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FILED
LOS ANGELES SUPERIOR COURT

JUN 02 2009

JOHN A. CLARKE, CLERK
BY BAILEY SANCHEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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

Plaintiffs,

vs.

DESTINY HOPE CYRUS dba, aka
MILEY CYRUS, an individual;
SMILEY MILEY, INC., a
corporation, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO.: BC407607

[Assigned to Hon. Robert L. Hess,
Dept. 24]

**RESPONSE TO DEFENDANT'S
OBJECTIONS TO PLAINTIFF'S
REQUEST FOR JUDICIAL NOTICE**

**DATE: June 4, 2009
TIME: 8:30 a.m.
DEPT: 24**

1 PLAINTIFF LUCIE J. KIM individually and on behalf of all those similarly situated,
2 (“Plaintiff”) responds to Defendant’s objections to Plaintiff’s Request for Judicial Notice as
3 follows:

4 **REQUEST FOR JUDICIAL NOTICE:**

- 5 1. On May 1, 2008, the Los Angeles Superior Court in Case No. SS016575, issued
6 an order changing the name of Destiny Hope Cyrus to Miley Ray Cyrus. A true
7 and correct copy of the order is attached hereto as Exhibit 1.

8 **Response to Objection:**

9 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
10 “business establishment” within the scope of the Unruh Civil Rights Act. By changing her name
11 to “Miley Cyrus,” there is no longer any difference between the person and the trademark “Miley
12 Cyrus.” The trademarks reflect a proprietary business interest in sales, marketing, advertisement,
13 solicitation for sales of the “Miley Cyrus” name and image, which directly prove that Defendant
14 is a business establishment. The person and the business trademark are one and the same.

15 This court may take judicial notice of official acts of the judiciary, Evidence Code
16 Section 452(c); records of any court, Evidence Code Section 452(d); facts and proposition that
17 are not reasonably subject to dispute and are capable of immediate and accurate determination by
18 resort to resources of reasonably indisputable accuracy, Evidence Code Section 452(h).
19 Defendant does not dispute the facts are an “official act,” does not dispute they are records of a
20 court, and do not dispute the accuracy of the facts to be noticed.

21 **REQUEST FOR JUDICIAL NOTICE:**

- 22 2. The United States Patent and Trademark Office issued 19 trademarks for “Miley”
23 and “Miley Cyrus” which cover several hundred goods and services. True and
24 correct copies of the trademarks are attached hereto as Exhibit 2.

25 **Response to Objection:**

26 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
27 “business establishment” within the scope of the Unruh Civil Rights Act. By changing her name
28 to “Miley Cyrus,” there is no longer any difference between the person and the trademark “Miley

1 Cyrus." The trademarks reflect a proprietary business interest in sales, marketing, advertisement,
2 solicitation for sales of the "Miley Cyrus" name and image, which directly prove that Defendant
3 is a business establishment. The person and the business trademark are one and the same.

4 This court may take judicial notice of official acts of the executive department of the
5 United States, Evidence Code Section 452(c); any records of the United States, Evidence Code
6 Section 452(d); facts and proposition that are not reasonably subject to dispute and are capable of
7 immediate and accurate determination by resort to resources of reasonably indisputable accuracy,
8 Evidence Code Section 452(h). Defendant does not dispute the facts are an "official act," does
9 not dispute they are records of the United States, and does not dispute the accuracy of the facts to
10 be noticed.

11 **REQUEST FOR JUDICIAL NOTICE:**

- 12 3. The gesture of placing one's hands on his or her face and pulling the sides of the
13 eyes to cause the eyes to slant and squint can be considered a racially offensive
14 gesture to Asians.

15 **Response to Objection:**

16 The act is the crux of the entire lawsuit, and therefore the discrimination or racial
17 distinction displayed by such act is directly relevant to Defendant's liability under the Unruh Act.
18 Notably, the request is not to take judicial notice that the act "is" offensive, but "can be
19 considered" offensive by Asians.

20 This court may take judicial notice of facts and propositions of generalized knowledge
21 that are so universally known that they cannot reasonably be the subject of dispute, Evidence
22 Code Section 451(f); facts and proposition that are not reasonably subject to dispute and are
23 capable of immediate and accurate determination by resort to resources of reasonably
24 indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute the facts are
25 of generalized knowledge that are so universally known, they cannot be the subject of dispute,
26 and also does not dispute the facts are not reasonably the subject of dispute and capable of
27 immediate and accurate determination by resort to resource of reasonably indisputable accuracy.
28

1 Similar to the "N____" word when referring to African Americans, this court may take
2 judicial notice that certain acts and words are racially offensive and insulting. See, *Lee v.*
3 *Superior Court* (1992) 9 Cal. App. 4th 510 516.

