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18

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF SAN BERNARDINO

21 KENDALL OLIVER,  
22  
23 Plaintiff,  
24 v.  
25 THE BARBERSHOP, R.C., INC.; RICHARD  
JAY HERNANDEZ, JR.; and BRANDEN  
26 MCREYNOLDS,  
27 Defendants.

Case No.  
**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF, AND  
DECLARATORY RELIEF**  
[Cal. Civ. Code §§ 51, 52]

1 Plaintiff Kendall Oliver (“Oliver” or “Plaintiff”), also known as Brittney Kendall Barrios-  
2 Oliver, by and through their undersigned counsel, brings this action against (1) The Barbershop,  
3 R.C., Inc. (“The Barbershop”), (2) its owner and one of the barbers who provides services at The  
4 Barbershop, Richard Jay Hernandez, Jr. (“Hernandez”), and (3) another barber who also provides  
5 services at the Barbershop, Branden McReynolds (“McReynolds”) (all jointly and severally  
6 referred to herein as “Defendants”), for damages, injunctive relief, declaratory relief, and other  
7 remedies.

## 8 INTRODUCTION

9 1. This case challenges Defendants’ refusal to provide services to some customers  
10 based solely on their actual or perceived sex. The Barbershop, Hernandez, and McReynolds each  
11 refuse to comply with their duties under California’s Unruh Civil Rights Act (the “Unruh Act”) to  
12 grant all persons full and equal access to their services free from discrimination on the basis of  
13 sex, which includes actual or perceived gender, gender identity, and gender expression, and not to  
14 aid or incite a denial of services in violation of the Unruh Act.

15 2. The discriminatory provision of goods and services deprives individuals of their  
16 personal dignity, imposes social stigma, artificially impedes the free flow of commerce, and  
17 creates a barrier to the social integration of disadvantaged groups. The Unruh Act is aimed at  
18 eliminating these deep-rooted personal and social harms by guaranteeing free and equal access to  
19 business establishments and eradicating a form of second-class citizenship in places of public  
20 accommodation. Defendants’ exclusion of customers on the basis of actual or perceived sex  
21 frustrates these efforts by openly flouting California’s prohibition on discrimination in the public  
22 sphere.

23 3. Oliver brings this suit to remedy the discrimination to which Oliver was personally  
24 subjected and to enforce California’s compelling state interest in banishing invidious  
25 discrimination from its business establishments and ensuring that its people have equal access to  
26 publicly available goods and services in the marketplace.

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1 **PARTIES**

2 4. Plaintiff Kendall Oliver is a transgender individual who currently resides in  
3 Eastvale, California, and works in Rancho Cucamonga, California. Although Oliver was assigned  
4 the sex of female at birth, that does not accurately reflect Oliver’s gender identity. Oliver  
5 identifies more as male than female. Oliver also uses gender-neutral pronouns (i.e., the singular  
6 “they,” “them,” and “their”) and, as a result, those gender-neutral pronouns are used herein to refer  
7 to Oliver.

8 5. Defendant The Barbershop is a California corporation doing business in Rancho  
9 Cucamonga, California. It operates as a for-profit, commercial business establishment that offers  
10 hair-cutting services to the general public.

11 6. Defendant Hernandez is an individual residing in San Bernardino County,  
12 California. He owns The Barbershop, where he also offers his services as a barber.

13 7. Defendant McReynolds is an individual residing in San Bernardino County,  
14 California. He also offers his services as a barber at The Barbershop.

15 8. Plaintiff is informed and believes, and on that basis alleges, that at all times  
16 relevant to the facts herein Hernandez and McReynolds were authorized agents and  
17 representatives of The Barbershop and at all times relevant to the facts alleged herein were acting  
18 within the scope of their authority as agents of, and with the permission and consent of, The  
19 Barbershop.

20 **JURISDICTION AND VENUE**

21 9. This Court has jurisdiction over Defendants because they have their principal place  
22 of business and/or are domiciled in California.

23 10. Venue is proper in this court pursuant to California Code of Civil Procedure  
24 section 395.5 because the conduct that gave rise to Plaintiff’s claim for relief occurred in Rancho  
25 Cucamonga, which is in San Bernardino County.

