

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

FRANTZ LEGER, individually,

Plaintiff,

CASE NO.

vs.

MI COLOMBIA BAKERY, INC., d/b/a  
LOS PERROS, a Florida For-Profit Corporation,

Defendant.

\_\_\_\_\_ /

**COMPLAINT — JURY TRIAL DEMAND**

Plaintiff, FRANTZ LEGER (“Plaintiff”), by and through his undersigned counsel and hereby files this Complaint and demand for jury trial against the Defendant, MI COLOMBIA BAKERY, INC., d/b/a LOS PERROS (“Defendant” or “Los Perros”), and alleges as follows:

**INTRODUCTION**

1. This is an action brought by FRANTZ LEGER, a black man who was intentionally discriminated against by Defendant on the basis of his race. Plaintiff sues under the public accommodation provisions of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a(a) (“Title II”), Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”), and the Florida Civil Rights Act, Fla. Stat. § 760.08 (2016) (“FCRA”). Plaintiff seeks an injunction against the illegal discrimination, compensatory damages, punitive damages, attorneys’ fees and costs, and any other available relief under these statutes.

**JURISDICTION**

2. This is an action arising under, *inter alia*, Title II and Section 1981. This court has federal-question jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. § 1331.

This court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367 because the state claim arises out of the same nucleus of operative facts as do the federal claims.

### **VENUE**

3. Venue is proper in the Miami Division of the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(1) and (2) because at all times material hereto the Defendant is and was doing business in Miami, Florida, and all of the events giving rise to the claim occurred in Miami, Florida.

### **PARTIES**

4. Plaintiff, Frantz Leger, is a resident of Miami-Dade County, Florida. Plaintiff is also a citizen of the United States who is protected under Title II, Section 1981, and the FCRA.

5. Defendant, Mi Colombia Bakery, Inc., d/b/a Los Perros, is a Florida corporation which operates as a place of public accommodation as defined in 42 U.S.C. 2000a (b)(2) and Fla. Stat. § 760.02(11). Defendant is a restaurant, located at 1427 Alton Road, Miami Beach, Florida 33139. The operations of the restaurant “affect commerce” within the meaning of 42 U.S.C. 2000a(c)(2).

### **SATISFACTION OF CONDITIONS PRECEDENT**

6. On or about March 18, 2016, Plaintiff filed a charge of discrimination with the Florida Commission on Human Relations (“FCHR”) alleging intentional discrimination on the basis of race.

7. On September 19, 2016, the FCHR made a determination that reasonable cause exists to believe that an unlawful practice occurred, and advised Plaintiff that he “may file a civil action in a court of law within one year of the date the determination was signed by the Executive Director.” *See Exhibit A.*

8. All conditions precedent to the filing of this lawsuit have been satisfied and/or waived.

**GENERAL ALLEGATIONS**

9. Mr. Leger is a black man.

10. On July 2, 2015, Mr. Leger entered the Los Perros restaurant located at 1427 Alton Road, Miami Beach, Florida 33139 to purchase food.

11. Upon information and belief, Los Perros does not employ any black employees.

12. Upon information and belief, Los Perros has never employed any black employees.

13. Los Perros is a restaurant where patrons typically proceed to the cash register upon arrival, and place their orders with the cashier stationed at the counter. Customers can either take their orders “to-go,” or eat their meals at a table inside the restaurant.

14. At approximately 2:26 a.m., Mr. Leger proceeded to the Los Perros cash register and placed his order.

15. The receipt Plaintiff received for this order is attached as **Exhibit B**.

16. Los Perros’ receipt refers to Mr. Leger by the heinous racist term “nigger” on two separate occasions. *See Exhibit B*. Plaintiff was disgusted, humiliated, and appalled by this intentional discrimination.

17. First, in the section of the receipt that requests the table number, Los Perros expressed their bigotry in writing and on the receipt by proclaiming that a “nigger”—referring to Mr. Leger—was sitting at that table. *See Exhibit B*.