4 **REQUEST FOR JUDICIAL NOTICE**

5 4. Miley Cyrus would never use the "N____" word when referring to her fans of
6 African American descent.

7 **Response to Objection**

8 The facts are relevant to the issue of equal "accommodations, services, privileges" within
9 the scope of the Unruh Act. Plaintiff alleges, and significantly Defendant does not deny, that
10 Defendant provides "accommodations, services, and privileges" to her fans of other races, by
11 never permitting her Image to use any racial insults or epithets. Defendant's failure to extend
12 this equal accommodation, services, and privileges to Asian fans is direct evidence of
13 discrimination in violation of the Unruh Act.

14 This court may take judicial notice of facts and propositions of generalized knowledge
15 that are so universally known that they cannot reasonably be the subject of dispute, Evidence
16 Code Section 451(f); facts and proposition that are not reasonably subject to dispute and are
17 capable of immediate and accurate determination by resort to resources of reasonably
18 indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute the facts are
19 of generalized knowledge that are so universally known, they cannot be the subject of dispute,
20 and also does not dispute the facts are not reasonably the subject of dispute and capable of
21 immediate and accurate determination by resort to resource of reasonably indisputable accuracy,
22 e.g., Defendant's own admissions.

23 **REQUEST FOR JUDICIAL NOTICE**

24 5. Miley Cyrus is a celebrity.

25 **Response to Objection**

26 The facts are relevant to the issue of equal "accommodations, services, privileges" within
27 the scope of the Unruh Act. Plaintiff alleges, and significantly Defendant does not deny, that
28 Defendant provides "accommodations, services, and privileges" to her fans of other races, by

1 never permitting her Image to use any racial insults or epithets. Defendant's failure to extend
2 this equal accommodation, services, and privileges to Asian fans is direct evidence of
3 discrimination in violation of the Unruh Act. Further, Defendant's status as a celebrity is
4 relevant to prove that she knew or should have known that when her profit making Image was
5 photographed making the racial insult, the photograph would be disseminated to all of her fans;
6 and in doing so, she failed to extend the same "accommodation, privilege, service" to her Asian
7 fans by intentionally using her Image to communicate a racial insult.

8 This court may take judicial notice of facts and propositions of generalized knowledge
9 that are so universally known that they cannot reasonably be the subject of dispute, Evidence
10 Code Section 451(f); facts and proposition that are not reasonably subject to dispute and are
11 capable of immediate and accurate determination by resort to resources of reasonably
12 indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute the facts are
13 of generalized knowledge that are so universally known, they cannot be the subject of dispute,
14 and also does not dispute the facts are not reasonably the subject of dispute and capable of
15 immediate and accurate determination by resort to resource of reasonably indisputable accuracy,
16 e.g., Defendant's own admissions.

17 **REQUEST FOR JUDICIAL NOTICE**

18 6. Miley Cyrus performed at one of President Barack Obama's Presidential inaugural
19 celebrations. True and correct copies of news articles announcing Defendant's
20 performance at the inaugural concert are attached hereto as Exhibit 3.

21 **Response to Objections**

22 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
23 "business establishment" within the scope of the Unruh Civil Rights Act. Her appearances on
24 such nationally televised events proves that she is a "commercial force" and has a permanent
25 position in her career or occupation.

26 This court may take judicial notice of official acts of the executive department of the
27 United States, Evidence Code Section 452(c); facts and proposition that are not reasonably
28 subject to dispute and are capable of immediate and accurate determination by resort to resources

1 of reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
2 the facts are an "official act," do not dispute these historical facts, and does not dispute the
3 accuracy of the facts to be noticed.

4 **REQUEST FOR JUDICIAL NOTICE**

5 7. Miley Cyrus was ranked No. 59 on TIME Magazine's Top 100 Most Influential
6 People of 2008 list. True and correct copies of said TIME Magazine articles are
7 attached hereto as Exhibit 4.