26 **GENERAL FACTUAL ALLEGATIONS**

27 11. In addition to being a member of the Army Reserve, Oliver works for an express  
28 mail service company. Oliver spent the last two years in Colorado as an Operations Supervisor for

1 that company, but Oliver recently relocated to California, where Oliver grew up, to accept a new  
2 General Manager position at the company's Rancho Cucamonga shipping center. Upon  
3 relocating, Oliver was in the market for a new barber.

4 12. Long hair is inconsistent with Oliver's gender identity. Oliver would feel deeply  
5 uncomfortable wearing their hair long in a style traditionally and stereotypically associated with  
6 women. Since high school, Oliver has worn their hair short, approximately half an inch on the  
7 sides and three to four inches on top. Oliver's preference for short hair was reinforced when  
8 Oliver began their service in the Army Reserve. During basic training, Oliver saw that a short cut  
9 was best for keeping their hair from interfering with their military duties. Long hair must be  
10 fastened or pinned in a bun to comply with military regulation. A short cut better accommodates  
11 military headgear, such as the helmets that Oliver wore while riding in helicopters during their  
12 deployment to Afghanistan.

13 13. On March 8, 2016, Oliver sought a haircut in anticipation of a visit in the near  
14 future to Oliver's place of employment by senior company executives. Eager for a good haircut,  
15 Oliver relied on online research to select a new barber that would meet Oliver's needs. Based on  
16 this research, Oliver decided to patronize The Barbershop, which had many positive customer  
17 reviews. On its website, The Barbershop bills itself as "restoring the quality service and  
18 comfortable ambiance" of "classic style" barber shops.

19 14. Early in the morning on March 8, 2016, Oliver used The Barbershop's online  
20 system, which requires customers to select a specific barber, to make a reservation. Oliver  
21 selected an appointment with McReynolds, one of the barbers who provides services at The  
22 Barbershop. Because Oliver's driver's license is in Oliver's birth name, Oliver put the reservation  
23 under that name as well, to avoid any confusion in the event The Barbershop asked for  
24 identification to verify Oliver's credit card payment, which is also under their birth name.

25 15. Later that same morning, Oliver took a break from work and arrived at The  
26 Barbershop a few minutes before the 9:00 a.m. appointment Oliver had scheduled online.

27 16. A woman with short hair on one side of her head and longer hair on the other side  
28 walked into The Barbershop ahead of Oliver. Hernandez, who was cutting someone's hair in a

1 chair away from the counter, first addressed the woman who had entered ahead of Oliver. When  
2 the woman informed Hernandez that she had made an appointment, Hernandez told her that The  
3 Barbershop does not cut women's hair. The woman then explained that she only wanted someone  
4 to shave the short hair that was on one side of her head. Hernandez simply repeated that The  
5 Barbershop would not do it. Expressing shock and disbelief, the woman left The Barbershop.

6 17. Having witnessed the incident with the woman ahead of them, Oliver was uncertain  
7 whether Oliver would also be rejected, but Oliver thought that they might still receive service  
8 since they did not have any long hair, unlike the woman who had been refused service ahead of  
9 Oliver. This hope proved to be short-lived. Only a few moments passed before Hernandez looked  
10 over at Oliver. After Oliver informed him that they had a 9:00 appointment with McReynolds,  
11 Hernandez repeated his earlier refrain: "We don't cut women's hair." Oliver said that they  
12 wanted a men's cut—a fade—just like the cut Hernandez was giving the customer he was then  
13 serving in the chair. Hernandez's position remained unchanged. He said that he knew for a fact  
14 that McReynolds would not cut a woman's hair. Oliver is informed and believes, and on that basis  
15 alleges, that McReynolds heard Hernandez refuse service to Oliver based on Oliver's perceived  
16 sex. McReynolds did not say anything to contradict Hernandez's representation that "we don't cut  
17 women's hair." While other barbers and customers looked on, Oliver entreated, "Even though I  
18 have short hair?" Hernandez again refused by replying that he could recommend other places in  
19 the area for Oliver.

