STATE OF IDAHO)
County of KOOTENAI)ss
FILED 1/17/2020
AT 1:00 O'Clock P. M
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JOHN MUSGJERD, a married man,

Plaintiff,

VS.

INNERCEPT, LLC, an Idaho limited liability company,

Defendant.

Case No. **CV28-19-1690**

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT INNERCEPT'S MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

A. Summary of Facts

This matter is before the Court on a Motion for Summary Judgment filed on November 11, 2019, by Defendant, Innercept, LLC (Innercept). This Court heard oral arguments on the Motion for Summary Judgment on January 7, 2019, and took the motion under advisement at that time.

This case involves a dispute over a contract entered into between Musgjerd and Innercept. Compl. 7. The contract was to admit a young adult relative of Musgjerd, referred to as KM, for treatment at Innercept's Coeur d' Alene facility. *Id.* at 2-6. Innercept advertises on its website that they are:

> ...a residential program located in Coeur d'Alene, Idaho, designed to help struggling teens and young adults change the trajectory of their mental health utilizing an Integral Psychology approach.

Id. 2, ¶ III; https://innercept.net (last visited Jan. 7, 2020). Additionally, Innercept advertises on their website that they specialize in:

> Mood Disorder, Depression and Bipolar Disorder, Anxiety Disorders, OCD, Panic, Disorder and Social Anxiety, Executive Functioning issues, Adoption and Attachment Issues, Autism Spectrum Disorders and/or related diagnoses, Trauma/PTSD, Strained relationships with parents and authority figures, Decline in academic performance, ADD/ADHD issues, Anger Management, Eating Disorders, Thought Disorders, Executive Functioning Issues, Personality Disorders, Negative peer Relationships, Somatoform Disorders, Gaming Addictions, [and] Technology Addictions.

Id.

Musgjerd wished to pay for KM to be admitted to Innercept. Compl. 3. Innercept provided Musgjerd with documents involving the program, including one called "Innercept Financial Policy," which required a $30,000.00 deposit. *Id.* Musgjerd emailed Innercept's Chief Financial Officer, Jami Sturges (now known as Jami Ullrich, "Ullrich"), on October 3, 2018, to inquire about the Admission Deposit. *Id.* Musgjerd's email stated, "One question: I see the deposit is $30,000. And I think I lose that deposit if [KM] does not stay for 6 months. What if she arrives tomorrow and within a few days it is not the right fit (which I do not at all expect nor want). Also, if she is ready to launch earlier, do I still lose the $30,000? Thanks for all your help to date." *Id.*

Ullrich returned Musgjerd's email and she left a message on Musgraves voicemail for clarification. The Voicemail said:

> Hi John, this is Jami from Innercept. You emailed me about an hour ago and had a question about the admissions deposit. I wanted to have a conversation as it is easier than writing it all down. The main goal is to prevent rescue and to commit to a 6 month stay. For the type of students we take and the features we are trying to address, it's not realistic to think that could get done in less than 6 months. I've never seen it, even when we did not have a 6-month minimum, you know, to get a years' worth of education done. These things usually don't resolve in 6 months either. If the treatment team gets together and we find that it is not a good fit, or we

> can't help, it is refundable. If she walks away and you don't fund the walking away and not completing treatment is refundable in that circumstance also. So we are really just trying to prevent a bad outcome. We just want to make sure we get in there, she's there long enough and we get a job done and we maintain our good reputation. This is a huge benefit to [KM] also if she stays put. So hopefully that answers all your questions.

Decl. of John Musgjerd 3.

After listening to the voicemail, Musgjerd directed wire payment of $46,400 to Innercept on October 4, 2018. Compl. 4. This amount related to the $30,000 "Admission Deposit," as well as the advance payment for the first Month's "Program Fees" of $15,400 and a deposit of $1,000 for "Discretionary Funds." *Id.* KM arrived at Innercept's facility this same day, and Musgjerd then paid, in advance, two installments of the $15,400 "Program Fee" for November and December of 2018.

