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By Melinda McClure, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 ANTHONY MERRIWEATHER, an
12 individual,

13 Plaintiff,

14 v.

15
16 OAKLEY INC., a California corporation;
17 RHONDA MILLER, an individual;

18 Defendant.

) **UNLIMITED CIVIL CASE**

) Case No.: 37-2019-00049134-CU-OE-CTL

) **AMENDED COMPLAINT FOR DAMAGES:**

-)
) 1) Hostile Work Environment [Gov.
) Code, § 12940(j)]
) 2) Intentional Infliction of Emotional
) Distress (Egg Shell Plaintiff)
) 3) Negligent Infliction of Emotional
) Distress (Egg Shell Plaintiff)

) **DEMAND FOR JURY TRIAL**

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1 Plaintiff Anthony alleges as follows:

2 **INTRODUCTION**

3 1. This case is about a callous store manager that told an employee to change the color of
4 his hair to match his skin color. Plaintiff Anthony Merriweather is that employee and he is a
5 proud African American war veteran. Mr. Merriweather suffered harm, embarrassment, severe
6 emotional distress, and damages. Plaintiff seeks relief in the form of general, special, and
7 punitive damages.

8 **VENUE**

9 2. This venue is proper because the place of harassment, discrimination, and resulting
10 injuries occurred in San Diego County.

11 **PARTIES**

12 3. Plaintiff Anthony Merriweather is a natural person who resides in San Diego, California.

13 4. Defendant Oakley Inc. is a California corporation with its headquarter at One Icon,
14 Foothill, CA 92610.

15 5. Defendant Rhonda Miller is a resident of San Diego County.

16 **THE CROWN ACT**

17 6. The CROWN (Create a Respectful and Open Workplace for Natural Hair) Act (SB 188)
18 is a California law which prohibits discrimination based on hair style and hair texture by
19 extending protection for both categories under the FEHA and the California Education Code.
20 The CROWN Act ensures the protection against discrimination in the workplace and schools
21 based on hairstyles by prohibiting employers and schools from enforcing purportedly ‘race
22 neutral’ grooming policies that disproportionately impact persons of color.”

23 **STATEMENT OF FACTS**

24 7. Defendant Oakley is a national household brand known for manufacturing and retail of
25 eyewear and apparels. Oakley has a global footprint with retail stores. One of the retail stores is
26 in downtown San Diego; known as Oakley Store #049, 460 Fifth Avenue, Suite 2-113, San
27 Diego, California 92101. The store’s general manager is Rhonda Miller.

1 8. Plaintiff Anthony Merriweather is a young African American, war veteran with PTSD.
2 About April 2019, Miller hired Merriweather as a sales employee. When Miller hired
3 Merriweather, Merriweather's hair was orange; orange represents sickle cell anemia.
4 Merriweather was calling attention to sickle cell disease through the color of his hair – orange.

5 9. On August 21, 2019, Miller began chastising Merriweather for his color. The
6 conversation between Miller and Merriweather is as follows:

7 MR. MERRIWEATHER: Why are you kicking me out of work?

8 MS. MILLER: Because I don't think -- I don't think you're okay to be here.

9 MR. MERRIWEATHER: How am I not okay to be here? I'm just sitting here
10 (inaudible).

11 MS. MILLER: Well, I'm trying to have a conversation with you about something.

12 MR. MERRIWEATHER: Yeah, it was really inappropriate. You're talking about my
13 hair color.

14 MS. MILLER: I have to. It's part of (inaudible).

15 MR. MERRIWEATHER: And I told you it was okay.

16 MS. MILLER: And I did it in front of Jesse because I need to have a witness there to
17 make sure you're not -- understand what I'm touching about (inaudible) and that's one
18 of the things. Like, I don't -- I don't know what to tell you. I don't -- I don't want you
19 to be upset at work and I don't --

20 MR. MERRIWEATHER: Oh, no. I'll let you know. You basically called me out of
21 work --

22 MS. MILLER: Yeah, but that's kind of --

23 MR. MERRIWEATHER: Can I finish speaking?

24 MS. MILLER: No.

25 MR. MERRIWEATHER: I'm not too sure -- if you're just going to keep interrupting
26 me after addressing --

27 MS. MILLER: No. No. I'm sorry. It was really insubordinate.
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1 MR. MERRIWEATHER: Oh, insubordinate?

