



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

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Promoting Equality and Justice for all People

August 5, 2022

CHRO ex rel. Daniel Brelsford v. Edge Fitness, LLC CHRO No. 1720124.


FINAL DECISION FOLLOWING REMAND

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision following remand in the above captioned complaint.

The decision is being sent via email to the commission, complainant and respondent.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

Daniel Brelsford
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Jon P. FitzGerald, Presiding Human Rights Referee

STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

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PUBLIC HEARINGS - CHRO
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Commission on Human Rights and Opportunities
ex rel. Daniel Brelsford, Complainant

CHRO No. 1720124

v.

Edge Fitness, LLC, Respondent

August 5, 2022

Final decision following remand

I
PRELIMINARY STATEMENT

On September 27, 2016, Daniel R. Brelsford filed his affidavit of illegal discriminatory practice (complaint) with the Commission on Human Rights and Opportunities (commission). In his complaint, Mr. Brelsford alleged that Edge Fitness, LLC (Edge Fitness) violated General Statutes § 46a-64 by maintaining a separate workout section only for women. Following a decision on the merits, the then-presiding human rights referee (referee)¹ issued a final decision on October 17, 2019 in which she found that the separate women's-only area did not violate § 46a-64 and dismissed the complaint.

The commission appealed the decision of the referee. The trial court dismissed the appeal.² Our Supreme Court reversed the decision of the referee and trial court. Our Supreme Court held that Edge Fitness' gym was a place of public accommodation and

¹ The human rights referee who heard this case on the merits has since retired.

² *Commission on Human Rights & Opportunities v Edge Fitness*, Superior Court, judicial district of New Britain, Docket No. HHB-CV-19-6056021 (July 23, 2020) (70 Conn L. Rptr. 232) (2020 WL 5607779).

that it denied Mr. Brelsford full and equal accommodation of its facility on the basis of his sex. Further, because § 46a-64 (b) (1) did not have a specific exemption permitting a single-sex workout section, Edge Fitness' practice of maintaining women's only workout areas within an otherwise public gym violated the statute. Our Supreme Court remanded the case for further proceedings consistent with its opinion.³

On July 18, 2022, the parties filed supplemental briefs as to the relief to be awarded pursuant to General Statutes § 46a-86, at which time the record closed.

II PARTIES

The parties to this action are the Commission on Human Rights and Opportunities, 450 Columbus Boulevard, Hartford, Connecticut; Daniel Brelsford, whose address at the time of the hearing was Stratford Connecticut; and Edge Fitness, LLC, c/o Attorney James Shea of Jackson Lewis, PC, 90 State House Square, 8th floor, Hartford, Connecticut.

III FINDINGS OF FACT

Based upon a review of the pleadings, exhibits and transcript, the following facts relevant to this decision are found. References to the transcript are designated as "Tr."⁴ followed by the page number. References to the commission's exhibits are designated as CHRO followed by an exhibit number. References to Edge Fitness, LLC's exhibits are designated as R followed by an exhibit number.

1. Mr. Brelsford had been a member of Edge Fitness intermittently since 2008. (Tr. 45; CHRO-1).

³ *Commission on Human Rights & Opportunities v Edge Fitness, LLC*, 342 Conn. 25, 268 A.3d 630 (2022).

⁴ Transcript references are to the hearing held on October 10, 2018.

2. As a member, Mr. Brelsford utilized the weightlifting machines, free weight racks for squatting, dumbbells, treadmills and cardiovascular endurance equipment. Tr. 48-49.
3. Prior to 2015, Mr. Brelsford generally used Edge Fitness' Stamford, Connecticut facility. Tr. 49. That facility had a single large room used by both men and women. Tr. 49-50.
4. On one occasion Mr. Brelsford used Edge Fitness' Meriden, Connecticut location. He observed that the facility had a women's-only section. Tr. 50.
5. Entrance to the women's-only section was through a frosted glass door that said "Females Only". Tr. 51.
6. Mr. Brelsford asked an employee if he could use the women's-only section. The employee told him he could not because it was for women only. Tr. 51.
7. Mr. Brelsford opened the door, looked in, and observed that the women's-only section was not busy. Tr. 51. This was unlike the general population section which was very, very busy. Tr. 52.
8. Seeing the women's only section at Edge Fitness's Meriden facility left a bad taste in his mouth. Tr. 52.
9. Mr. Brelsford sent an email to Edge Fitness' Stratford facility objecting to the women's-only area at the Meriden site. The email was forwarded to the Director of Human Resources, Shannon Engel. Tr. 52; R-5.
10. Ms. Engel made multiple phone calls and sent emails to Mr. Brelsford to talk to him regarding his concerns. Mr. Brelsford decided that he was "going to change

gyms rather than make a big deal about something that [was] an easy fix for [him].”