8 **Response to Objection:**

9 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
10 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
11 establish that Defendant holds a permanent place in her occupation or her career and is a
12 "commercial force." The information is also relevant to prove that Defendant knows about the
13 publicity she generates, and actively uses that publicity to gain further profits from her Image.

14 This court may take judicial notice of facts and proposition that are not reasonably subject
15 to dispute and are capable of immediate and accurate determination by resort to resources of
16 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
17 these facts, and certainly, they can be easily confirmed via reference to the records of these
18 historical publications.

19 **REQUEST FOR JUDICIAL NOTICE**

20 8. Miley Cyrus had a nationwide broadcasted, exclusive interview with Barbara
21 Walters in a ABC News Special Report, February 24, 2008. A true and correct
22 copy of the transcript of the interview is attached hereto as Exhibit 5.

23 **Response to Objection:**

24 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
25 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
26 establish that Defendant holds a permanent place in her occupation or her career and is a
27 "commercial force." The information is also relevant to prove that Defendant knows about the
28 publicity she generates, and actively uses that publicity to gain further profits from her Image.

1 This court may take judicial notice of facts and proposition that are not reasonably subject
2 to dispute and are capable of immediate and accurate determination by resort to resources of
3 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
4 these facts, and certainly, they can be easily confirmed via reference to the records of these
5 historical publications.

6 **REQUEST FOR JUDICIAL NOTICE**

7 9. Miley Cyrus had multiple appearances on the Oprah Winfrey Show, November
8 21, 2007 and December 20, 2007. True and correct copies of both transcripts are
9 attached hereto as Exhibit 6.

10 **Response to Objection:**

11 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
12 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
13 establish that Defendant holds a permanent place in her occupation or her career and is a
14 "commercial force." The information is also relevant to prove that Defendant knows about the
15 publicity she generates, and actively uses that publicity to gain further profits from her Image.

16 This court may take judicial notice of facts and proposition that are not reasonably subject
17 to dispute and are capable of immediate and accurate determination by resort to resources of
18 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
19 these facts, and certainly, they can be easily confirmed via reference to the records of these
20 historical publications.

21 **REQUEST FOR JUDICIAL NOTICE**

22 10. Miley Cyrus performed live at the recent Grammy Awards Show in which she had
23 a duet which was broadcast to the entire world. A true and correct copy of a news
24 article announcing said event is attached hereto as Exhibit 7.

25 **Response to Objection:**

26 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
27 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
28 establish that Defendant holds a permanent place in her occupation or her career and is a

1 "commercial force." The information is also relevant to prove that Defendant knows about the
2 publicity she generates, and actively uses that publicity to gain further profits from her Image.

3 This court may take judicial notice of facts and proposition that are not reasonably subject
4 to dispute and are capable of immediate and accurate determination by resort to resources of
5 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
6 these facts, and certainly, they can be easily confirmed via reference to the records of these
7 historical publications.

8 **REQUEST FOR JUDICIAL NOTICE**

9 11. Miley Cyrus recently set a world record for the highest grossing opening weekend
10 for a G rated movie. A true and correct copy of a news article announcing said
11 event is attached hereto as Exhibit 8.

12 **Response to Objection:**

13 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
14 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
15 establish that Defendant holds a permanent place in her occupation or her career and is a
16 "commercial force." The information is also relevant to prove that Defendant knows about the
17 publicity she generates, and actively uses that publicity to gain further profits from her Image.

18 This court may take judicial notice of facts and proposition that are not reasonably subject
19 to dispute and are capable of immediate and accurate determination by resort to resources of
20 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
21 these facts, and certainly, they can be easily confirmed via reference to the records of these
22 historical publications.

23 **REQUEST FOR JUDICIAL NOTICE**

24 12. Miley Cyrus admitted in a Fox News publication that "If you look at me as a role
25 model, I agree with it." A true and correct copy of that Fox News publication is
26 attached hereto as Exhibit 9.

27 **Response to Objection:**

28

1 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
2 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
3 establish that Defendant holds a permanent place in her occupation or her career and is a
4 "commercial force." The information is also relevant to prove that Defendant knows about the
5 publicity she generates, and actively uses that publicity to gain further profits from her Image.

6 This court may take judicial notice of facts and proposition that are not reasonably subject
7 to dispute and are capable of immediate and accurate determination by resort to resources of
8 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
9 these facts, and certainly, they can be easily confirmed via reference to the records of these
10 historical publications.