2 MS. MILLER: Yes.

3 MR. MERRIWEATHER: Can I finish if you're going to keep addressing it because I
4 haven't spoken. You just walked by me without addressing to me. Because what
5 happened was I was standing at work. You called me over, said "Hey, I don't think
6 you can wear your hair like that." The way you addressed it was really
7 unprofessional. And I said, "Hey, yes, you can." And I said you can even check my
8 hair color.

9 MS. MILLER: I think you should go, Anthony.

10 MR. MERRIWEATHER: Ma'am, I said my hair color is a natural hair color and I
11 can have it this way.

12 MS. MILLER: It's not a natural hair color. I've dealt with my hair, and I've been in
13 this industry for a long time, and I've worn my hair all different kind of colors.

14 MR. MERRIWEATHER: See, you're using personal experience.

15 MS. MILLER: Orange is not -- it's not personal experience. It's the rules.

16 MR. MERRIWEATHER: Because you literally just said you do know. You said, "I
17 don't know." You started off with "I don't know, but I have to check" and now you're
18 telling me you do know like you're for sure, and so --

19 MS. MILLER: I am for sure. You know why I'm for sure, because I know what the
20 dress code is.

21 MR. MERRIWEATHER: Ma'am, you definitely started off with saying "I don't
22 know."

23 MS. MILLER: And believe me, I wear my hair a ton of different colors. The natural
24 law is me going natural hair.

25 MR. MERRIWEATHER: I have every right, if I don't feel uncomfortable talking
26 about my personal appearance with the person that's telling me --

27 MS. MILLER: Anthony --
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1 MR. MERRIWEATHER: I have every right to say I don't want to talk about my hair
2 color.

3 MS. MILLER: Here's what I'm going to say, I feel like you should go home.

4 MR. MERRIWEATHER: I'm good. I work this full shift.

5 MS. MILLER: Because you're being really insubordinate over something that I had
6 to address.

7 MR. MERRIWEATHER: You --

8 MS. MILLER: And if I can't address these things with you, you don't need to be here.

9 MR. MERRIWEATHER: We talked about it. It is literally 1:06.

10 MS. MILLER: You just told me "I don't want to talk about my hair at work."

11 MR. MERRIWEATHER: Yeah.

12 MS. MILLER: This is a discussion I have to have with you. It's part of dress code.

13 MR. MERRIWEATHER: You need to talk to me professionally --

14 MS. MILLER: If you don't want to have these discussions about --

15 MR. MERRIWEATHER: Would you stop raising your voice at me, please?

16 MS. MILLER: Listen, I'm not raising my voice.

17 MR. MERRIWEATHER: You are, ma'am.

18 MS. MILLER: If you can't have these discussions about the things that I need to
19 discuss with you, which is -- even if it's about dress code, then -- then you can't -- you
20 can't be here. I have to have these discussions because they're important because if
21 somebody from the corporate office comes in and they see your hair like that, I am
22 responsible.

23 MR. MERRIWEATHER: Ma'am, you constantly talk down on me and belittling my

24 --

25 MS. MILLER: It's not belittling with you.

26 MR. MERRIWEATHER: Well, if I can't talk --

27 MS. MILLER: If I can't have an honest conversation with you about --

28 MR. MERRIWEATHER: I can't speak up for myself.

1 MS. MILLER: Step over here. (Inaudible) important to the job, then you can't be
2 here. I have to be able to discuss dress code with you. You're not dressed
3 appropriately. Your hair is not appropriate.

