical panels. (Tr. 247).

Prior to the January 2023 OSHA inspection, Regional Manager Michaels was not aware of issues regarding alleged electrical hazards, including the electrical circuit breaker missing screws, the breaker slot being covered by tape, the main circuit breaker panel not being legibly marked, and unused openings in the circuit breaker panel not being properly closed. (Tr. 181-82). During the OSHA inspection, Manager Michaels told the OSHA investigators that the Edwardsville worksite gym had been renovated in 2017, and the condition of the electrical panels had remained the same since the 2017 renovation until the time of the January 2023 OSHA inspection.<sup>27</sup> (Tr. 214).

Club Manager Rogers recalls monthly Safety Evaluations were done and the Safety Evaluation forms were completed in October, November, the first week of December 2022, and January 2023. (Tr. 243-44, 252). Club Manager Rogers completes the monthly Safety Evaluation forms, by hand, and keeps them in hard copy at the Edwardsville Club, including the evaluation forms completed for December 2022, and January 2023 when the OSHA inspection was conducted. (Tr. 176-80, 252). These completed, relevant, monthly Safety Evaluation forms were not offered

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<sup>26</sup> Respondent's facilities technician Michael Kunkle sometimes worked at the Edwardsville worksite gym. (Tr. 225, 227-28). Regional Manager Michaels testified if someone needed to go into the electrical panel, to the breakers, it would be either Mr. Kunkle or the electrician vendor. (Tr. 225-26).

<sup>27</sup> Regional Manager Michaels testified that based on Respondent's sample month Safety Evaluation form, every month, since 2017, the electrical panels should have been inspected, and the items on the form in paragraph 3, Electrical and IT Rooms, should have been examined. (Tr. 214-15; R-5, ¶ 3(a) (three feet of clearance in front of electrical panels, (d) (circuit breakers properly identified and labeled), (e) (cover plates on the junction boxes in place), (f) (all electrical (including light fixtures) protected by enclosure / guard).

into evidence by Respondent to support Respondent's claimed defense of "no knowledge" of the alleged violations stated in the citation items.<sup>28</sup>

*Respondent's Motion for Relief from Judgment*

On September 5, 2023, Respondent's Motion for Relief from Judgment pursuant to Rule 60(b)(1) was filed. (JX-1, Stip. 9). Respondent contends that it is entitled to relief from judgment, the final order of the Commission, pursuant to Rule 60(b)(1) because its actions constitute "mistake, inadvertence, surprise, or excusable neglect." (JX-1, Stip. 10). Filed with Respondent's Motion was Exhibit C, the August 30, 2023 Declaration of Senior Director Casaletto (Casaletto Decl.). Respondent's Motion relies on the fact statements included in Director Casaletto's Declaration, including alleged instructions to team members at Planet Fitness centers regarding the handling of OSHA-related correspondence. Motion 3-4, (Casaletto Decl. ¶¶ 11, 12).

In the Declaration, Director Casaletto stated she was "capable of making this declaration, and personally acquainted with the facts stated herein."<sup>29</sup> (Casaletto Decl. ¶ 1). Statements included in Director Casaletto's signed Declaration were revealed at the hearing to be misleading and inaccurate. At the hearing, during cross-examination of Director Casaletto, it was revealed that Director Casaletto signed the Declaration without firsthand knowledge, without "being personally acquainted," with fact statements regarding what, if any, mail handling instruction and training was provided to Respondent's employees at the Edwardsville worksite gym. In fact, there is no evidence that Respondent's employees at the Edwardsville worksite gym received any instruction or training regarding OSHA or OSHA mail. (Tr. 119-20, 133, 135-36, 139-47, 151-52, 159-60; Motion, Ex. C (Casaletto Decl. ¶¶ 4, 12). For example, Director Casaletto's Declaration states, in part:

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<sup>28</sup> Manager Michaels testified that if a safety walk-through had been done and a Safety Evaluation form had been completed during the time the large box containing part of the Synrgy 360 equipment was in the back storage room in front of the exit doors, it would have been marked on the Safety Evaluation form. (Tr. 209-10). Similarly, Manager Michaels testified that if a Safety Evaluation form had been completed during the two months prior to the January 2023 safety inspection, the box of tanning bulbs, present for over two months in front of the electrical panels, in the back storage room, would have been included on the Safety Evaluation form. (Tr. 210-11). The absent Safety Evaluation forms during the period surrounding the January 2023 OSHA inspection are directly relevant to Respondent's alleged meritorious defense.

<sup>29</sup> Director Casaletto's Declaration includes the statement "I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746(2) [Unsworn declarations under penalty of perjury]." (Casaletto Decl. ¶ 14).

As the Senior Director of Operations Process and Systems, mail related to OSHA matters is sent to me. *The employees who work at individual fitness centers and receive mail know this and direct such mail to my attention.* (Casaletto Decl. ¶ 4) (emphasis added).

See Motion 3-4, 9. (Tr. 143).

*Team members are trained on navigating OSHA inspections.*<sup>30</sup> *This training includes training team members and management to provide all OSHA-related items to me.* (Casaletto Decl. ¶ 12) (emphasis added).

See Motion 3-4, 9; Resp't Reply 2. (Tr. 136, 138-39).

The credible record evidence reveals the statements in Senior Director Casaletto's Declaration, set forth above in italics, are inaccurate and misleading. At the hearing, Director Casaletto admitted she did not have firsthand knowledge whether the Edwardsville worksite gym employees had received mail handling training. (Tr. 143-47, 151). Director Casaletto admitted that she had no firsthand knowledge that the employees at the Edwardsville worksite gym knew to send OSHA mail to her. (Tr. 145). Rather, she included these fact statements in her August 2023 Declaration based on a conversation with Manager Michaels "that training was complete at the [Edwardsville] club," that "the teams [all employees] are trained and understand the mail process." (Tr. 145-46, 151).

In fact, Regional Manager Michaels did not corroborate Senior Director Casaletto's testimony in this regard. Manager Michaels was not involved in mail handling training at the Edwardsville worksite gym. (Tr. 189, 193-94). Manager Michaels had no knowledge whether mail handling procedures were followed or not regarding the OSHA citation packet. (Tr. 199). Manager Michaels had no knowledge whether anybody at the Edwardsville worksite gym was trained regarding what to do if an OSHA envelope came in the mail. (Tr. 200).