20 18. Flustered, distressed, and humiliated by being denied equal services, Oliver left the  
21 shop. Oliver was shocked by the refusal of service. Reflecting on the incident, Oliver thought  
22 that maybe Hernandez had not fully understood their situation. Shortly after leaving, Oliver called  
23 The Barbershop. When Hernandez answered the phone, Oliver told him words to the effect that,  
24 "I understand you don't cut women's hair, but I identify more as male than female. The best way  
25 I can put it to you, so you can understand, is that I am transgender. So, given that, will you cut my  
26 hair?" Refusing service yet again, Hernandez told Oliver "no, ma'am," and stated that he would  
27 not cut the hair of "any kind of woman."  
28

1           19. After Hernandez reiterated his and The Barbershop's discriminatory refusal to  
2 provide services to Oliver, Oliver became even more insulted, hurt, and upset. Oliver felt  
3 degraded by being treated as unworthy of a routine haircut at a barbershop open to the public.  
4 Shortly thereafter, Oliver posted a Facebook message detailing what had happened in connection  
5 with Defendants' refusal to provide services. After Oliver's social media post, local news stations  
6 picked up the story and contacted both Oliver and Hernandez.

7           20. When speaking to these reporters, Hernandez unabashedly admitted: "We simply  
8 don't cut women's hair. It's a traditional men's barbershop." In recorded footage he elaborated:  
9 "It's a shame for a man to have long hair, but if a woman has long hair, it's her glory and it speaks  
10 to being given to her as her covering, and I don't want to be the one who is taking away from her  
11 glory." Hernandez also told reporters that when "people go against what God has created, you  
12 start getting everything out of whack."

13           21. Hernandez subsequently informed Oliver that McReynolds attends the same church  
14 as Hernandez and that McReynolds shares Hernandez's objection to cutting the hair of a woman.

15           22. Oliver asked Hernandez why The Barbershop did not openly state a refusal to serve  
16 customers based on the customers' sex (e.g., through window signage). Hernandez answered that  
17 doing so would be bad for business.

18           23. Oliver is informed and believes, and on that basis alleges, that The Barbershop,  
19 Hernandez, and McReynolds each continue to refuse to provide full and equal access to their  
20 publicly offered commercial services, based either on their shared belief that the law allows them  
21 to discriminate based on the actual or perceived sex of their customers or their disregard of the law  
22 that does bar such discrimination.

23                                   **CAUSE OF ACTION**  
24                                   **Discrimination Based on Sex in Violation of the**  
   **Unruh Civil Rights Act, California Civil Code § 51, *et seq.***

25                                   **(Against All Defendants)**

26  
27           24. Plaintiff realleges and incorporates by reference the foregoing paragraphs as though  
28 fully set forth herein.

1           25.     The Unruh Act, which unequivocally declares that all persons within the state are  
2 “free and equal,” serves California’s longstanding and compelling interest in protecting  
3 individuals from arbitrary discrimination by business establishments. Plaintiff brings this claim  
4 not only to remedy the discrimination to which they were subjected but also to preserve  
5 California’s compelling government interest in prohibiting discrimination in public spaces.

6           26.     In section 51(b) of the California Civil Code, the Unruh Act provides that all  
7 persons in the state are “entitled to the full and equal accommodations, advantages, facilities,  
8 privileges, or services in all business establishments of every kind whatsoever.” That code section  
9 provides that this right is granted to all persons “no matter what their sex, race, color, religion,  
10 ancestry, national origin, disability, medical condition, genetic information, marital status, sexual  
11 orientation, citizenship, primary language, or immigration status.” In section 51(e)(5) of the  
12 California Civil Code, the Unruh Act further guarantees equality irrespective of a person’s “sex,”  
13 which is defined to include actual or perceived gender, gender identity, and gender expression.  
14 Gender expression is further defined in that code section as “a person’s gender-related appearance  
15 and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”

16           27.     Section 52 of the California Civil Code imposes liability on “[w]hoever denies, aids  
17 or incites a denial, or makes any discrimination or distinction contrary to” the Unruh Act’s  
18 guarantee of full and equal access.

19           28.     As commercial providers of hair-cutting services to the public, Defendants are each  
20 “business establishments” within the meaning of the Unruh Act. Indeed, prior to 1959, “barber  
21 shop” was expressly enumerated as a place of public accommodation in California statute.  
22 California subsequently expanded the statute’s coverage when it adopted the current language of  
23 “all business establishments of every kind whatsoever” in section 51(b) of the California Civil  
24 Code. This broad language embraces professionals engaged in the business of selling their  
25 services to the public as “business establishments.” Plaintiff was denied full and equal access to  
26 Defendants’ professional services because of their sex, including their perceived gender.