Tr. 80-81; R-5.

11. About the same time as his experience at the Meriden facility, Mr. Brelsford saw plans for a new Edge Fitness facility in Stratford. The plans included a women’s-only section. Tr. 52.
12. Mr. Brelsford felt he would not be able to deal day in and day out with being upset over the women’s-only section. Tr. 52.
13. Mr. Brelsford cancelled his membership at Edge Fitness four months later. Tr. 81.
14. In 2016, Mr. Brelsford utilized a guest pass at the new Edge Fitness facility in Stratford. He was curious to see if the facility had gone through with its plan to have a women’s-only section. Tr. 54.
15. The facility was packed with people. Mr. Brelsford had trouble utilizing the equipment that he wanted to use in the general population area. Tr. 55. He had to wait in line to use equipment. Tr. 66-67.
16. Mr. Brelsford saw a large sign on a door leading to a separate room indicating a women’s-only area. Tr. 55-56.
17. Mr. Brelsford looked into the women’s-only area to see if it was crowded. He didn’t see many women in that area. Tr. 56. Not all the equipment was in use. Tr. 66-67.
18. He asked an employee if he could use the women’s-only area. The employee told him that he could not use that area because he was a guy. Tr. 56-57.
19. The women’s-only section left Mr. Brelsford feeling aggravated, dirty, and marginalized. He felt as though he was not trusted to act like a responsible adult around women. Tr. 57.

20. Shortly after cancelling his membership with Edge Fitness, Mr. Brelsford joined LA Fitness. LA Fitness does not have a women's-only section. Tr. 60, 62.

21. Mr. Brelsford also became a member of Aspire Fitness. Aspire Fitness does have a designated women's-only area but it allows Mr. Brelsford and other men to workout in the area. Tr. 61-63, 82.

IV APPLICABLE STATUTE

General Statute § 46a-86 provides in relevant part that:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall make written findings of fact and file with the commission and serve on the complainant and respondent an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as is necessary to achieve the purpose of this chapter.

* * *

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant.

V
RELEVANT CASE LAW

Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including § 46a-64. *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 694, 855 A.2d 212 (2004). “Damages that may be awarded under § 46a–86 (c) include damages for emotional distress.” *Commission on Human Rights & Opportunities v. Sullivan Associates*, Superior Court, judicial district of New Haven, Docket Nos. CV-94-4031061s, CV-95-4031060s (April 28, 2011) (2011 WL 1992014, *2).

However, “[p]unitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of courts.” *Commission on Human Rights & Opportunities v Cantillon*, Superior Court, judicial district of New Britain, Docket HHB-CV-17-6039406, n 9 (October 2, 2019) (2019 WL 5549576), *aff'd*, 207 Conn. App. 668 (2021), cert. granted, 340 Conn. 909 (2021); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986).

“Awarding of compensatory damages for emotional distress is not a science.” *Commission on Human Rights & Opportunities v Cantillon*, *supra*, 2019 WL 5549576, *5.

A complainant need not present expert medical testimony to establish his or her internal, emotional response to the harassment; his or her own testimony, or that of friends or family members, may suffice. *Busche v. Burke*, 649 F.2d 509, 519 n. 12 (7th Cir. 1981); see also, *Marable v. Walker*, *supra*. However, medical testimony may strengthen a case. *Id.* As the Supreme Court stated in *Carey v. Phipus*, “[a]lthough essentially subjective, genuine injury in this respect [mental suffering or emotional anguish] may be evidenced by one’s conduct and observed by others.” *Carey v. Phipus*, 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042 (1978).

In assessing damages for emotional distress the CHRO referees use a three-factor analysis which was enunciated in the case of *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433 (1985), and which is sometimes referred to as the "Harrison factors." This analysis of emotional distress damages also has superior court support. *Commission on Human Rights and Opportunities ex rel Peoples v. Belinsky*, Superior Court, judicial district of Stamford–Norwalk at Norwalk, Docket No. 88061209 (November 8, 1988, Riefberg, J.). Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. *Harrison, supra*. Second, is whether the discrimination occurred in front of other people. *Id.* For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. *Id.* The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant. *Id.* In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

Commission on Human Rights & Opportunities v Sullivan Associates, supra, 2011 WL 3211150, *4.