Further, Club Manager Rogers's testimony contradicted Director Casaletto's Declaration statements set forth above. Club Manager Rogers's testimony contradicted Director Casaletto's testimony that non-management, hourly employees are trained how to handle OSHA related mail, to make sure the club manager received OSHA-related mail. (Tr. 138-39). Club Manager Rogers's

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<sup>30</sup> Senior Director Casaletto testified that the term "team members" includes management and non-management employees. (Tr. 136-37, 146, 161-62).

description of the “on-hand” mail-handling training for Edwardsville worksite gym employees working behind the desk, was very general. (Tr. 234). The general “on-hand” training was to pile all mail on the back counter of the front desk, including junk mail, with the sole exception of handwritten letters to cancel membership. How to handle important mail, mail from the government, mail from OSHA, was not mentioned. (Tr. 237-38).

Relying on Senior Director Casaletto’s inaccurate and misleading declaration statements in its Motion for Relief, Respondent asserts that “Planet Fitness has an established procedure for how OSHA-related items are received and distributed.” Motion 9. Respondent also asserts that the late notice of contest filing “was an isolated incident of certified mail involving an OSHA-matter not being promptly provided to Ms. Casaletto, despite being trained to do so.” *Id.* Respondent asserts “[t]he evidence shows that the issue was an isolated incident, and what resulted was certainly not so inexcusable as to deny Planet Fitness its day in court.” *Id.* Respondent requests that the Motion for Relief be granted pursuant to Rule 60(b).

Respondent’s legal analysis in support of its Motion for Relief pursuant to Rule 60(b)(1) due to “excusable neglect,” is reiterated in Respondent’s Reply to the Secretary’s Opposition, and in Respondent’s Post Hearing Brief. Motion 6-9; Reply 2; Resp’t Br. 6-12. Respondent’s legal analysis is discussed below.

#### *Secretary’s Response in Opposition to Respondent’s Motion*

On October 18, 2023, the Secretary filed a Response in Opposition to Respondent’s Motion (Sec’y Opp’n). The Secretary contends that Respondent, in its Motion, failed to meet its burden of establishing it is entitled to relief pursuant to Rule 60(b)(1) due to excusable neglect. The Secretary asserts that Respondent’s Motion “provided no evidence regarding how or why the citation was not discovered until well after the 15-day contest period.” Sec’y Opp’n 4, 8. Importantly, “Respondent has not produced any specific evidence to establish that it had adequate procedures for handling mail or to establish that the citation was mishandled and temporarily lost for reasons beyond the company’s reasonable control.” Sec’y Opp’n, 6. *See* Sec’y Opp’n 1-2, 4-5, 8. The Secretary contends Respondent’s Motion should be denied.

The Secretary's legal analysis in support of its Opposition to Respondent's Motion is reiterated in the Secretary's Post Hearing Brief. Sec'y Opp'n 2-3, 6-7; Sec'y Br. 1-7, 12-16, 19-20. The Secretary's legal analysis is discussed below.

*Respondent's Reply to the Secretary's Opposition*

Again, in Respondent's October 26, 2023 Reply to the Secretary's Opposition, Respondent relies on the fact statements included in Senior Director Casaletto's Declaration, including alleged instructions to team members at Planet Fitness centers regarding the handling of OSHA-related correspondence. Reply 2, (Casaletto Decl. ¶¶ 12, 13). "Respondent has put forth evidence that 'team members who work at Planet Fitness fitness centers are instructed to provide all OSHA-related correspondence to management, who are responsible for providing all OSHA-related items to Ms. Casaletto.' " Reply 2 (Casaletto Decl. ¶ 12). As stated above, these statements in Senior Director Casaletto's Declaration are misleading and inaccurate.

*Focused Written Prehearing Discovery, Secretary's Sanctions Motion, Respondent's Response in Opposition*

A hearing on Respondent's Motion for Relief was scheduled for February 2, 2024. The parties engaged in focused written discovery regarding the issues present in the late notice of contest hearing. See November 13, 2023, Notice of Hearing, and Prehearing Order 1-2.

During prehearing discovery, on January 30, 2024, the Secretary filed a Motion for Order to Show Cause why Respondent should not be sanctioned pursuant to [Commission] Procedural Rules 32, 104(b)(1), and 104(c), together with exhibits and a proposed order. (Sanctions Motion). These Commission Procedural Rules are codified at 29 C.F.R. §§ 2200.32, 2200.104(b)(1) and (c). The Secretary asserts that Respondent included misleading and / or inaccurate factual claims in Respondent's September 5, 2023 Motion for Relief from Judgment, with attachments, and in Respondent's January 5, 2024 First Supplemental Interrogatory Response to the Secretary's interrogatory requests, served prior to the February 2, 2024, hearing regarding Respondent's Motion for Relief. Sanctions Motion 1-6.

In response to the Secretary's Sanctions Motion, the next day, January 31, 2024, less than two full days before the Friday, February 2, 2024, hearing, Respondent filed its Second

Supplemental Interrogatory Response, signed by Respondent Counsel Travis Vance. Resp't Response, Ex. 10 (Resp't Second Suppl. Interrog. Resp. 4-10, ¶¶ 5, 12, 13, 14, 15).

On February 2, 2024, an Order to Show Cause was issued directing Respondent to file a Response to the Secretary's Sanctions Motion.<sup>31</sup>

On February 23, 2024, Respondent filed a Response in opposition to the Secretary's Sanctions Motion, together with exhibits and Respondent Counsel's Declaration (Vance Decl.). (Resp't Response). Respondent requests that the Sanctions Motion be denied. Respondent asserts its actions were in good faith and complied with Commission Procedural Rules 32, 104(b)(1) and (c). Respondent concedes that Respondent's January 5, 2024 First Supplemental Interrogatory Response to the Secretary's interrogatory requests includes an inaccurate statement. That said, Respondent contends its interrogatory response followed a good faith investigation and does not evidence bad faith. Respondent contends it acted in good faith and complied with Commission Rules 32, 104(b)(1) and (c). Respondent contends the extreme sanctions requested in the Sanctions Motion are not warranted. Resp't Response 1-2, 9-10, 19.

#### *Order Denying Secretary's Motion for Sanctions*

An Order Denying the Secretary's Motion for Sanctions was issued on December 19, 2024. (Sanctions Order). The Sanctions Order stated that the credible record evidence revealed statements in Senior Director Casaletto's Declaration, Exhibit C attached to Respondent's Motion for Relief, were inaccurate and misleading. Sanctions Motion 21-24, Motion, Ex. C (Casaletto Decl. ¶¶ 4, 12). Sanctions Order 21-23. Director Casaletto's Declaration is discussed above, in the section Respondent's Motion for Relief from Judgment.