18. Second, in the section of the receipt that requests the customer's name, Los Perros once again expressed their bigotry in writing and on the receipt by proclaiming that a "nigger"—referring to Mr. Leger—made that order. *See Exhibit B.*

19. Defendant's discrimination was intentional.

20. As a result of this discrimination, Los Perros denied Mr. Leger the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of its restaurant, and intended to discourage the Plaintiff from reentering the accommodation because of his race.

21. Calling Plaintiff a "nigger" is unfair, humiliating, insulting, threatening and intimidating by its very nature, thereby creating a hostile public accommodation environment that denied Plaintiff from receiving the full and equal enjoyment of the public accommodation.

22. Nothing was done by Defendant to remedy its illegal discrimination.

23. Defendant treated similarly-situated non-black persons differently from Plaintiff.

24. On March 18, 2016, Plaintiff filed a charge of discrimination based on race with the FCHR.

25. After its investigation into Plaintiff's claim, on September 19, 2016, the FCHR made a determination that there is reasonable cause to believe that an unlawful practice occurred. *See Exhibit A.*

26. As the FCHR confirmed, Defendant's receipt constitutes "direct evidence of race discrimination in a place of public accommodation." *See Exhibit A.*

27. At all times relevant times, Defendant's waitress, cashier, managers, all employees involved in the facts alleged in the complaint were acting within the scope of their

employment and were acting in their capacities as employees, agents, and/or representatives of Defendant.

28. The discriminatory practices described in this Complaint were carried out at the direction of and with the consent, encouragement, knowledge, and ratification of Defendant; under Defendant's authority, control, supervision; and within the scope of the employees' employment.

29. Defendant's unlawful discrimination against Plaintiff demonstrates a practice of racial discrimination created and maintained for the purpose and with the effect of denying black customers full and equal access to and enjoyment of goods and services offered to the general public.

30. A real and immediate threat of repeated injury exists, causing Plaintiff and other black individuals to suffer and continue to suffer irreparable injury in the denial of their civil rights.

**COUNT I -  
VIOLATION OF TITLE II OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C § 2000a**

31. Plaintiff incorporates the allegations of paragraph 1-30 as if they were fully set forth herein.

32. "One of the purposes of the public accommodations provisions of the Civil Rights Act of 1964 was to eliminate the unfairness, humiliation, and insult of racial discrimination in facilities which purport to serve the general public." Rousseve v. Shape Spa for Health & Beauty, Inc., 516 F.2d 64, 67 (5th Cir. 1975) (citing H.R. Rep. No. 914, 88th Cong., 1st Sess., 18 U.S.C. Cong. & Admin. News 1964, p. 2355); Daniel v. Paul, 395 U.S. 298, 307-8 (1969) (citing H.R. Rep. No. 914, 88th Cong., 1st Sess.).

33. Title II prohibits discrimination based on protected categories, including race, in the provision of “full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.” 42 U.S.C. § 2000a.

34. As the Courts have held, “without question, the racial epithet of ‘nigger’ shows an intent to discriminate on the basis of race. That satisfies plaintiff’s burden under . . . . 42 U.S.C. § 2000a.” Jones v. City of Boston, 738 F. Supp. 604, 605 (D. Mass. 1990); *See also* LaRoche v. Denny’s, Inc., 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) (same).

35. Defendant discriminated against Plaintiff on the basis of his race, in violation of Title II.

36. Defendant denied Plaintiff the full and equal enjoyment of its public accommodation on the basis of his race, in violation of Title II.

37. Defendant excluded the Plaintiff from enjoying an environment at a place of public accommodation that is free from a hostile and intimidating environment, in violation of Title II.

38. By using the racial epithet “nigger” to refer to Plaintiff, Defendant also disparately impacted Plaintiff, and denied him his statutory right to “full and equal enjoyment” of a public accommodation. *See* King v. Greyhound Lines, Inc., 656 P.2d 349, 351 (Or. App. 1982) (emphasis added).

39. Defendant’s actions were willful, wanton, intentional and in knowing violation of their obligations and duties under Title II of the Civil Rights Act and were taken with the callous disregard of the probable detrimental consequences to the Plaintiff.