VI ANALYSIS

A

In its brief, the commission argued that Mr. Brelsford should receive an award of at least \$30,000 for his emotional distress. The commission cited to *Patino v Birken Mfg. Co.*,⁵ *MacCluskey v Univ. of Connecticut Health Ctr.*,⁶ and *Commission on Human Rights & Opportunities ex rel. Germaine Gilbert v. Judicial Department*,⁷ as justifications for its request. This tribunal, however, cannot award punitive damages. A \$30,000 award in this

⁵ 304 Conn. 679, 41 A.3d 1013 (2012).

⁶ United States District Court, Docket No. 3:13-cv-1408 (MPS) (D. Conn. February 21, 2017) (2017 WL 684440).

⁷ CHRO No. 1240254 (2018 WL 10419063); Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6048927 (October 15, 2019) (2019 WL 5681409), remanded 343 Conn. 90 (2022).

case would be punitive, not compensatory. The cases cited by the commission in its brief as justification for a \$30,000 award are not factually comparable to the facts of this case or to Mr. Brelsford's emotional distress.

In *Patino* was a hostile work environment case. Mr. Patino was harassed by his co-workers for several years. The harassing, derogatory statements occurred several times a week and sometimes even several times a day. The harassment continued despite Mr. Patino's complaints to management. Mr. Patino was "devasted and 'overwhelmed by anger and by frustration and the humiliation' resulting from the harassment. He testified that the demeaning treatment made him so upset that his body would shake, his work product suffered, and it became difficult for him to sleep." *Patino v Birken Mfg. Co*, 304 Conn 679, 683-684 (2012). In addressing the jury award of \$94,500, our Supreme Court concluded that "given the sustained nature of the discrimination described by the plaintiff, the severity of the hostility he experienced, and the continued failure of the defendant to remedy the situation, the trial court did not abuse its discretion when it concluded that the award was not excessive or shocking when compared to verdicts awarded under similar circumstances." *Id.*, 707-708.

The cases *Patino* cited as supporting a \$94,500 award are also clearly not similar to the circumstances in Mr. Brelsford's case:

- *Gonzales v Bratton*⁸ (\$250,000) was an employment discrimination case. The plaintiff's complaint of sexual harassment led to retaliation and her constructive discharge. The standard for determining the emotional distress award was that of

⁸ 147 F. Supp. 2d 180 (S.D.N.Y. 2001).

the intentional infliction of emotional distress,⁹ a very different standard than that used by this tribunal in assessing emotional distress damages. The plaintiff was subjected to a nearly year-long harassment campaign that included baseless disciplinary charges resulting in suspensions without pay, continual and unusual shift changes, and arrest and detention for a minor traffic violation. The plaintiff suffered not only the mortifications of unrelenting petty harassment but fear for her personal safety and the safety of the public.

- *Oliver v Cole Gift Centers, Inc.*¹⁰ (\$100,000) was an employment discrimination case. After informing her employers that she was pregnant, the plaintiff was subjected to repeated criticism of her job performance and then fired after complaining about the criticisms. The plaintiff suffered emotional and mental distress and pecuniary losses due to the loss of her medical insurance benefits.
- *Ikram v Waterbury Bd. Of Educ.*¹¹ (\$100,000) was a 42 U.S.C. § 1983 claim. The plaintiff's employer retaliated against her for exercising her First Amendment right to freedom of speech. She suffered mental and emotional injury for over one year and experienced physical manifestations of her distress.
- *Annis v Westchester*¹² (\$100,000) was a 42 U.S.C. § 1983 equal protection claim. The plaintiff's employer discriminated against her for years because of her gender. The adverse actions included discriminatory work assignments and unfair removal

⁹ "The tort has four elements: (1) extreme and outrageous conduct; (2) intent to cause severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress." *Gonzales v Bratton*, supra, 147 F. Supp. 2d 194.

¹⁰ 85 F. Supp. 2d 109 (D. Conn. 2000).

¹¹ United States District Court, Docket No. 3:95CV2478 (AHN) (D. Conn. September 9, 1997) (1997 WL 597111).