The Sanctions Order also found that inaccurate and misleading fact statements were included in Respondent's January 5, 2024 First Supplemental Interrogatory Response to the Secretary's interrogatory requests. Sanctions Order 23-27. In response to the Secretary's interrogatory request regarding what happened to the OSHA citation after it was delivered to the

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<sup>31</sup> The Order to Show Cause was issued on February 1, 2024, and re-issued to the parties on February 2, 2024, to correct an inadvertent date error on page 4. (Tr. 119).

worksite, Respondent's January 5, 2024 First Supplemental Interrogatory Response, to Interrogatory No. 5, states, in part:

[T]he Citation and Notification of Proposed Penalty was signed for by Grenwis Rivas. At the time the Citation and Notification of Proposed Penalty was signed for by Grenwis Rivas, the Club Manager, Jessica Rogers, was not working. *The club has a designated section on a shelf in the Club Manager's office where all mail is placed. On the day, the Citation was delivered, Grenwis thought the Citation was something more important than general mail, so he took it upon himself to put the packet in the Club Manager's personal section, where she keeps her personal belongings.*

Sanctions Motion 2-5, Ex. A (Resp't First Suppl. Interrog. Resp. 5-6, ¶ 5, and 9-10, ¶ 12) (emphasis added).

Respondent concedes that Respondent's January 5, 2024 First Supplemental Interrogatory Response to the Secretary's interrogatory requests includes an inaccurate statement. As an explanation regarding how the inaccurate statement about Mr. Rivas's "beliefs," "motivations," and "actions" were included in Respondent's First Supplemental Interrogatory Response, to Interrogatory No. 5, Respondent states "within an accurate response, a presumption about why an employee deviated from normal mail-handling procedures was told and retold until it was presumed to be a fact." Resp't Response 2, 9, 10.

As stated in the Sanctions Order, it is noteworthy, that Respondent's January 5, 2024 First Supplemental Interrogatory Response includes another inaccurate fact statement. The Secretary's Interrogatory No. 15 asked Respondent to "[d]escribe in detail any efforts taken by Respondent, after Mr. Michaels and the club manager came across the citation packet, to determine why the citation packet was not properly handled when it was delivered to the worksite, and explain all information gathered as a result of these efforts." In response, Respondent inaccurately stated that "Respondent investigated the circumstances by *discussing the matter with* Jessica Rogers, Cody Michaels and *Grenwis Rivas*. The investigation determined the facts described above regarding the delivery of the Citation packet." Sanctions Motion, Ex. A (Resp't First Suppl. Interrog. Resp. 11, ¶ 15) (emphasis added). This statement was inaccurate. No one from Respondent or Respondent Counsel had spoken to Mr. Rivas. Sanctions Order 24-27.

Former front desk associate Rivas received and signed for the OSHA citation packet at the Edwardsville worksite gym on February 28, 2023. At the hearing, Mr. Rivas testified that since February 28, 2023, no one from Respondent Planet Fitness asked him what mail handling training, if any, he received while working at the Edwardsville worksite gym. No one from Respondent Planet Fitness asked him if he recalled receiving an envelope from OSHA or the Department of Labor. (Tr. 263; Sanctions Motion Ex. B (Rivas Decl. ¶ 14)).

The Sanctions Order noted that on January 31, 2024, Respondent filed its Second Supplemental Interrogatory Response, signed by Respondent Counsel Travis Vance. Resp't Response, Ex. 10 (Resp't Second Suppl. Interrog. Resp. 4-10, ¶¶ 5, 12, 13, 14, 15). In marked contrast to Respondent's First Supplemental Interrogatory Response, Respondent's description of "what happened" to the OSHA citation packet after it was received at the Edwardsville worksite gym, no longer included a description of front desk associate Grenwis Rivas's "thoughts," "motivations," and "specific actions." Resp't Response 7-9, Ex. 10 (Resp't Second Suppl. Interrog. Resp. 4-5, ¶ 5, and 5-7 ¶ 12). Sanctions Order 10-12.

Further, in Respondent's Second Supplemental Interrogatory Response, Respondent revised its response describing Respondent's efforts to determine why the citation packet was not properly handled, when received at the worksite, deleting its prior statement that Respondent investigated the circumstances by discussing the matter with Grenwis Rivas. Resp't Response 9, Ex. 10 (Resp't Second Suppl. Interrog. Resp. 9-10, ¶ 15).

The Order Denying Secretary's Motion for Sanctions found that Respondent's actions in filing the Motion for Relief, with Director Casaletto's Declaration, including inaccurate and misleading statements, and Respondent's First Supplemental Interrogatory Responses, including inaccurate and misleading statements regarding a discussion with former Respondent front desk associate Grenwis Rivas, and imagined "assumptions" set forth as "facts," did not reflect a reasonable inquiry or good-faith investigation by Respondent. Inclusion of the inaccurate and misleading factual claims and assertions in these documents was inconsistent with the Commission Rule 32 requirement that documents, formed after a reasonable inquiry, are well grounded in fact. The inaccurate and misleading statements set forth by Respondent in these documents are central to the applicable equitable analysis when a Respondent requests relief for a late filed notice of contest. In filing these documents, Respondent's actions did not reflect good faith. That said,



reviewing Respondent's overall conduct in this Commission proceeding, the undersigned did not find that Respondent's actions rose to the level of contumacious conduct warranting the extreme sanctions requested by the Secretary. Sanctions Order 21-30. Therefore, the Secretary's Sanctions Motion was denied.

#### *ANALYSIS*

##### *Respondent's May 8, 2023, notice of contest was not timely filed*

Pursuant to section 10(a) of the Act, after receipt of a citation, an employer has "fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty." If the employer fails to file a notice of contest within the fifteen working day period, "the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency." 29 U.S.C. § 659(a).

On February 24, 2023, OSHA issued to Respondent, a four-item serious citation, with subparts, and a notification of penalty (citation). (GX-1, JX-1, Stip. 1). The OSHA Area Office sent the citation to Respondent's Edwardsville worksite gym, by U.S. Postal Service, certified mail, return receipt requested. (JX-1, Stip. 2). The citation was received at Respondent's Edwardsville worksite gym, on February 28, 2023. (GX-2; JX-1, Stip. 3). Therefore, the 15-working day notice of contest filing period ended on March 21, 2023.