4 MR. MERRIWEATHER: If you talked to me appropriately and --

5 MS. MILLER: It has nothing to do with your dreadlocks. It has to do with the color.

6 MR. MERRIWEATHER: You started off with I don't know if you can have your hair
7 color.

8 MS. MILLER: I don't think --

9 MR. MERRIWEATHER: Until you do --

10 MS. MILLER: And I'm 100 percent positive that I am right about it.

11 MR. MERRIWEATHER: Until you do, then address me.

12 MS. MILLER: If you would like for me to take a picture of your hair to send it to
13 Jenny -- I already know what the answer is going to be.

14 MR. MERRIWEATHER: You're going to take pictures? No, I literally -- when the
15 way you brought it up was so unprofessional. You said "Hey, I don't think."

16 MS. MILLER: Unprofessional? No, I don't think --

17 MR. MERRIWEATHER: Because if you say you don't think, you should start off
18 with what you know. You didn't start off with what you know. For sure you didn't.

19 MS. MILLER: Go home. Go home because you're being insubordinate.

20 MR. MERRIWEATHER: How am I insubordinate for stating the facts?

21 MS. MILLER: I'm not going to lunch. I'm going to stay here. You need to go home.

22 MR. MERRIWEATHER: That's going to count as I'm leaving work? I didn't quit
23 work or leave work.

24 MS. MILLER: You're being insubordinate.

25 MR. MERRIWEATHER: Insubordinate for disagreeing?
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1 MS. MILLER: And I'm going to document it because I'm trying to have a
2 conversation with you about something, and all you're doing is giving it back to me,
3 and I don't need that back.

4 MR. MERRIWEATHER: I just spoke up for myself. You just talked down to me.

5 MS. MILLER: This is -- this is a job. This isn't about speaking up for yourself. If
6 you can't take direction or you're not going to listen to me about certain things,
7 Anthony, it's not going to work. And every time I try to address something with you,
8 it's just a difficult situation. It shouldn't be. You should just be like, "You know
9 what, I understand. I get it. My hair is like this. It's a really bright color. Let me
10 know whether or not I can wear my hair this color." Same situation. I have been in
11 this situation before about my hair color. There are times I had to change my hair
12 color because it was too bright, and I understand that because they wanted to be -- it
13 has to be close to your skin color. It can't be anything outrageous. That is Oakley's
14 rule. It has --

15 MR. MERRIWEATHER: It has to be close to my skin color.

16 MS. MILLER: Listen, it has nothing to do with your -- with your hairstyle or
17 anything like that. I wear my hair natural, but if I come in here with pink hair, I'm not
18 going to be able to.

19 MR. MERRIWEATHER: If orange hair isn't a natural hair color --

20 MS. MILLER: It's not a natural hair color. I've worn my hair colors. That is not it.
21 So I'm just saying, like, if you want --

22 MR. MERRIWEATHER: I have to go to work because I discontinue -- I disagree
23 with that and I rather you talk to me formally with that because I really didn't want to
24 have that conversation unless it was better.

25 MS. MILLER: Okay. Here's the form. You're being insubordinate. I can't have a
26 conversation with you. I don't want to try anymore because it's so difficult. You
27 fight me on everything, and it's unnecessary.

28 MR. MERRIWEATHER: You just talked to me really disrespectful.

1 MS. MILLER: I can't even go to lunch.

2 MR. MERRIWEATHER: Okay. Like, you're -- nobody told you to stay and have
3 that conversation.

4 MS. MILLER: I have to because when somebody tells me I'm not having this
5 conversation and walks away, that's insubordination.

6 MR. MERRIWEATHER: And so you had -- I didn't walk away insubordinately.

7 The way --

8 MS. MILLER: That's insubordination.

9 MR. MERRIWEATHER: I talked to you respectfully.

10 MS. MILLER: Anthony?

11 MR. MERRIWEATHER: The way you're talking to me now is how you talked to me
12 then.

13 MS. MILLER: Anthony? That's why I had Jesse here because you do that to me.

14 MR. MERRIWEATHER: Do what?

15 MS. MILLER: Anytime I try to address anything with you, it's just hard. It shouldn't
16 be that hard.

17 MR. MERRIWEATHER: What, say what my side is instead of just --

18 MS. MILLER: It's the same thing if --

19 MR. MERRIWEATHER: You know what, I should just accept what you say. Yes,
20 ma'am, you right. Whatever you say goes. My hair is so crazy.

