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FILED
Los Angeles Superior Court

JUN 09 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

6 Attorneys for DEFENDANTS DESTINY HOPE CYRUS
7 aka MILEY CYRUS and SMILEY MILEY, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 LUCIE J. KIM individually and on behalf of
12 all those similarly situated,

13 Plaintiffs,

14 v.

15 DESTINY HOPE CYRUS dba/aka MILEY
16 CYRUS, an individual; SMILEY MILEY,
17 INC., a corporation; and DOES 1 TO 100,
18 inclusive,

19 Defendants.

Case No. BC407607

**NOTICE OF MOTION AND MOTION
FOR SANCTIONS PURSUANT TO CCP
128.7 FOR FILING FRIVOLOUS FIRST
AMENDED COMPLAINT;
DECLARATION BRYAN M. SULLIVAN
IN SUPPORT THEREOF**

[Honorable Robert L. Hess, Dept. 24]

Hearing Date: June 30, 2009

Time: 8:30 a.m.

Dept: 24

20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that on June 30, 2009, at 8:30 a.m., or as soon thereafter as
22 counsel may be heard, before the Honorable Robert L. Hess in Department 24 of the above-entitled
23 Court, located at 111 N. Hill St., Los Angeles, California 90012, Defendants Destiny Hope Cyrus
24 aka Miley Cyrus and Smiley Miley, Inc. ("Defendants") will and hereby do, in support of the
25 Section 128.7 of the California Code of Civil Procedure, for an Order awarding sanctions against
26 Plaintiff Lucie J. Kim ("Plaintiff") and her counsel, Henry M. Lee, Esq. ("Plaintiff's Counsel")

CITY/STATE: BC407607 LEA/DEF#: 0310
RECEIVED: 06/09/09 12:14:27 PM
DATE PAID: 06/09/09 12:14:27 PM
PAYMENT: \$40.00
CHARGE: 40.00
CASH: 0.00
CHECK: 0.00
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1 Good cause exists to award sanctions because Plaintiff and Plaintiff's Counsel has no basis,
2 in law or fact, to bring this class action under the Unruh Civil Rights Act (the "Unruh Act") against
3 Defendant for several reasons:

4 *First*, the First Amended Complaint is manifestly frivolous because the alleged misconduct
5 is not actionable under the Unruh Civil Rights Act (the "Unruh Act"), whose purpose is to assure
6 full and complete access to public accommodations, advantages, privileges and services—not to
7 provide civil redress for racial insults, which is the basis of Plaintiff's sole cause of action here.

8 *Second*, Plaintiff lacks standing. She has not alleged any fact showing that Defendants
9 denied Plaintiff (or anyone else) any access to any public "accommodations, advantages, privileges
10 or services," as defined by the Unruh Act, based on Asian-Pacific Islander descent.

11 *Third*, Defendants are not a "business establishment" as defined by the Unruh Act in that,
12 among other things, Defendants do not offer to the public any "accommodations, advantages,
13 facilities, privileges, or services" and the alleged misconduct does not relate to any offer to the
14 public of any "accommodations, advantages, facilities, privileges, or services."

15 *Fourth*, the First Amended Complaint fails because, as admitted by Plaintiff in her original
16 Complaint, Defendants did not intend to discriminate against people of Asian-Pacific Islander
17 descent.

18 Defendants seek sanctions under Section 128.7 as follows:

- 19 (1) That this Action be dismissed in its entirety with prejudice;
- 20 (2) That Plaintiff and Plaintiff's Counsel be ordered to pay the Court for all court costs in
21 connection with this Action; and
- 22 (3) That Plaintiff and Plaintiff's Counsel be ordered to pay to Defendants all attorneys'
23 fees and costs incurred in connection with this action, which through the filing of this
24 motion totals \$58,162.50 (Defendants will provide an updated attorney's fee amount
25 in her reply and at the time of the hearing).

26 Defendants have complied fully with the notice requirements of Section 128.7(c)(1) by
27 serving this Motion on May 12, 2009, by personal delivery, on Plaintiff's Counsel. This Motion

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1 will not be filed with the Court until at least 21 days after that date (i.e., on June 3, 2009), to allow
2 Plaintiff the statutory time period to withdraw the First Amended Complaint against Defendants.

3 Defendants' Motion is based upon this Notice, the accompanying Memorandum of Points
4 and Authorities, the records, pleadings and papers on file in this action filed concurrently herewith,
5 and such other and further evidence or argument as may be presented at the hearing on this matter.

6 Dated: May 12, 2009

7 GLASER, WEIL, FINK, JACOBS,
8 HOWARD & SHAPIRO, LLP

9 By: Bryan M. Sullivan
10 BRYAN M. SULLIVAN
11 Attorneys for DEFENDANTS DESTINY
12 HOPE CYRUS aka MILEY CYRUS and
13 SMILY MILEY, INC.
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