¹² 939 F.Supp. 1115 (S.D.N.Y. 1996).

from a promotion list. The plaintiff felt angry, humiliated and very upset after being called a "f__ing cunt". The repeated harassment left her humiliated and feeling degraded. She received counseling for her emotional distress.

- *Rush v Scott Specialty Gases, Inc.*¹³ (\$100,000) was an employment discrimination case. The plaintiff's employer discriminated against her in training and promotion and created a hostile work environment. She suffered emotional distress for the four years she worked for the defendant. At the time of the trial, she was continuing to suffer emotional distress. Her expert testified that the plaintiff suffered mild to moderate depression. Witnesses testified that her personality was altered, she ceased her social activities, and spent much of her free time at home sleeping.
- *Olsen v Nassau*¹⁴ involved claims by female employees that the county police department discriminated against them in terms and conditions of their employment and retaliated against them in violation of 42 U.S.C. § 1983, Title VII, state law, and their First Amendment rights. As a result of the discriminatory conduct, the plaintiffs experienced disillusionment with their jobs; stress; anxiety; negative-impact on family life; physical manifestations of the distress such as chest pains, fatigue and sleeplessness, migraines, and shingles; and received therapy and medication.

¹³ 930 F. Supp. 194 (E.D.Pa. 1996) rev'd in part and remanded 113 F.3d 476 (3d Cir. 1997).

¹⁴ 615 F. Supp 2d 35 (E.D.N.Y. 2009).

The emotional distress experienced by Mr. Brelsford in his fact situation was not as severe or prolonged as the emotional distress experienced by the plaintiffs in *Patino* and the cases cited therein.

In addition to citing to *Patino*, the commission cited *MacCluskey v University of Connecticut Health Center*, supra, (\$125,000) and *Commission on Human Rights and Opportunities ex rel. Germaine Gilbert v. Judicial Department*, supra, (\$50,000) in support of its \$30,000 request. These cases also do not support the punitive award of \$30,000.

- *MacCluskey* was an employment discrimination claim. The plaintiff had been repeatedly sexually harassed by another employee and the employer failed to take remedial action. The harasser grabbed her waist and put his hand up her shirt. She testified that she felt ashamed and embarrassed, was afraid to be home alone, and did not sleep for weeks. The harassment negatively affected her work. She no longer trusted people. The harassment also negatively affected her relationship with her children.
- *Gilbert* was an employment discrimination case. The plaintiff was repeatedly subjected to sexual harassment and touching by her supervisor. The severe harassment caused her to go to a co-worker's office and cry. The emotional distress manifested itself in physical changes. She gained a lot of weight, her grooming deteriorated, and she looked like a different person. She had trouble sleeping. She was on prescription medications and receiving therapy.

Again, the emotional distress experienced by Mr. Brelsford in his fact situation was not as severe or prolonged as the emotional distress experienced by the plaintiffs in *MacCluskey* and *Gilbert*.

The commission cites to one non-employment case, *Saunders v Mad Murphy's*¹⁵ which also does not support awarding Mr. Brelsford damages of \$30,000. Although Mr. Brelsford was restricted from access to part of the facility, he was able to utilize the equipment in the general area, even if at times he had to wait in line. This was unlike Mr. Saunders' experience. An employee told Mr. Saunders that because of his physical disability not only would he not be served and but he also had to leave the restaurant. The emotional distress that Mr. Brelsford testified experiencing was not as severe or as prolonged as that experienced by Mr. Saunders.

None of the cases cited by the commission or in *Patino* provide justification for an award to Mr. Brelsford of \$30,000.

B

Employment discrimination cases make poor comparators to Mr. Brelsford's public accommodation case. Better comparators are two public accommodations cases: *Corcoran v German Social Society Froshinn, Inc.*¹⁶ and *Commission on Human Rights & Opportunities ex rel. Rochelle Toepelt v Nailtique aka Nailtique, Inc.*¹⁷ Ms. Corcoran was denied membership in the defendant's club because women were not allowed to become members. The referee's decision awarding Ms. Corcoran \$250 for emotional distress damages would be upheld. In *Toepelt*, Ms. Dowell, on behalf of whom the action was commenced, was denied service at a beauty parlor because of her physical disability.

¹⁵ Because *Saunders* had not been indexed and made available for public inspection and copying as of date of the issuance of this decision, it cannot be relied upon the agency as precedent. General Statutes § 4-180a.