Respondent did not submit a notice of contest on or before March 21, 2023, the end of the notice of contest filing period. By operation of law the citation was deemed a final order of the Commission. Respondent Counsel submitted a notice of contest to the OSHA Area Director, received by the OSHA Wilkes Barre Area Office, on May 8, 2023. (JX-1, Stips. 6, 7, 8).

The Joint Stipulations and the Secretary's exhibits, in evidence, establish the Secretary's initial burden that the citation was timely issued, delivered to Respondent's inspected Edwardsville worksite gym, and Respondent's contest was late filed. (Tr. 30-33; JX-1, Stips. 1, 2, 5, 6, 7; GX-1, GX-2).

The Secretary's initial burden to establish grounds to dismiss Respondent's May 8, 2023 late notice of contest is established. The burden shifts to Respondent to establish a basis for relief from the final order under Rule 60(b)(1). Respondent has not met its burden. *See Taj Mahal*

*Contracting*, 20 BNA OSHC 2020, 2022 (No. 03-1088, 2004); *Kerr-McGee Chem. Corp.*, 4 BNA OSHC 1739, 1740 (No. 9890, 1976).

*Respondent may not receive relief under Rule 60(b)(1) for Respondent's May 8, 2023, late filed notice of contest*

An employer who has filed an untimely notice of contest may be granted relief under Rule 60(b) in certain circumstances. *George Harms Constr. Co. v. Chao*, 371 F.3d 156 (3d Cir. 2004) (*George Harms*). It is the moving party's burden to show that it is entitled to Rule 60(b) relief. *See Burrows Paper Corp.*, 23 BNA OSHC 1131, 1132 (No. 09-1559, 2010); *NYNEX*, 18 BNA OSHC 1967, 1970 (No. 95-1671, 1999). *See also Cox v. Horn*, 757 F.3d 113, 122 (3d Cir. 2014). (JX-1, Stip. 15). Sec'y Opp'n 1-4, 8; Sec'y Br. 2-3.

Both parties filed Post Hearing Briefs. The legal contentions raised by each party have been carefully reviewed and considered. In Respondent's Motion for Relief, Respondent contends that it is entitled to relief from judgment, pursuant to Rule 60(b)(1), because its actions constitute "mistake, inadvertence, surprise, or excusable neglect." (JX-1, Stip. 10), Resp't Br. 6-12. The Secretary contends that Respondent's Motion should be denied because Respondent failed to meet its burden of establishing it is entitled to relief for its untimely filed notice of contest, due to excusable neglect pursuant to Rule 60(b)(1). Sec'y Br. 1-5.

The Secretary and Respondent agree, when determining whether a party is entitled to relief pursuant to Rule 60(b)(1) due to "excusable neglect," the applicable equitable analysis is stated by the Supreme Court in *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 393 (1993) (*Pioneer*). Motion 5; Sec'y Opp'n 2; Sec'y Br. 2; Resp't Br. 7. The *Pioneer* analysis considers all relevant circumstances surrounding the party's omission, including [1] the danger of prejudice to the opposing party, [2] the length of the delay and its potential impact on the proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the party seeking relief, and [4] whether the party seeking relief acted in good faith. *Pioneer*, 507 U.S. at 395. *See Evergreen Envtl. Serv.*, No. 16-1295, 2017 WL 6806225, at \*2 (OSHRC, Oct. 12, 2017) (*Evergreen*).

The Supreme Court stated that "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect." *Pioneer*, 507 U.S. at 392. The Court found

“excusable neglect” to be, in part, an “elastic concept” not restricted to “omissions caused by circumstances beyond the control of the movant.” *Id.* Regarding relief sought pursuant to Rule 60(b), the Court stated that “‘excusable neglect’ is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence.” *Id.* at 394.

Long-settled Commission precedent focuses on the third factor in the *Pioneer* equitable analysis. Evaluating a request for relief for a late filed notice of contest due to excusable neglect, Commission precedent states that a “key factor” is “the reason for the delay, including whether it was within the reasonable control of the movant.” *CalHar Constr., Inc.*, 18 BNA OSHC 2151, 2153-54 (No. 98-0367, 2000). In appropriate circumstances, the Commission finds this to be the dispositive factor. Commission decisions state that “[e]mployers must maintain orderly procedures for handling important documents,” and when the lack of such procedures results in the untimely filing of a notice of contest, Rule 60(b) relief is not warranted. *A.W. Ross, Inc.*, 19 BNA OSHC 1147, 1148-49 (No. 99-0945, 2000).

Commission precedent distinguishes between cases where “an employer’s deficient procedures lead to a delay in filing [the notice of contest] and [cases where] there is an unforeseeable misunderstanding or miscommunication that results in a delay despite the company’s otherwise sufficient procedures.” *Burlington Cap. PM Grp., Inc.*, No. 20-0528, 2020 WL 13610776 at \*2 (OSHRC Dec. 31, 2020) (*Burlington*). Compare *Villa Marina Yacht Harbor Inc.*, 19 BNA OSHC 2185, 2187 (No. 01-0830, 2003) (Denying relief where employer did not have orderly procedures in place for handling important documents and / or employer’s messenger who mishandled mail was not properly supervised); *La. – Pac. Corp.*, 13 BNA OSHC 2020, 2021 (No. 86-1266, 1989) (Denying relief where the citation was “lost in the shuffle” during a management change. Even during a management transition orderly procedures for handling important documents must be maintained.); *Stroudsburg Dyeing & Finishing Co.*, 13 BNA OSHC 2058, 2058 (No. 88-1830, 1989) (“The failure of the Stroudsburg employee who received the citation to bring it to the attention of the proper officer of the company does not constitute ‘excusable neglect’ ”); *with Evergreen*, 2017 WL 6806225, at \*2-3 (Granting relief where employer had adequate procedures in place to handle and direct the citation when received. The delayed notice of contest filing was due to a “temporary crisis,” an unforeseen office water damage event, requiring the temporary relocation of office papers, including the citation).

The Secretary contends the correct equitable analysis applicable to this case is stated in the long-settled Commission precedent that focuses on the third *Pioneer* factor “the reason for the delay, including whether it was within the reasonable control of the movant.” Sec’y Opp’n 2-3, 6-7; Sec’y Br. 1-2,7.