27           29.     Without any legitimate business justification, Defendants each engaged in arbitrary,  
28 unlawful discrimination contrary to the Unruh Act, both by denying their own services because of

1 Plaintiff's perceived sex and by aiding and inciting each other's discriminatory treatment of  
2 Plaintiff. Specifically, as alleged above, Defendants refused to provide a haircut to Oliver because  
3 of Hernandez's perception that Oliver was a woman. Hernandez told Oliver that McReynolds  
4 would not cut Oliver's hair for this reason. Oliver is informed and believes, and on that basis  
5 alleges, that this message was delivered by Hernandez with McReynolds' knowledge of, consent  
6 to, and joinder in the policy and practice of turning away any customer perceived as female and  
7 that McReynolds ratified Hernandez's discriminatory denial of service on McReynolds' behalf.  
8 Later, over the phone, Hernandez again denied service to Oliver on behalf of Hernandez and the  
9 other Defendants, motivated by the additional knowledge that Oliver was transgender (i.e., that  
10 Oliver's gender identity differed from Oliver's birth-assigned sex).

11 30. Plaintiff is informed and believes, and on that basis alleges, that Defendants'  
12 discriminatory denial of services to customers on the basis of sex is a practice that has existed for  
13 years, and other customers have been denied services by Defendants because of their perceived  
14 sex.

15 31. As a direct and proximate result of Defendants' discriminatory conduct, Oliver has  
16 suffered injury, loss, harm, and damage. This harm includes not only actual damages, but also  
17 emotional pain and distress, as Defendants' treatment of Oliver as inferior and unequal caused  
18 Oliver to feel humiliated, deeply upset, and profoundly devalued and degraded.

19 32. Defendants' discriminatory conduct was intentional, and Defendants each acted  
20 with a willful and conscious disregard of Oliver's right to full and equal access to their services.  
21 Defendants knew or should have known that their actions were likely to cause Oliver injury.

22 33. Oliver is entitled to a declaration that Defendants' refusal to cut Oliver's hair  
23 because of Oliver's perceived sex, including Oliver's gender identity—and Defendants' ongoing  
24 policy and practice of refusing to provide services based on the sex of their customers—violates  
25 the Unruh Act. An actual controversy exists between the parties as a result of Oliver's concrete  
26 interest in equal access to the services that Defendants offer to the general public. A declaratory  
27 judgment is necessary to resolve the controversy between Plaintiff and Defendants as to whether  
28 Defendants' denial of services violates the Unruh Act.



1 34. Oliver is entitled to a permanent injunction pursuant to section 52(c)(3) of the  
2 California Civil Code because injunctive relief is necessary to ensure that Oliver and all those  
3 similarly situated fully enjoy the rights protected by the Unruh Act. Unless and until Defendants'  
4 unlawful discriminatory practices are enjoined, Oliver and others will be denied the equal  
5 opportunity to benefit from services offered to the general public and will suffer ongoing  
6 irreparable harm. Monetary relief is inadequate to compensate for the emotional distress,  
7 humiliation, degradation, and feelings of inferiority that would be caused by Defendants'  
8 continued discriminatory practices.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment as follows:

11 A. A declaratory judgment that Defendants' denial of services to Plaintiff based on  
12 Plaintiff's perceived sex, including Plaintiff's gender identity, and Defendants' ongoing refusal to  
13 provide services to customers because of their actual or perceived sex, including their gender  
14 identity, violates California's laws prohibiting discrimination by business establishments pursuant  
15 to California Civil Code section 51, *et seq.*;

16 B. A permanent injunction enjoining and restraining Defendants, each of them, and  
17 their representatives, agents, attorneys, and all persons or entities acting or purporting to act in  
18 concert with any or all of them, from engaging in discriminatory practices that deny Plaintiff and  
19 other members of the public full and equal access to Defendants' accommodations, advantages,  
20 facilities, privileges, or services on the basis of their actual or perceived sex in violation of the  
21 Unruh Act;

22 C. Damages in an amount to be proven at trial, including actual, compensatory,  
23 statutory, treble, special and punitive damages pursuant to California Civil Code section 52, which  
24 provides for minimum statutory damages of \$4,000;

25 D. An award to Plaintiff of their costs of suit, including, but not limited to, reasonable  
26 attorneys' fees, as permitted by law, including California Civil Code section 52(a); and

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E. Any other and further relief that the Court may deem just and proper.

Dated:

May 24, 2016

Respectfully submitted,

By:



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