40. Plaintiff seeks all relief available to him under Title II and pursuant to 42 U.S.C. § 2000a-3.

Wherefore Plaintiff demands declaratory relief, and an injunction against Defendant prohibiting it from discriminating against black individuals, restraining Defendant from instituting any policies or practices that discriminate or segregate people on the basis of race as well as attorneys' fees and costs pursuant to 42 U.S.C. § 2000a-3(b), and any other relief deemed appropriate by the Court.

**COUNT II:**  
**VIOLATION OF 42 U.S.C. § 1981**

41. Plaintiff incorporates the allegations of paragraph 1-30 as if they were fully set forth herein.

42. Under Section 1981 of the Civil Rights Act of 1866, “all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . .” 42 U.S.C § 1981(a).

43. As the Courts have held, “[w]ithout question, the racial epithet of ‘nigger’ shows an intent to discriminate on the basis of race. That satisfies plaintiff's burden . . . . under 42 U.S.C. § 1981. See *General Bldg. Contractors' Ass'n v. Pennsylvania*, 458 U.S. 375, 389, 391 (1982).” Jones, 738 F. Supp. 604 at 605; LaRoche v. Denny's, Inc., 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) (same).

44. Defendant intentionally discriminated against Plaintiff on the basis of race by calling him a “nigger.”

45. Defendant's actions were discriminatory, arbitrary, and capricious, and constituted a disparity in treatment between Plaintiff and other white patrons of Defendant's establishment.

46. By the actions described herein, Defendant deprived Plaintiff of the equal enjoyment of the benefits, privileges, terms, and conditions of a contractual relationship on the same basis as white persons.

47. Further, because Defendant's discrimination was intentional, the Plaintiff has a cause of action under the equal benefits clause of Section 1981.

48. Defendant excluded the Plaintiff from enjoying an environment at a place of public accommodation that is free from a hostile and intimidating environment, in violation of Section 1981.

49. As a proximate result of the actions of Defendant as described herein, Plaintiff has suffered, continues to suffer, and will, in the future, suffer great and irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, and mental anguish.

50. Defendant's actions were willful, wanton, intentional and in knowing violation of their obligations and duties under 42 U.S.C. § 1981 and were taken with the callous disregard of the probable detrimental, emotional and economic consequences to the Plaintiff. Therefore Plaintiff is entitled to recover punitive damages to Punish Defendant and to deter it and others from such conduct in the future.

Wherefore, Plaintiff prays for judgment against the Defendant, for compensatory and punitive damages, for an award of costs, including a reasonable attorney's fee, and for such other and further relief as is just.



**COUNT III -  
VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, FLA. STAT. § 760.08**

51. Plaintiff incorporates the allegations of paragraph 1-30 as if they were fully set forth herein.

52. Under the Florida Civil Rights Act of 1992, “[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 chapter, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion.” Fla. Stat. § 760.08.

53. Defendant unlawfully discriminated against Plaintiff on the basis of race in the provision of public accommodations.

54. By its actions, Defendant denied Plaintiff the “full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations” of its restaurant—a public accommodation—in violation of the Florida Civil Rights Act of 1992, Fla. Stat. § 760.08.

55. Plaintiff was provided disparate service to him, thereby denying him his statutory right to full and equal enjoyment of a public accommodation.

56. Defendant excluded the Plaintiff from enjoying an environment at a place of public accommodation that is free from a hostile and intimidating environment, in violation of FCRA.

57. Defendant’s actions were willful, wanton, intentional and in knowing violation of their obligations and duties under FCRA, Fla. Stat. § 760.08 and were taken with the callous disregard of the probable detrimental, emotional and economic consequences to the Plaintiff.

Therefore Plaintiff is entitled to recover punitive damages to Punish Defendant and to deter it and others from such conduct in the future.

Wherefore, Plaintiff prays for judgment against the Defendant, an order prohibiting the discriminatory practice, and all affirmative relief provided for under Fla. Stat. § 760.08 and Fla. Stat. § 760.11, which includes compensatory, damages for mental anguish, loss of dignity, other intangible injuries, punitive damages, and for an award of costs, including a reasonable attorney's fee.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury.