When evaluating whether a party is entitled to relief pursuant to Rule 60(b)(1) due to “excusable neglect,” many circuit courts focus on the third factor in the *Pioneer* equitable analysis, “the reason for the delay, including whether it was within the reasonable control of the movant.” *Pioneer*, 507 U.S. at 395.<sup>32</sup>

The four *Pioneer* factors do not carry equal weight; the excuse given for the late filing must have the greatest import. While prejudice, length of delay, and good faith might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry . . . [A]t the end of the day, the focus must be upon the nature of the neglect.

See *Hosp. del Maestro v. NLRB*, 263 F.3d 173, 175 (1st Cir. 2001) (per curiam) (*Hosp. del Maestro*), quoting *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000). See *Dimmitt v. Ockenfels*, 407 F.3d 21, 24-25 (1st Cir. 2005) (Of the enumerated *Pioneer* factors, “by far the most critical is the asserted reason for the mistake”) citing *Hosp. del Maestro*; *David E. Harvey Builders, Inc. v. Secretary of Labor*, 724 F. App’x 7, 9 (D.C. Cir. 2018) (unpublished) (The “most important” consideration in an “excusable neglect inquiry,” may be the party’s control over the circumstances that caused the delay.) (*David Harvey Builders*).<sup>33</sup> Sec’y Br. 3.

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<sup>32</sup> “[T]he Commission generally applies the law of the circuit where it is probable a case will likely be appealed.” *TH Constr.*, 2023 WL 1223909, at \*2; *Kerns Bros. Tree Serv.*, 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000). This case may be appealed by either party to the Third Circuit, the circuit where the violation is alleged to have occurred, Respondent’s Edwardsville worksite gym, or to the First Circuit, the circuit where the employer has its principal office. Here, the principal office of the employer of the Edwardsville worksite gym employees is in New Hampshire. See note 6 above, and accompanying test. Also, this case may be appealed by Respondent to the D.C. Circuit. See section 11(a) of the Act; 29 U.S.C. §660(a)(b). Sec’y Br. 3.

<sup>33</sup> The D.C. Circuit has not specifically affirmed the Commission’s authority to grant Rule 60(b) relief for a late filed notice of contest. See *David Harvey Builders*, 724 F.App’x at 8 (“We assume Rule 60(b)(1)’s applicability to these proceedings because neither party contests it.”). The *David Harvey Builders* decision was cited by the Commission in *Burlington*, 2020 WL 13610776, at \*3 n.3.

Other circuit courts emphasize that the *Pioneer* equitable analysis requires consideration of “all relevant circumstances” surrounding a party’s request for relief due to excusable neglect. These circuit courts state that the *Pioneer* factor regarding “the reason for the delay, including whether it was within the reasonable control of the movant,” should not weigh too heavily at the expense of the other relevant *Pioneer* factors. Respondent contends that the application of the equitable analysis stated by these courts is the correct analysis. Resp’t Br. 8-10. Respondent relies on the Fifth Circuit decision in *Coleman Hammons Construction Co. v. OSHRC*, 942 F.3d 279, 283-84 (5th Cir. 2019) (*Coleman Hammons*), and the Third Circuit decisions in *Avon Contractors, Inc. v. Secretary of Labor*, 372 F.3d 171, 174 (3d Cir. 2004) (*Avon Contractors*), and *George Harms*, 371 F.3d at 164. Respondent contends the *Pioneer* factors weigh in favor of granting the Rule 60(b)(1) equitable relief requested in Respondent’s Motion for Relief. Motion 5-9; Reply 1-3; Resp’t Br. 7-12.

Here, application of the *Pioneer* equitable analysis to the credible case facts reveals Respondent failed to meet its burden of establishing it is entitled to relief for its untimely filed notice of contest, due to excusable neglect pursuant to Rule 60(b)(1). Commission precedent and the relevant Circuit Court precedent, cited by Respondent, results in the same conclusion.<sup>34</sup> In *George Harms*, the Third Circuit found the *Pioneer* factors of good faith, prejudice, and efficient

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<sup>34</sup> The Fifth Circuit decision cited by Respondent also has been carefully considered. In *Coleman Hammons*, the Fifth Circuit found the *Pioneer* factors of good faith, prejudice, and efficient judicial administration, all weighed in favor of granting the Rule 60(b)(1) equitable relief requested by the employer. The court also noted that it is undisputed that the employer has meritorious defenses. Regarding the *Pioneer* control factor the company established that ordinarily all company mail was “received, opened, and distributed by the office manager or the company controller.” 942 F.3d 284. In the circumstances presented, the company secretary / treasurer who normally is not a mail handler, signed for the OSHA letter and left it unopened on the project superintendent’s desk, who was out of town. The OSHA citation notice was not discovered until the project superintendent returned to the office, resulting in the late filed notice of contest. This was a single deviation from office mail procedures, apparently unique, and of minimal consequence in the excusable neglect inquiry. *Coleman Hammons*, 942 F.3d at 281, 284-85.

In a more recent case, *D.R.T.G. Builders, LLC v. OSHRC*, the Fifth Circuit applied the *Pioneer* factors, and found that Rule 60(b)(1) equitable relief was not warranted as DRTG’s neglect was not excusable. *D.R.T.G. Builders, LLC v. OSHRC*, 26 F.4th 306, 309 (5th Cir. 2022). The circuit court applied the *Pioneer* factors finding the delay, good faith, and control factors disfavored granting equitable relief. “Unlike in *Coleman*, DRTG had no system in place to receive, open, and respond to mail such that the missed citation was only ‘attributable to a single instance of unforeseen human error.’ ” 26 F.4th 312. The circuit court found Rule 60(b)(1) relief “not warranted because DRTG did not ‘maintain orderly procedures for handling important documents.’ ” *Id.* at 313.

judicial administration all weighed in favor of finding excusable neglect and granting Rule 60(b)(1) relief. Further, the *Pioneer* control factor did not weigh against the employer, as the record revealed the employer had “reliable mail-handling procedures demonstrate[ing] the loss of the citations was an unforeseeable human error beyond its reasonable control.” *George Harms*, 371 3d Cir. at 164-65.

In *Avon Contractors*, the Third Circuit found the *Pioneer* factors of good faith, prejudice, efficient judicial administration, and control all weighed in favor of finding excusable neglect and granting Rule 60(b)(1) relief. The employer had established mailing procedures in place, which were disrupted by the receptionist’s alleged deliberate acts of mail destruction. It was not within the employer’s control to prevent the employee’s unforeseeable acts of destruction to prevent the mishandled mail. *Avon Contractors*, 372 F.3d at 174-75.

