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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

13	CARL RAY HARRIS,) Case No.
14)
15	Plaintiff,) PLAINTIFF'S VERIFIED
16	v.) COMPLAINT FOR
17	THE BARN, JERRY HAYDEN, MILES) DECLARATORY RELIEF,
18	BAXTER, CURIS MUELLER, and DOES 1-5,) INJUNCTIVE RELIEF AND
19	Defendants.) DAMAGES
20) JURY TRIAL DEMANDED
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I. INTRODUCTION

1. This is an action for racial discrimination based on defendants' creation of and hanging of a photograph of plaintiff Carl Ray Harris ("Harris"), an African-American, depicting him as a "famous KOON" at a public establishment (bar) called The Barn. See Exhibit 1 [attached hereto]. Even after Harris repeatedly confronted the bar management about the offensive nature of this racist photograph, the bar owner, defendant Jerry Hayden ("Hayden"), refused to take it down. This constitutes racial discrimination in a public establishment, which

1 violates 42 U.S.C. § 1981, the Civil Rights Act of 1964, 42 U.S.C. § 2000a, as well as a host of
2 state laws, including the Unruh Civil Rights Act, Cal. Civil Code § 51, and the Tom Bane Civil
3 Rights Act, Cal. Civil Code § 52.1.

4 **II. JURISDICTION AND VENUE**

5 2. Plaintiff Harris brings this action to redress the deprivation of his civil rights
6 under 42 U.S.C. § 1981 and the Civil Rights Act of 1964, as well as state law.

8 3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
9 §§ 1331 and 1343. Plaintiff also invokes supplemental jurisdiction over his state law claims
10 pursuant to 28 U.S.C. § 1367, as the state law claims form part of the same case or controversy.

11 4. This Court has personal jurisdiction over each of the defendants, as they operate
12 or reside within the County of Lake, which is within this judicial district.

14 5. Venue is proper in this judicial district under 28 U.S.C. § 1391 because the events
15 giving rise to the complaint occurred in the County of Lake, which is in this judicial district.

16 **III. THE PARTIES**

17 **A. Plaintiff**

18 6. Plaintiff CARL RAY HARRIS (“Harris”) is a resident of Clearlake Oaks,
19 California who has resided there for sixteen years in the home that he owns. Harris is a sixty-
20 nine-year-old African-American who was a two-time All-American football player at Fresno
21 State University. Until the owner of The Barn refused to remove the racist photograph of him,
22 Harris had visited The Barn approximately thirty to forty times. He no longer feels comfortable
23 visiting The Barn.
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26 **B. Defendants**

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1 7. Defendant THE BARN is a bar located in Clearlake Oaks, California, which is in
2 the County of Lake. At all times relevant hereto, The Barn operated its business in Clearlake
3 Oaks, California.

4 8. Defendant JERRY HAYDEN (“Hayden”) owns the bar The Barn.

5 9. Defendant MILES BAXTER (“Baxter”) is the bar patron seen in Exhibit 1 posing
6 with plaintiff Harris who is pointing at Harris.
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8 10. Defendant CURTIS MUELLER (“Mueller”) is the other gentleman posing in the
9 racist photograph, depicted in Exhibit 1, on the left of Harris.

10 11. Defendant “ROOSTER” is the alias of the person whose cellphone camera was
11 used to take the racist photograph. He is currently being sued as a DOE defendant.
12

13 12. Defendant Hayden’s sister Cheryl is the bartender at The Barn who took the racist
14 photograph with Rooster’s cellphone.

15 13. Plaintiff is ignorant of the true names of defendants sued herein as DOES 1
16 through 5, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will
17 amend his complaint to allege their true names when ascertained. Plaintiffs are informed and
18 believe and therefore allege that each of the Doe defendants is legally responsible for the injuries
19 and damages hereinafter set forth, and that each of the said defendants proximately caused said
20 injuries and damages by reason of their violations of statutory and common law rights.
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22 14. Each of the defendants caused and is responsible for the below-described
23 unlawful conduct and resulting injuries by, among other things: personally participating in the
24 unlawful conduct or acting jointly or conspiring with others who did so by acquiescing or setting
25 into motion plans or actions that led to the unlawful conduct.
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1 15. Defendants’ acts were willful, wanton, malicious and oppressive and done with
2 conscious disregard and deliberate indifference to Harris’ rights, thereby justifying the award of
3 exemplary and punitive damages.