KM had arranged for a friend (Luc) to purchase an airline ticket to Chicago, and KM persuaded a neighbor of the facility to take her to Spokane International Airport. Decl. of John Musgjerd, 4-5 and 11-12. On December 6, 2018, Musgjerd received a phone call from Jamie Rosteck, KM's therapist at Innercept, telling him that KM had made plans to leave their facility. Pl's. Mem. in Opp. to Def's Mot. for Summ. J. 5. Mugjerd requested that Jamie Rosteck arrange for phone calls in order to talk to KM and convince her not to leave Innercept, and to talk to the neighbor in an attempt to convince the neighbor not to take KM to the airport. *Id.* These phone calls were not arranged. However, prompted by Jamie Rasteck's suggestion, Musgerd wrote KM a letter, trying to convince her to stay at Innercept. That letter was delivered to KM through Jamie Rosteck shortly after 11:00 AM on December 6, 2018. *Id.*

KM left the facility on December 7, 2018, and did not return. Compl. 5. Musgjerd met with KM in Chicago and attempted to convince her to return to Innercept and told her that he would not provide her with shelter or food. Decl. of John Musgjerd

5. Musgjerd also contacted the resident doctor of Innercept (Dr. Ullrich), and was advised of her medications and dosing information for the prescription medication Innercept had been providing KM. *Id.* Based on the knowledge Musgjerd had of KM's health history he "...knew that absent treatment and medication, she would not survive." *Id.* Musgjerd located a doctor in Chicago who prescribed the medication to KM and located a facility for treatment. *Id.* Subsequently, Musgjerd entered into a contract with a facility called Yellowbrick in Evanston, Illinois, to provide treatment for KM.

On December 26, 2018, Musgjerd requested, through an email to Jami Sturges, a refund of the $30,000 "Admission Deposit" as well as the balance of the unused prepayment of the "Program Fee" for December 2018. *Id.* at 6. Musgjerd did not receive a response and re-forwarded the email on January 4, 2019. *Id.* Musgjerd received a memo from the "Innercept Administration Team" on January 7, 2019, stating that KM is still relying on Musgjerd for medication and treatment, and the resources committed by Musgjerd would remain available for the next year if Musgjerd chooses to return to Innercept to complete the treatment. The memo also stated that, if KM does not return in the next year, the remaining resources of the deposit would be donated to a nonprofit. *Id.* at Ex. F.

B. Procedural History

On March 7, 2019, Plaintiff John Musgjerd (Musgjerd) filed his Complaint against Innercept. On April 30, 2019, Innercept filed an Answer and Counterclaim. On May 30, 2019, Musgjerd filed an Answer to Counterclaim and Affirmative Defenses. On November 20, 2019, Innercept filed a Motion for Summary Judgment, a Memorandum in Support of Motion for Summary Judgment, a Statement of Undisputed Facts in Support of Defendant Innercept's Motion for Summary Judgment, a Declaration of Jami

Ullrich, and a Declaration of Mark A. Ellingsen. On December 24, 2019, Musgjerd filed Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, Declaration of John Musgjerd in Response to Motion for Summary Judgment, and Plaintiff's Statement of Disputed Facts. On December 31, 2019, Innercept filed Reply Memorandum in Support of Innercept's Motion for Summary Judgment.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156

P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden. . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is

lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

III. ANALYSIS

Innercept asks this Court to rule on summary judgment to dismiss Musgjerd's breach of contract clams and consumer protection claims. Additionally, Innercept asks this Court to grant, by summary judgment, its counterclaim for breach of contract.

A. The Motion for Summary Judgment to Dismiss Musgjerd's breach of contract claim is granted because no issue of material fact exists.

Innercept argues:

> ...that one condition related to the refund of the Admission Deposit is that the Student must be enrolled in the Innercept program for a minimum of 6 months (180) days. In this case, it is undisputed fact that KM enrolled in the Innercept Program on October 4, 2018 and terminated her enrollment with Innercept by leaving the program on December 7, 2018. Thereafter, KM, with the help of the Plaintiff, enrolled in a competing program known as Yellowbrick on or about January 2, 2019 and KM's enrollment in that program was paid by Plaintiff. In sum, KM was not enrolled in the Innercept Program for 180 days which would trigger a potential refund of the Admission Deposit under the Agreement. Since this condition was clearly not satisfied, Plaintiff has no right to recover any portion of the admission deposit pursuant to clear and unambiguous terms of the Agreement. Plaintiff's breach of contract claim must be dismissed as a matter of law.

Mem. in Supp. of Innercept's Mot. for Summ. J. 9.