In the instant case, each factor in the *Pioneer* equitable analysis is considered below.

*Danger of prejudice to the Secretary, the party opposing Respondent’s Motion for Relief from Judgment*

The Secretary asserts that there is evidence supporting a showing of prejudice to the Secretary in this proceeding. Sec’y Brief 2, 12. The Secretary emphasizes that Myron Romanchick, one of the Compliance Officers who conducted the OSHA inspection at Respondent’s Edwardsville worksite, left employment with OSHA in October 2023. Therefore, in prehearing discussions between Mr. Romanchick and the Secretary’s Counsel, the Secretary’s Counsel did not represent Mr. Romanchick, and their communications were not privileged. If the Motion for Relief is granted, as Mr. Romanchick is no longer an employee of OSHA his cooperation with the Secretary’s Counsel to prepare for the hearing will be purely voluntary. As Mr. Romanchick no longer is an OSHA employee, Counsel for the Secretary’s communications with Mr. Romanchick will not be privileged and Respondent Counsel will be free to contract Mr. Romanchick directly. While two OSHA investigators participated in the inspection, Mr. Romanchick took all the photographs and measurements at the worksite. As Mr. Romanchick no longer works for OSHA, he is free to relocate and move to a location outside the jurisdiction of the Wilkes-Barre OSHA Area Office. (Tr. 38-39, 46-49, 51). Sec’y Brief 12-14.

Respondent disputes the Secretary's assertions and instead contends that the Secretary will suffer no identifiable prejudice if relief is granted to Respondent. The fact that Mr. Romanchick no longer works for OSHA and the attorney client privilege no longer exists between Counsel for the Secretary and Mr. Romanchick does not support a finding of prejudice. Mr. Romanchick participated in the late notice of contest hearing pursuant to subpoena. Mr. Romanchick testified that if he received a subpoena nothing would prevent him from testifying at a hearing on the merits of the citation items. At the time of the hearing, Mr. Romanchick had not moved from the address where he lived when working for the Wilkes-Barre OSHA Area Office. (Tr. 37-39, 45-48). Resp't Br. 10-11.

These facts do not support a finding of legal prejudice to the Secretary regarding Mr. Romanchick's changed employment status. In the *Pioneer* equitable analysis, the factor considering the "danger of prejudice to the opposing party" weighs in favor of granting Rule 60(b)(1) relief in this case.

*Length of the delay and its potential impact on the proceedings.*

The second factor in the equitable analysis is the length of the delay and the impact on the judicial proceedings. The Secretary contends that Respondent's delay in filing its contest negatively impacts the proceedings before the Commission. Respondent's late contest impacts the Secretary's ability to best present its case regarding the merits of alleged violations stated in the citation items. The Secretary notes that the hearing regarding Respondent Motion for Relief was held approximately one year after the citation was issued. Sec'y Br. 14-15, 19.

Respondent emphasizes that the citation packet was received by the Edwardsville worksite gym on February 28, 2023, and Respondent filed its notice of contest 49 working days later. Respondent found the misplaced citation packet on May 4, 2023, and filed its notice of contest two working days later. Respondent contends this time delay is minimal, in view of the length of time to adjudicate a contested citation before the Commission, which often takes a year or more from initiation to conclusion. Motion 8; Resp't Br. 11.

In the *Pioneer* equitable analysis, the factor considering the "*length of the delay and its potential impact on the proceedings*" weighs in favor of granting Rule 60(b)(1) relief in this case.

*Whether Respondent, the party seeking relief, acted in good faith*

The next *Pioneer* fact considered is whether Respondent acted in good faith. The Secretary contends Respondent failed to act in good faith in this proceeding. Sec’y Br. 2, 15, 19. As stated in the Sanctions Motion, the Secretary contends that Respondent filed its Motion for Relief without engaging in a reasonable inquiry, and that Motion was not well grounded in fact. The Secretary contends Respondent served signed interrogatory responses to the Secretary with false allegations regarding key information about Respondent’s former front desk associate Grenwis Rivas, the employee who received the citation packet at the Edwardsville worksite gym. The Secretary notes that the false allegations only became known to the Secretary when the Secretary’s Counsel Judson Dean located and spoke with Mr. Rivas. Further, regarding Respondent’s alleged meritorious defense of “no knowledge,” the Secretary notes that Respondent failed to gather and produce the completed, relevant, Safety Evaluation forms, to the Secretary during discovery, or to offer the relevant Safety Evaluation forms into evidence at the hearing. The Secretary contends that Respondent’s conduct in this proceeding does not support a finding of good faith. Sec’y Br. 2, 15, 19; Sanctions Motion.

Respondent argues that Respondent’s actions reflect good faith and weigh in favor of the equitable relief requested. Respondent notes its cooperation during the OSHA inspection and prompt production to OSHA of the documents and information requested. Motion 9; Resp’t Br. 11-12.

Respondent’s actions in this case, in part, reflect good faith. Respondent cooperated during the OSHA worksite gym inspection and provided requested documents to OSHA. Also, the citation, when issued, noted each citation item, as “Corrected During Inspection.” (GX-1, at 8-15). When Club Manager Rogers received the OSHA delinquency letter, she was prompted to search for the OSHA citation. Once the OSHA citation was located, with reasonable promptness Respondent contacted the OSHA Area Office and filed its late contest.

That said, Respondent’s actions with OSHA and before the Commission, during the case processing and adjudication of Respondent’s Motion for Relief, unfortunately were marked by inaccurate and misleading statements regarding important facts. Respondent’s Post Hearing Brief does not address the inaccurate and misleading factual claims and assertions included in



Respondent's September 5, 2023 Motion for Relief or in Respondent's January 5, 2024 First Supplemental Interrogatory Responses, discussed above, in the sections Respondent's Motion for Relief from Judgment, and Order Denying Secretary's Motion for Sanctions.

As set forth above in the sections, Respondent's Motion for Relief from Judgment, and Order Denying Secretary's Motion for Sanctions (Sanctions Order), Senior Director Casaletto's August 30, 2023 Declaration, filed with Respondent's Motion for Relief, as Exhibit C, included inaccurate and misleading fact statements regarding alleged mail-handling procedures and training provided to employees at the Edwardsville worksite gym, including alleged training regarding OSHA and OSHA related items. Motion 3-4, 9; Reply 2 (Casaletto Decl. ¶¶ 4, 12); Tr. 136, 138-39, 143).