¹⁶ Superior Court, judicial district of New London, Docket No. 562775 (2005) (2005 WL 154881); rev'd and remanded 99 Conn. App. 839 (2007); cert. denied, 282 Conn. 910 (2007); decision on remand, Superior Court, judicial District of New London, Docket No. CV-02-0562775 (February 21, 2008) (2008 WL 642659).

¹⁷ Docket No. CHRO No. 0720118 (December 13, 2013) (2013 WL 8183402).

The referee awarded her \$250. Like Mr. Brelsford, Ms. Dowell did not experience severe or long-term emotional distress and resumed her normal activities shortly after the discriminatory act occurred.

C

Three factors are considered by this tribunal in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86.¹⁸ The most important of these three is the subjective internal reaction experienced by a complainant and whether that reaction was intense, prolonged, and understandable. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. Unlike the plaintiffs in the cases cited by the commission and *Patino*, Mr. Brelsford was not specifically targeted for months or years of harassment. He testified to having the experience leaving a bad taste in his mouth, being upset, feeling dirty, marginalized, and being made to feel untrustworthy. It is unclear from his testimony how prolonged these feelings were. There was no testimony how these feelings impacted his

¹⁸ In addition to the *Harrison* factors used by this tribunal in determining emotional distress damages, Connecticut has at least two other standards for determining such damages: the negligent infliction of emotional distress and the intentional infliction of emotional distress.

It would not be surprising that the same fact situation could result in different damage awards or indeed even no award depending on the factors used for assessing emotional distress.

In the case of the negligent infliction of emotional distress, the factors are: "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Carroll v Allstate Ins. Co.*, 262 Conn. 433, 444 (2003).

In the case of intentional infliction of emotional distress, the factors are: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe.... (Internal quotation marks omitted.)" *Carroll v Allstate Ins. Co.*, 262 Conn. 433, 442-443 (2003).

life. He did not suffer any physical manifestations of any emotional distress. He did not testify to any anxiety, humiliation, or impact on relationships. He seemed distressed about having to wait in line to use the equipment in the general area while equipment went unused in the women's-only section.

The second factor to consider is whether the discriminatory conduct occurred in front of other people. Consideration is given to whether the discriminatory act was in public and in the view or hearing of other people which would cause a more intense feeling of humiliation and embarrassment. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. The signage designated a women's only section was public. Further, Mr. Brelsford did speak with Edge Fitness employees at both the Meriden and new Stratford facilities. The employees told him that he could not use the women's-only section. It is not clear, though, whether other people overheard those conversations.

The third factor to consider is the degree of offensiveness of the discrimination and its impact on the complainant. Consideration is given to whether the act was done with the intention and effect of producing the maximum pain, embarrassment, and humiliation. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. There was no evidence that Edge Fitness established a women's-only section with the intent of embarrassing or humiliating Mr. Brelsford or anyone else. Nor did Mr. Brelsford testify to any feelings of embarrassment and humiliation.

Further, given that on appeal the trial court concluded that no discrimination had occurred and our Supreme Court indicated that the legislature could add fitness centers


to the list of public accommodation exceptions in § 46a-64 (b) (1)¹⁹, the degree of offensiveness is minor.

VII CONCLUSIONS OF LAW

1. As a result of the decision by our Supreme Court, Edge Fitness, LLC is found to have violated General Statutes § 46a-64 by offering a workout section exclusively for women.
2. The commission and Mr. Brelsford presented sufficient evidence for the awarding of compensatory emotional distress damages.

VIII ORDER

1. The respondent Edge Fitness, LLC. is ordered to pay the complainant Daniel Brelsford compensatory emotional distress damages in the amount of \$1500.00. Edge Fitness, LLC. shall make payment on or before September 30, 2022.
2. Post-judgment interest shall accrue at the annually compounded rate of 5% on any balance outstanding on or after October 1, 2022.
3. Edge Fitness, LLC is ordered to cease and desist from offering separate workout areas exclusively for women.



Hon. Jon P. FitzGerald
Presiding Human Rights Referee

¹⁹ "Thus, the sensitivity of the determination of where to limit antidiscrimination protections, along with evolving contemporary understandings of the terms 'gender' and 'sex', see footnote 2 of this opinion, renders this issue uniquely well suited for consideration in the first instance by the legislature, which is the policy-making branch of our government." *Commission on Human Rights and Opportunities v Edge Fitness, LLC*, 342 Conn. 25, 43 (2022).