Musgjerd argues that the relevant language of the agreement is ambiguous in several respects. Pl's Mem. in Opp. to Def's Mot. for Summ. J. 9-12. Musgjerd cites the following language of the agreement to be relevant:

> Innercept requires a (6) month minimum commitment.....The admission deposit is fully refundable, provided the following conditions are met;
>
> 1. The student is enrolled a minimum of six months (180 days).
> 2. After the 6 full months, a 30 days' notice is provided via email, letter, or fax to Innercept with a written confirmation of receipt from Innercept, so discharge plans can be made for the student.
> 3. There are no outstanding balances owed for monthly fees, psychiatric fees or damages.
> 4. The resident does not receive support from parents to remain living in the area if discharged against medical advice.
>
> ...
>
> Upon a scheduled discharge if there is an outstanding balance owed, this amount will be deducted from the total admission deposit, and the balance refunded. If a student is discharged prior to the full six month commitment, or elopes from the program, or for any reason the program is not given a 30 day written notice with a confirmation receipt from Innercept prior to the student leaving the program, and this date precedes the full six month commitment, the admission deposit is non-refundable.

Id. at 8-9.

First, Musgjerd argues that the agreement is ambiguous as to what conditions a discharged student has to meet in order to receive a refund of the admission deposit. *Id.* at 9-10. Musgjerd argues that it is unclear from the language of the agreement if a deposit is refundable to a student discharged by the unilateral decision of the defendant prior to a 180-day stay. *Id.* at 10. Additionally, Musgjerd points out that it is unclear if a deposit is refundable to a student who is deemed "not a good fit". *Id.* (citing Decl. of John Musgjerd, paragraphs 7-9). Also, Musgjerd argues that it is unclear if a deposit is refundable if "a student is discharged on the 180th day, against medical advice, and remains living 'in the area' with 'support' from her parent[.]" *Id.* Furthermore, Musgjerd argues that the term support is ambiguous, as it is unclear if it means financial support, or also includes emotional or social support, and it is unclear if support means any financial support, or relates to the total financial support for all the student's needs. *Id.* Musgjerd also argues that it is not clear under the agreement whether a student

discharged against medical advice can receive a refund if they do not continue to live in the area, and it is unclear if providing support to a student who no longer lives in the area matters for purposes of receiving a refund. *Id.* The Court notes that only the last of this series of hypotheticals is pertinent to the facts of this case.

Secondly, Musgjerd argues the agreement is ambiguous because:

> [t]he Language from the "Innercept Financial Policy" states that "The admission deposit is refundable, provided the following conditions are met". It does not state whether "all" or "any" of those conditions being met is sufficient. The document does not define "against medical advice" but does state that the justification for the six month minimum enrollment is that "...if the course of treatment is terminated prematurely, the client and family all to often experience a devastating relapse in their progress...". (Declaration of Jami Ullrich, Exhibit B, page 1). A reasonable interpretation of the document is that the deposit is refundable if the "...resident does not receive support from parents to remain living in the area if discharged against medical advice", regardless of whether the discharge was against medical advice, was happening prematurely or for some other reason.

Pl's Mem. in Opp. to Def's Mot. for Summ. J. 10. Musgjerd argues that since the language of the agreement was ambiguous, the communications between Musgjerd and Ullrich can come in, and Ullrich's representation of the meaning of the terms is contrary to that urged by Innercept in the current action. *Id.* at 12. Musgjerd cites *Charpentier v. Welch*, 74 Idaho 242, 246, 259 P.2d 814, (1953), to make the argument that since the agreement was ambiguous, and the parties communicated in writing on the same day about these ambiguities, then, "[a]ll of those documents should be construed together as the whole of the agreement between the parties." *Id.* at 13.

Finally, Musgjerd argues that the forfeiture clause of the agreement "...is a penalty as defined under Idaho law...[,] and [d]efendant's refusal to refund plaintiff's deposit and unused program fees is arbitrary, bears no reasonable relation to damages at all, and is exorbitant and unconscionable." *Id.* at 15. Innercept argues that Musgjerd

was required to raise such a defense in his answer and therefore objects to this argument being heard by the court as it is untimely. Reply Mem. in Supp. of Innercept's Mot. for Summ. J. 6.

Most recently, the Idaho Supreme Court outlined the rules surrounding contract interpretation in *Caldwell Land & Cattle, LLC v. Johnson Thermal Sys., Inc*:

> "The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was formed." *Thurston Enterprises, Inc. v. Safeguard Bus. Sys., Inc.*, 164 Idaho 709, 717, 435 P.3d 489, 497 (2019) (citation omitted). To accomplish this, "the contract is to be viewed as a whole." *Id.* "The interpretation of a contract begins with the language of the contract itself." *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (quoting *Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006)). "An unambiguous contract will be given its plain meaning." *Bakker v. Thunder Spring-Wareham, LLC*, 141 Idaho 185, 190, 108 P.3d 332, 337 (2005). "A contract is ambiguous if it is reasonably subject to conflicting interpretations." *Id.* "Determining whether a contract is ambiguous is a question of law over which this Court exercises free review." *Cristo Viene*, 144 Idaho at 308, 160 P.3d at 747. However, "interpreting an ambiguous term is an issue of fact." *Thurston Enterprises, Inc.*, 164 Idaho at 717, 435 P.3d at 497 (quoting *Phillips v. Gomez*, 162 Idaho 803, 807, 405 P.3d 588, 592 (2017)).