Similarly, as set forth above in the section Order Denying Secretary's Motion for Sanctions, and in the Sanctions Order, inaccurate and misleading fact statements were included in Respondent's January 5, 2024 First Supplemental Interrogatory Response. Respondent concedes that the First Supplemental Interrogatory Response, to Interrogatory No. 5, included an inaccurate statement regarding what happened to the OSHA citation after it was delivered to the Edwardsville worksite gym, by the inclusion of inaccurate statements regarding, the employee who signed for the citation packet, Grenwis Rivas's "beliefs," "motivations," and "actions." Sanctions Order 24-27; Sanctions Motion 2-5, Ex. A (Resp't First Suppl. Interrog. Resp. 5-6, ¶ 5, and 9-10, ¶ 12). The Sanctions Order rejected Respondent's assertions that its Response to Interrogatory No. 5 followed a reasonable inquiry and a good-faith investigation. Sanctions Order 27.

Respondent's First Supplemental Interrogatory Response included another inaccurate fact statement that Respondent had investigated the circumstances to determine why the citation packet was not properly handled after it was delivered to the worksite, by discussing the matter with Grenwis Rivas. Sanctions Order 24-27; Sanctions Motion, Ex. A (Resp't First Suppl. Interrog. Resp. 11 ¶ 15). The hearing revealed this interrogatory response to be inaccurate. No one from Respondent or Respondent Counsel had spoken to Mr. Rivas.

The Order Denying Secretary's Motion for Sanctions found that Respondent's actions in filing the Motion for Relief, with Director Casaletto's Declaration, including inaccurate and misleading statements, and Respondent's First Supplemental Interrogatory Responses, including

inaccurate and misleading statements regarding a discussion with former Respondent front desk associate Grenwis Rivas, and imagined “assumptions” set forth as “facts,” did not reflect a reasonable inquiry or good-faith investigation by Respondent. Inclusion of the inaccurate and misleading factual claims and assertions in these documents was inconsistent with the Commission Rule 32 requirement that documents, formed after a reasonable inquiry, are well grounded in fact. The inaccurate and misleading statements set forth by Respondent in these documents are central to the applicable equitable analysis when a Respondent requests relief for a late filed notice of contest. In filing these documents, Respondent’s actions did not reflect good faith. That said, reviewing Respondent’s overall conduct in this Commission proceeding, the undersigned did not find that Respondent’s actions rose to the level of contumacious conduct warranting the extreme sanctions requested by the Secretary. Sanctions Order 21-30. Therefore, the Secretary’s Sanctions Motion was denied.

The inaccurate and misleading statements set forth by Respondent in these documents are central to the applicable equitable analysis when a Respondent requests relief for a late filed notice of contest. These misleading statements concern material facts regarding mail-handling procedures and training at the Edwardsville worksite gym and Respondent’s alleged investigation of the circumstances to determine why the citation packet was not properly handled after it was delivered to the worksite. It appears the inaccurate and misleading statements included in Respondent’s documents were crafted in furtherance of the equitable relief sought.

Consideration of the record as a whole in this proceeding, and application of the *Pioneer* equitable analysis regarding the factor of whether the party seeking relief “acted in good faith,” establishes that this factor weighs against granting Rule 60(b)(1) relief in this case.

*The reason for the delay, including whether it was within the reasonable control of the Respondent, the party seeking relief*

The Secretary asserts that the reason for Respondent’s delay in filing the notice of contest was Respondent’s mishandling of the citation mail, which was foreseeable because Respondent did not have orderly mail-handling procedures, and the worksite gym employees were not trained in mail-handling procedures. The Secretary contends Respondent also failed to establish what happened to the citation following its receipt at the Edwardsville worksite that resulted in the

citation being misplaced. The record discloses Respondent never investigated how the citation in this case became misplaced. Respondent has not established that the misplaced citation and the delayed notice of contest were beyond Respondent's reasonable control. The Secretary asserts that Respondent did not meet its burden to establish that its late filed notice of contest was due to excusable neglect justifying relief pursuant to Rule 60(b)(1). Sec'y Br. 1-3, 5-12, 19.

Respondent contends that the Edwardsville worksite gym employees received hands-on training on how to receive mail and to place mail on the back counter for the managers to review. The issue with the misplaced citation packet in this case "was an isolated incident, and what resulted was certainly not so inexcusable as to deny Planet Fitness its day in court." Motion 9; Resp't Brief 12.

The undersigned finds the reason for the delayed filing was within Respondent's reasonable control. *See CalHar Constr.*, 18 BNA OSHC at 2153 n.5. Respondent's delay in filing the notice of contest was a result of Respondent's lack of procedures for handling important mail, which were communicated to the employees who received mail at the Edwardsville worksite gym.

Club Manager Rogers described very general "on-hand" training regarding mail-handling for Edwardsville worksite gym employees behind the front desk. This "on-hand" mail-handling training was to pile all mail on the back counter of the front desk, including junk mail, with the sole exception of handwritten letters to cancel membership. There was no instruction regarding how to handle important mail, such as mail from the government, OSHA, or the Department of Labor. (Tr. 234, 237-38).

Even this very general "on-hand" discussion regarding mail handling was not provided to all front desk associates at the Edwardsville worksite gym. Former front desk associate Rivas credibly testified that he received no mail handling training while working at the Edwardsville worksite gym. Mr. Rivas's testimony is unrebutted. Respondent did not call any employee or management witness to corroborate Club Manager Rogers's testimony that this very general "on-hand" mail-handling training had been provided. The undersigned finds that all Edwardsville worksite team members – employees and managers – did not receive this very general "on-hand" mail-handling training. As all team members, including team members who worked behind the

front desk, did not receive even this general “on-hand” mail-handling training, it was foreseeable that important mail such as the OSHA citation packet would be misplaced, overlooked.

The hearing record does not support Respondent’s claim that the misplaced OSHA citation packet in this case was an “isolated incident.” As discussed above, Respondent’s narrowly targeted question to Club Manager Rogers whether “an employee [had ever] place[d] mail in the manager’s cabinet” is unhelpful. (Tr. 234). The far more relevant question would have been whether in the three years she worked as the Edwardsville Club Manager, important mail such as letters or documents from government agencies, or legal documents, had been misplaced, lost, or forgotten, causing Respondent’s delayed response to the mail received. That inquiry was not asked or answered. The answer to that question would have illuminated whether the misplaced and forgotten OSHA citation packet in this case was an “isolated incident.” See notes 22 and 23 above and accompanying text. Maintenance of orderly procedures for handling important documents was clearly within Respondent’s reasonable control.