11 **REQUEST FOR JUDICIAL NOTICE**

12 13. Miley Cyrus permitted a photograph to be taken of her, in which photograph
13 Miley Cyrus has her hands on her face, pulling the sides of her eyes to cause her
14 eyes to slant and squint. A true and correct copy of said photograph is attached
15 hereto as Exhibit 10.

16 **Response to Objection:**

17 The facts are the crux of this lawsuit, and there is no dispute that the photograph is at
18 issue in this lawsuit.

19 This court may take judicial notice of facts and proposition that are not reasonably subject
20 to dispute and are capable of immediate and accurate determination by resort to resources of
21 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
22 these facts, and certainly, they can be easily confirmed via reference to the photograph itself.

23 **REQUEST FOR JUDICIAL NOTICE**

24 14. Miley Cyrus considers the face she made in the photograph, where she is pulling
25 the sides of her eyes to cause her eyes to slant and squint, a "goofy face." A true
26 and correct copy of a news article quoting Miley Cyrus is attached hereto as
27 Exhibit 11.

28

1 **Response to Objection:**

2 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus committed
3 an act of discrimination or distinction based on race. The documents from which the quote is
4 taken are in fact attached to Defendant's request for judicial notice, to which Plaintiff does not
5 object.

6 This court may take judicial notice of facts and proposition that are not reasonably subject
7 to dispute and are capable of immediate and accurate determination by resort to resources of
8 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
9 these facts, and certainly, they can be easily confirmed via reference to her own admissions
10 which are quoted verbatim.

11 **REQUEST FOR JUDICIAL NOTICE**

- 12 15. The photograph in which Miley Cyrus has her hands on her face, pulling the sides
13 of her eyes to cause her eyes to slant and squint was disseminated by TMZ.

14 **Response to Objection:**

15 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
16 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
17 establish that Defendant holds a permanent place in her occupation or her career and is a
18 "commercial force." The information is also relevant to prove that Defendant knows about the
19 publicity she generates, and actively uses that publicity to gain further profits from her Image.

20 Further, the facts reflect that Miley Cyrus, knowing about the publicity relating to her
21 Image, did not extend the same "accommodations, services, privileges" to Asians because she
22 permitted her Image to communicate a racial insult, and further permitted her Image to be
23 photographed, which photograph she knew would be communicated to her Asian fans.

24 This court may take judicial notice of facts and proposition that are not reasonably subject
25 to dispute and are capable of immediate and accurate determination by resort to resources of
26 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
27 these facts, and certainly, they can be easily confirmed via reference to the records of these
28 historical publications.

1 **REQUEST FOR JUDICIAL NOTICE**

2 16. TMZ publicly displayed video of Miley Cyrus stating, "If I was there, you
3 would've been there." A true and correct copy of the TMZ internet page which
4 contains such video is attached hereto as Exhibit 12.

5 **Response to Objection:**

6 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
7 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
8 establish that Defendant holds a permanent place in her occupation or her career and is a
9 "commercial force." The information is also relevant to prove that Defendant knows about the
10 publicity she generates, and actively uses that publicity to gain further profits from her Image.

11 This court may take judicial notice of facts and proposition that are not reasonably subject
12 to dispute and are capable of immediate and accurate determination by resort to resources of
13 reasonably indisputable accuracy, Evidence Code Section 452(h). Defendant does not dispute
14 these facts, and certainly, they can be easily confirmed via reference to the video of TMZ. There
15 is no interpretation required, Miley Cyrus stated on a video the quote at issue, which quote is
16 directly relevant to prove that she knows, or should know, that her Image is constantly being
17 photographed, and her use of such publicity for her own personal profit and gain.

18 **REQUEST FOR JUDICIAL NOTICE**

19 17. Miley Cyrus issued a public statement acknowledging that some people were
20 offended by her gesture in the photograph wherein Miley Cyrus has her hands on
21 her face, pulling the sides of her eyes to cause her eyes to slant and squint. A true
22 and correct copy of a news article which contains such admission is attached as
23 Exhibit 13.

24 **Response to Objection:**

25 The facts are relevant to establish that Destiny Hope Cyrus aka Miley Cyrus is a
26 "business establishment" within the scope of the Unruh Civil Rights Act. The undisputable facts
27 establish that Defendant holds a permanent place in her occupation or her career and is a
28