452 P.3d 809, 818 (Idaho 2019). *Buku Properties, LLC v. Clark* found that, "[o]nly when a document is ambiguous is parol evidence admissible to discover the drafter's intent." 153 Idaho 828, 834, 291 P.3d 1027, 1033 (2012) (citing *Kepler–Fleenor v. Fremont Cnty.*, 152 Idaho 207, 211, 268 P.3d 1159, 1163 (2012). *J.R. Simplot Co. v. Bosen*, found that "[a] party's subjective, undisclosed intent is immaterial to the interpretation of a contract." 144 Idaho 611, 614, 167 P.3d 748, 751 (2006).

This Court finds that the contract is not ambiguous and therefore parol evidence will not be considered. In reaching this conclusion the Court has considered each section of the contract, and how it relates to the contract as a whole, to determine if any reasonable conflicting interpretations of the contract exist.

This Court finds that the sentence of the contract that reads, "[t]he admission deposit is fully refundable, provided the following conditions are met[,]" is not reasonably subject to conflicting interpretations. The only reasonable interpretation of this sentence is that a violation of any of the four conditions that follow this sentence would make the admission deposit non-refundable. Musgjerd appears to argue that these conditions are singular caveats that can be taken individually in order to create ambiguities within the contract, but they are not. The contract would have Musgjerd's desired meaning if it read that the admission deposit is refundable "provided one of the following conditions are met," or "provided a condition is met," but it does not. This Court also finds that the four conditions listed are not reasonably subject to conflicting interpretations.

The whole of the contract makes clear that a student must remain at the facility for six months in order for the admission deposit to become refundable. The first line of the Innercept Financial Policy section of the contract states, "Innercept requires a (6) month minimum commitment." Decl. of John Musgjerd Ex. A. The next pertinent sentence reads, "The admission deposit is fully refundable, provided the following conditions are met." The first of those conditions is, "1. The student is enrolled a minimum of six months (180 days)." That requirement is not ambiguous. There can be no doubt that KM did not meet that requirement. Conditions 2 and 3 are not applicable to the facts of this case. Criteria 4 reads, "The resident does not receive support from parents to remain living in the area if discharged against medical advice." This section could be applicable, and if it were the only applicable term, there would be ambiguity. That is because it is unclear whether Chicago is "in the area" as set forth in criteria 4. However, because the first criteria is not ambiguous and is clearly met, then factually,

criteria 4 is not an issue. The initial requirement of a "sixth month minimum commitment" is further clarified in the final relevant section which reads:

> Upon a scheduled discharge if there is an outstanding balance owed, this amount will be deducted from the total admission deposit, and the balance refunded. If a student is discharged prior to the full six month commitment, or elopes from the program, or for any reason the program is not given a 30 day written notice with a confirmation receipt from Innercept prior to the student leaving the program, and this date precedes the full six month commitment, the admission deposit is non-refundable.

Id. This court finds that this section is not reasonably subject to conflicting interpretations. This language further clarifies the conditions in which an admission deposit becomes refundable. The only reasonable interpretation of this sentence is that any discharge or elopement will make the admission deposit non-refundable. The only caveat is that a discharge, if preceded by a 30-day written notice with confirmation receipt, will become refundable, even before the six-month commitment has passed. This Court finds that this section does not contradict the second condition for a refundable admission deposit. Instead, this section covers a different scenario, where the student has not fulfilled the six-month requirement, and written notice with confirmation receipt has been received 30 days prior to the student leaving the facility. In such a case, the admission deposit would be refundable under the contract. This is not the case before this Court.

For these reasons, this Court does not find the October 4, 2019, contract between Musgjerd and Innercept to be ambiguous.