Here, the *Pioneer* equitable analysis factor of “the reason for the delay, including whether it was within the reasonable control of the party seeking relief” weighs against granting Rule 60(b)(1) relief in this case.

#### *Meritorious Defense*

The Commission requires the moving party to allege a meritorious defense to be eligible for Rule 60(b) relief. See *Burlington*, 2020 WL 13610776, at \*2; *Evergreen*, 2017 WL 6806225, at \*3. “The Commission has generally found this requirement to be ‘satisfied with minimal allegations that the employer could prove a defense if given the opportunity.’” *Evergreen*, 2017 WL 6806225, at \*3, quoting *Jackson Assoc. of Nassau*, No. 91-0438, 1993 WL 230102, at \*7 (OSHRC, June 18, 1993) (*Jackson*). (JX-1, Stips. 17, 18). Sec’y Br. 4-5, 16; Resp’t Br. 12.

In *Jackson Associates*, the Commission stated “[w]e do not believe . . . that the Commission ought to require a complete defense against every citation item before granting 60(b) relief, or that it should grant relief in a piecemeal fashion, only with respect to those citations for which the proffered defense is found to be meritorious.” *Jackson*, 1993 WL 230102, at \*7.

The Secretary emphasizes that in this proceeding, the only meritorious defense alleged by Respondent is “no knowledge of the alleged violations.” Sec’y Brief 15-16; (JX-1, Stip. 11, referencing Respondent’s First Supplemental Response to the Secretary’s First Set of Interrogatory Nos. 17 through 22. *See* January 30, 2024, Sanctions Motion, Ex. A) (Tr. 157-58).<sup>35</sup>

The Secretary asserts that Respondent did not produce any evidence at the hearing to support Respondent’s claimed lack of knowledge of the violations. Sec’y Brief 16, 19-20. Rather, the hearing testimony of Respondent’s management witnesses disclosed that Respondent did have knowledge of the violative conditions at the time of the OSHA inspection. Sec’y Brief 2, 16, 16 n.3. The Secretary asserts that Respondent’s claimed defense of “no knowledge” of the violations cited should be rejected. *Id.* The Secretary also contends that the hearing evidence supports the conclusion that Respondent had constructive knowledge of the violative conditions in the worksite back storage room. Sec’y Brief 17-19.

Relevant, completed, monthly Safety Evaluation forms, retained in hard copy by Respondent at the Edwardsville worksite gym, apparently were not gathered and reviewed by Respondent, were not produced to the Secretary during discovery, or offered into evidence at the hearing. Sec’y Brief 17-19. The Secretary asserts that Respondent failed to meet its burden “to come forward with something more than mere allegations to demonstrate it would have a meritorious defense to the violations.” Sec’y Brief 18-20. Therefore, the Secretary contends that Respondent’s Motion for Relief should be denied. *Id.*

Respondent alleges no knowledge of the alleged violations. (JX-1, Stip. 11). In its Post Hearing Brief, to support its no knowledge defense, Respondent solely relies on the testimony of Regional Manager Michaels and Club Manager Rogers that Respondent conducts monthly safety inspections at the Edwardsville worksite gym. Manager Michaels testified he was not aware of any issues related to the electrical breaker box and Club Manager Rogers testified that she never opened

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<sup>35</sup> Respondent’s First Supplement Interrogatory Responses state, in part, “Respondent had no knowledge of the alleged violations.” (Tr. 157-58). Senior Director Casaletto testified that she does not know where this information came from. (Tr. 158). She did not know, because she was not at the Edwardsville worksite gym, before or at the time of the OSHA inspection, to accurately claim that there was a lack of knowledge. (Tr. 158). Senior Director Casaletto never inquired of Club Manager Rogers or Shift Manager Natasha Heywood if they knew the large box was in front of the exit doors before the OSHA inspection. (Tr. 157).

the electrical breaker box. Manager Michaels testified that “employees could still exit through the back egress doors referenced in the citation, and that there were other doors or exits for egress in the case of an emergency.” Motion 9 n.3; Reply 1; Resp’t Br. 12.

At the hearing, Respondent submitted into evidence a “sample” or exemplar, blank July [year unstated] Safety Evaluation form. (Tr. 170-79, 244-47, 251; R-5). Respondent offered the blank form into evidence to support Respondent’s claim regarding “the defenses that the company would have to show lack of constructive knowledge and / or actual knowledge of any alleged violations or hazards.” (Tr. 175).

Commission precedent instructs that for Respondent to be eligible for Rule 60(b) relief, Respondent must allege a meritorious defense. This requirement generally is found to be ‘satisfied with minimal allegations that the employer could prove a defense if given the opportunity.’” *Evergreen*, 2017 WL 6806225, at \*3, quoting *Jackson*, 1993 WL 230102, at \*7. In its Post Hearing Brief and during the hearing testimony of Respondent witnesses, Respondent presented evidence generally supporting Respondent’s “no knowledge” defense regarding certain citation items. Therefore, the undersigned finds that Respondent established its burden to allege a meritorious defense in this proceeding. *Jackson*, 1993 WL 230102, at \*7 (The Commission cautioned against granting relief regarding proffered meritorious defenses on a piecemeal basis.)

### *In Summary*

Consideration of the record as a whole and application of the *Pioneer* equitable analysis to the credible case facts reveals Respondent failed to meet its burden of establishing it is entitled to relief for its untimely filed notice of contest, due to excusable neglect pursuant to Rule 60(b)(1). In summary, the *Pioneer* equitable analysis discussed above establishes the *Pioneer* factors of the danger of prejudice to the Secretary, and the length of the delay and its potential impact on the proceedings, weigh in favor of granting Rule 60(b)(1) relief. Importantly, the *Pioneer* factors of whether Respondent acted in good faith, and the reason for the delay, including whether it was within the reasonable control of the Respondent, weigh against granting Rule 60(b)(1) relief and here these factors are dispositive.

*ORDER*

Based on the foregoing, the Respondent's Motion is Denied, Respondent's May 8, 2023, late notice of contest, concerning OSHA inspection no. 1644162, is Dismissed, and the citation issued, and penalty proposed on February 24, 2023, is Affirmed in all respects.

Dated: December 30, 2024  
Washington, D.C.

/s/ Carol A. Baumerich  
Carol A. Baumerich  
Judge, OSHRC