4 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

5 16. Clearlake Oaks, California is a small community located within the County of
6 Lake. Because there are only two establishments that serve alcohol in a bar setting in Clearlake
7 Oaks, Harris walked to The Barn approximately thirty to forty times over the years to have a beer
8 and socialize with the other patrons.

9 17. In the Spring of 2015, two of The Barn’s patrons, defendants Miles Baxter
10 (“Baxter”) and Curtis Mueller (“Mueller”), bought Harris a beer and posed with him in a
11 photograph. Later, this photograph was manipulated to include a balloon quote emanating from
12 Baxter’s mouth reading, “I paid for this famous KOON,S beer!!” *See Exhibit 1.*

13 18. Several months later, in approximately May of 2015, Harris returned to The Barn
14 and saw the photograph of him with the derogatory racist comment hanging on the wall behind
15 the bar. When Harris protested to the acting bartender that the photograph was racist and
16 offensive, she agreed and she called over the acting manager, who also agreed, so he took it
17 down. He, then, gave the photograph to Harris.

18 19. Unfortunately, Harris returned to the bar several months later, in December of
19 2015, to shelter himself and a friend from the wind and rain. Harris, once again, saw the racist
20 photograph of him hanging on the wall behind the bar, so he confronted the owner, defendant
21 Jerry Hayden (“Hayden”), about it. Defendant Hayden told Harris that he owned the bar and that
22 he could hang whatever he wanted in it. He also laughed at plaintiff Harris. Together, these
23 actions caused Harris to leave the bar without buying a drink.
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SECOND CAUSE OF ACTION

VIOLATION OF 42 U.S.C. § 2000a

29. Plaintiff realleges and incorporates by reference paragraphs 1 through 28 of this Complaint as though fully alleged herein.

30. 42 U.S.C. § 2000a(c) states in pertinent part that “[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or natural origin.”

31. The Barn is a public accommodation that affects commerce.

32. By posting a racial slur against Harris in its place of public accommodation, The Barn and the individual defendants denied Harris the full and equal enjoyment of the bar, in violation of 42 U.S.C. § 2000a.

THIRD CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CIVIL CODE §§ 51, 51.5 & 52

33. Plaintiff realleges and incorporates by reference paragraphs 1 through 32 of this Complaint as though fully alleged herein.

34. The Unruh Civil Rights Act, Civil Code § 51(b), provides that “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

1 equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured,
2 including appropriate equitable and declaratory relief to eliminate a pattern or practice of
3 conduct as described in subdivision (a).”

4 40. By taking, posting, and maintaining the racist photograph depicted in Exhibit 1,
5 defendants interfered with, and attempted to interfere by threats, intimidation, and coercion, with
6 Harris’ peaceable exercise of the rights secured to him by federal and state law, as described in
7 the three causes of action above, in violation of the Bane Civil Rights Act, Civil Code § 52.1.
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9 41. As a direct and proximate result of defendants’ racist conduct, Harris suffered
10 actual injuries and damages
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12 **FIFTH CAUSE OF ACTION**

13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

14 42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 41 of this
15 complaint as though fully set forth herein.

16 43. By taking, posting and maintaining the racist photograph of Harris behind the bar,
17 defendants acted outrageously and intended to cause Harris emotional harm or acted with
18 reckless disregard of the probability that Harris would suffer emotional distress, knowing that he
19 was present at the time of the incident.
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21 44. As a direct and proximate result of defendants’ racist conduct, Harris suffered
22 severe emotional distress.
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V. RELIEF SOUGHT

WHEREFORE, plaintiff, on behalf of himself and others similarly situated, seeks the following relief:

1. A declaration that the defendants' actions are unlawful and unconstitutional;
2. A permanent injunction enjoining defendants, and their employees and agents, from engaging in racist conduct at The Barn in the future;
3. Damages and punitive damages, according to proof at trial;
4. Treble damages under Civil Code § 52.1;
5. Costs and attorneys fees incurred in this action; and
6. Such other and further relief as may be just and proper.

DATED: November 16, 2017

Respectfully submitted,

/s/ Joseph D. Elford
JOSEPH D. ELFORD
Counsel for Plaintiff

VERIFICATION

I declare that my offices are located in the County of San Francisco, which is not the same county as the named plaintiff, Harris, so I verify this Complaint on his behalf.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of November, in San Francisco, California.

DATED: November 16, 2017

Respectfully submitted,

/s/ Joseph D. Elford
JOSEPH D. ELFORD
Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Harris hereby demands a jury trial of this action.

DATED: November 16, 2017

Respectfully submitted,

/s/ Joseph D. Elford
JOSEPH D. ELFORD
Counsel for Plaintiff

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