Musgjerd's assertion that Ullrich's October 3, 2018, voicemail should be considered by the Court as a contemporaneous writing is denied. The Court in *Charpentier* upheld the admission of an unexecuted escrow and accompanying executed warranty deed as the best evidence, because the execution of the warranty deed cured any defect in the execution of the escrow agreement. *Charpentier v.*

Welch, 74 Idaho 242, 247, 259 P.2d 814, 816 (1953). This does not relate to the voicemail sent by Ullrich that Musgjerd received prior to entering into the contract with Innercept.

Musgjerd's claim that the non-refundable nature of the admission deposit in the contract constitutes an unlawful penalty under Idaho law is barred by this Court pursuant to Idaho Rules of Civil Procedure Rule 8, because it was not raised in Musgjerd's answer.

For the reasons stated above, Innercept's Motion for Summary Judgment to dismiss Musgjerd's claim of breach of contract is granted because no genuine issue of material fact exists, and as a matter of law, the contract is not ambiguous.

B. Innercept's Motion for Summary Judgment to dismiss Musgjerd's claim under the Consumer Protection Act is granted because no genuine issue of material fact exists.

Innercept argues that:

> ...There is absolutely no evidence that Innercept violated the Idaho Consumer Protection Act by engaging in an act or practice which is "misleading, false, or deceptive" as alleged in Plaintiff's complaint. In explaining Innercept's policy on enforcement of the nonrefundable term of the Admission Deposit, Jami Stuges left a message with Plaintiff which is detailed in Exhibit B to the Declaration of Jami Ullrich. In this voice message, Jami Ullrich emphasized that it was Innercept's goal to have Plaintiff and KM commit to a six month stay regarding KM's enrollment in Innercept for the program to be successful. Jami Ullrich also told Plaintiff that if KM left the Innercept program early and Plaintiff did not "rescue" KM or in other words provide financial support to KM which would end up leading to KM not returning to the Innercept program, then the Admission Deposit would be refundable. As noted in the Declaration of Jami Ullrich, this restriction included instances where Plaintiff would provide funds for KM to enter into another mental health program and not return to Innercept... Given this conduct, the Admission Deposit is clearly nonrefundable per the clear and unambiguous terms of the Agreement and in accordance with what Ms. Ullrich represented in her voice message with Plaintiff.

Mem. in Supp. of Innercept's Mot. for Summ. J. 11

Musgjerd argues that:

> Ms. Ullrich's October 3, 2018 voicemail to plaintiff was short, precise and unequivocal: "If she walks away and uh, you don't fund her walking away and not completing treatment, um, it is refundable in that circumstance also." In her Declaration of November 19, 2019, however, at page 3 and 4, Ms. Ullrich states that what she meant by that concise voicemail message was something far different than what she told plaintiff. Defendant's representations to plaintiff in the conduct of its trade were misleading, false and/or deceptive to plaintiff, and therefore in violation of Idaho's Consumer protection Act.

Pl's Mem. in Opp. to Def's Mot. for Summ. J. 16.

As a starting point, this Court notes Idaho Code § 48-603(17), which reads:

> The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is: ... (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer[.]

In this case, Musgjerd and Innercept have not offered any case law pertaining to I.C. § 48-603(17). Most recently, in *Pierce v. McMullen*, the Idaho Supreme Court laid out the general guidelines for interpreting the Idaho Consumer Protection Act:

> "The Idaho Consumer Protection Act indicates a legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices." *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 455, 615 P.2d 116, 124 (1980). "[T]he Act [must] be liberally construed to effect the legislative intent." *In re Western Acceptance Corp., Inc.*, 117 Idaho 399, 401, 788 P.2d 214, 216 (1990).

156 Idaho 465, 474, 328 P.3d 445, 454 (2014). The Idaho Supreme Court has never directly addressed I.C. § 48-603(17) of the Consumer Protection Act, nor has the Idaho Supreme Court addressed whether I.C. § 48-603(17) allows for the consideration of parol evidence that may contradict the unambiguous plain meaning of contract terms. While this Court recognizes that the Idaho Supreme Court calls for a liberal interpretation of the Consumer Protection Act, this Court has found no indication from

the statute, or the Idaho Supreme Court, that I.C. § 48-603(17) is meant as a way to subvert the plain meaning rule. Therefore, this Court finds that I.C. § 48-603(17) does not allow Musgjerd to introduce parol evidence of Ullrich's voicemail to contradict the unambiguous plain meaning of the contract.