Respectfully submitted this 29<sup>th</sup> day of September, 2016.

**By: /s/ *Michael N. Hanna*** \_\_\_\_\_

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***Trial Counsel for Plaintiff***



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Governor

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Florida Commission on Human Relations

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Rebecca Steele  
Chair  
Michelle Wilson  
Executive Director

FCHR No. 201600910

Frantz Leger  
c/o Mr. Michael Hanna, Esquire  
Morgan & Morgan, Attorneys at Law  
600 North Pine Island Road, Suite 400  
Fort Lauderdale, FL 33324

**Complainant**

Mi Colombia Bakery, Inc. d/b/a Los Perros  
c/o Mr. Juan S. Hoyos, Owner  
1427 Alton Road  
Miami Beach, FL 33139

**Respondent**

**DETERMINATION: REASONABLE CAUSE**

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant provided direct evidence of race discrimination in a place of public accommodation. Complainant ordered take-out from Respondent on July 2, 2015. Complainant's receipt from Respondent had a derogatory racial term printed on it twice in the same type as the rest of the receipt. Respondent's argument that the system must have autocorrected Complainant's name to the derogatory racial term is unpersuasive given that the employee who was identified on Complainant's receipt as the server resigned on the shift immediately after Complainant called to complain about discrimination. Respondent's argument that re-opening the transaction showed that there was no derogatory statement written on the receipt is also unpersuasive because the receipt that Respondent provided was not an original receipt and the date and time on the top of the receipt do not match up with the date and time on the top of Complainant's receipt. Therefore, it is reasonable to believe that Respondent harassed Complainant due to his race by referring to him with a derogatory racial term on his receipt twice.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson  
Executive Director

Dated: September 19, 2016

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FCHR No. 201600910

Frantz Leger
c/o Mr. Michael Hanna, Esquire
Morgan & Morgan, Attorneys at Law
600 North Pine Island Road, Suite 400
Fort Lauderdale, FL 33324

Complainant

Mi Colombia Bakery, Inc. d/b/a Los Perros
c/o Mr. Juan S. Hoyos, Owner
1427 Alton Road
Miami Beach, FL 33139

Respondent

NOTICE OF DETERMINATION: REASONABLE CAUSE

The Florida Commission on Human Relations has determined that there is reasonable cause to believe that an unlawful practice occurred. A copy of the determination is attached.

Complainant may request an administrative hearing with the Division of Administrative Hearings by filing a Petition for Relief within 35 days of the date the determination was signed by the Executive Director. A blank Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek assistance from legal counsel prior to filing the petition. Alternatively, Complainant may file a civil action in a court of law within one year of the date the determination was signed by the Executive Director.

During the following 35 days, you are invited to participate in a conciliation session in order to reach a just resolution of this matter. A Commission mediator will be contacting the parties with additional details about our conciliation services.

Engaging in conciliation does not, however, extend the 35-day limitation period for filing a Petition for Relief. The determination of reasonable cause will become final if Complainant does not file a Petition for Relief within 35 days, and the Commission will dismiss the complaint.

The parties named in the determination may inspect the records and documents, in the custody of the Commission, which pertain to the determination. Please contact the Commission's Customer Service Office if you wish to request copies.

I HEREBY CERTIFY that a copy of the foregoing Notice of Determination was mailed to the above-named addressees this 19th day of Sept., 2016, by U.S. mail.

By: Tammy Barton
Clerk of the Commission

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LOS PERROS  
BEST HOT DOGS & BURGERS  
AROUND

Date: Jul 02, 2015 02:26:13  
Table: nigger  
TableTransId: 6029970  
TransId: 6031492  
Server: KISSILA  
Current Term: 1pcst2  
Start Date: Jul 02, 2015 02:25:17

Playt Code:  
Pin :

2	Burger 305 (Porkys)	19.98
1	French Fries	3.75
	Extra Cheddar	
	Subtotal	23.73
	FOOD	2.14
	Total	25.87
	Balance	25.87

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Order#: nigger  
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