The Court, in *City of Meridian v. Petra Inc,* describes the plain meaning rule as it relates to parol evidence:

> "If a written contract is complete upon its face and unambiguous, and no party alleges any fraud or mistake, 'extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract.' "

299 P.3d 232, 242 (Idaho 2013) (citing *Howard v. Perry*, 106 P.3d 465, 467 (Idaho 2005)). The contract between Musgjerd and Innercept is unambiguous. Additionally, Musgjerd has not made allegations of fraud or mistake. For these reasons, parol evidence of Ullrich's voicemail shall not be admitted as evidence to contradict, vary, alter, add to, or detract from the terms of the contract. For the reasons discussed above, Innercept's Motion for Summary Judgment dismissing Musgjerd's claim under the Consumer Protection Act is granted because no genuine issue of material fact exists.

C. The Motion for Summary Judgment regarding Innercept's counterclaim for breach of contract is granted because no genuine issue of material fact exists.

Innercept argues that Musgjerd agreed to pay "... $15,400 per month for KM's six-month minimum enrollment...", and "$30,000 for the admission deposit..." Reply Mem. in Supp. of Innercepts Mot. for Summ. J. 7-8. On October 4, 2018, Musgjerd paid "...$46,400 which was an amount which constituted the $30,000 admission deposit, the $15,400 monthly program fee which was due for October 2018, and $1,000

toward the discretionary fund deposit." *Id.* at 8. KM enrolled in the program this same day. *Id.* Furthermore, Innercept argues that:

> From October 4 through December 7, 2018, KM attended Innercept's program. On December 7, 2018, without Innercept's knowledge or consent and without prior notice to Innercept, KM left Innercept's program and did not return thereafter. Plaintiff paid to Innercept the monthly program fees of $15,400 per month for KM for the months of November and December 2018. However, Plaintiff did not pay Innercept the remainder of the $15,400 per month program fees for KM for January, February and March 2019 pursuant to the six-month minimum commitment term provided in the Agreement. Pursuant to the Agreement, the last monthly payment under the Agreement was due from John Musgjerd on March 1, 2019. After a deduction for the monthly payments and the nonrefundable deposit which Plaintiff made to Innercept, Plaintiff still owes Innercept the unpaid principal sum of $16,200 pursuant to the Agreement, plus accrued interest from March 1, 2019 through the date of judgment at the statutory rate of interest and judgment should be entered in favor of Innercept.

Id.

Musgjerd's argument against Innercept's counterclaim is found above, as it also pertains to Musgjerd's argument against Innercept's Motion for Summary Judgment to dismiss Musgjerd's breach of contract claim and Musgjerd's claim under the Consumer Protection Act.

This Court finds that no genuine issue of material fact exists regarding Innercept's Motion for Summary Judgment on their breach of contract claim. As discussed above, this Court has found no ambiguity in the contract terms, which required KM to remain at Innercept for a six-month commitment.

In light of the breach, precipitated by KM's voluntary departure, Musgjerd is subject to the terms of the contract. Decl. of John Musgjerd Ex. A. The contract allows Innercept to use the $30,000 deposit to deduct payment from the unpaid months of January, February and March of 2019. *Id.* Each month's payment was contracted to

be 15,400 per month, totaling $46,200. *Id.* Subtracting the $30,000 deposit leaves $16,200 unpaid under the contract.

For the reasons discussed above, the Motion for Summary Judgment regarding Innercept's counterclaim for breach of contract is granted because no genuine issue of material fact exists, and this Court finds in favor of Innercept in the amount of $16,200.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, Innercept's Motion for Summary Judgment to Dismiss Musgjerd's breach of contract claim and consumer protection claim is granted; and Innercept's Motion for Summary Judgment on Innercept's counterclaim for breach of contract is granted.

IT IS HEREBY ORDERED that defendant Innercept's Motion for Summary Judgment to Dismiss plaintiff Musgjerd's breach of contract claim is **GRANTED.**

IT IS FURTHER ORDERED defendant Innercept's Motion for Summary Judgment to Dismiss plaintiff Mudgjerd's consumer protection claim is **GRANTED**.

IT IS FURTHER ORDERED, that defendant Innercept's Motion for Summary Judgment on Innercept's counterclaim for breach of contract is **GRANTED.**

Entered this 16th day of January, 2020.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 17th day of January, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

Michael Hague
401 E. Front Ave., Ste 212
Coeur d'Alene, ID 83814
mhague@haguelawoffices.com

Mark Ellingsen
608 Northwest Blvd, Ste 300
Coeur d'Alene, ID 83814
mae@witherspoonkelley.com

By Jeanne Clausen, Deputy Clerk of Court