21 MS. MILLER: Anthony?

22 MR. MERRIWEATHER: Insubordinate for all that. So does that make you happy?

23 MS. MILLER: I think you should go home.

24 MR. MERRIWEATHER: Do I -- am I fired for going home because you sent me
25 home because I don't understand me losing --
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1 MS. MILLER: I just don't even want to --

2 MR. MERRIWEATHER: You're telling me to take it off my check. So before I take

3 money out of my family's mouth right now, I'm leaving -- am I fired because you're

4 telling me to leave for insubordination?

5 MS. MILLER: I just --

6 MR. MERRIWEATHER: For stuff that I'm not doing.

7

8 MS. MILLER: Because you're being insubordinate.

9 MR. MERRIWEATHER: I'm just trying to work.

10 MS. MILLER: I don't want you staying here after, like, talking to me like that.

11 MR. MERRIWEATHER: Like what?

12 MS. MILLER: There's no point whatsoever.

13 MR. MERRIWEATHER: So you can talk to me however way. If I just calmly talk

14 to you and say hey, I don't agree with you.

15 MS. MILLER: That's why I had Jesse there because I said, you know what, I don't

16 think you can wear your hair that color.

17 MR. MERRIWEATHER: And I said, yes, ma'am, I can.

18 MS. MILLER: And you're like I don't want to have this conversation at work.

19 MR. MERRIWEATHER: And you said I have to check. And I was like okay.

20 MS. MILLER: Anthony, go ahead and clock out.

21 MR. MERRIWEATHER: All right. I'm clocking out on your instructions.

22 MS. MILLER: No, you're clocking out because you're being insubordinate.

23 MR. MERRIWEATHER: You literally just told me to clock out.

24 MS. MILLER: I'm sorry, but you're being insubordinate. You can't be here if you're

25 going to be insubordinate. I'm going to document just so I have myself covered and

26 Jesse (inaudible).

27

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1 MR. MERRIWEATHER: What kind of order is this? So you're telling me to clock
2 out because I'm insubordinate, but you're saying I'm insubordinate for not clocking
3 out?

4 MS. MILLER: And you're going to continue to be insubordinate.

5 MR. MERRIWEATHER: I'm just trying to figure out what the heck I'm doing
6 because I haven't started anything.

7 MS. MILLER: Because you continue to be insubordinate.

8 MR. MERRIWEATHER: How am I being insubordinate?

9 MS. MILLER: So you're going to make a decision right now.

10 MR. MERRIWEATHER: Wait, how am I being insubordinate?

11 MS. MILLER: So you're going to listen or you're not going to listen. What's your
12 choice?

13 MR. MERRIWEATHER: Tell me how I'm being insubordinate first.

14 MS. MILLER: What's the choice?

15 MR. MERRIWEATHER: Tell me how I'm being insubordinate.

16 MS. MILLER: Because you keep talking back to me --

17 MR. MERRIWEATHER: I don't know what I'm being insubordinate about.

18 MS. MILLER: -- when I'm trying to have a conversation with you.

19 MR. MERRIWEATHER: What am I --

20 MS. MILLER: And you have done this to me before, and it's frustrating. It's like all
21 I have to do is say anything to help you out in order for you to be a dress code. It's a
22 fight. Why is this a battle? Why?

23 MR. MERRIWEATHER: So what am I insubordinate for?

24 MS. MILLER: If you don't -- if you don't -- if you don't want to follow policies here
25 and it's hard for you because you --

26 MR. MERRIWEATHER: Ms. Rhonda, my general manager, may you please tell me
27 why I'm being insubordinate?

28

1 MS. MILLER: Because you want to be yourself, which is -- there's nothing wrong
2 with that. Maybe this isn't the place for you to be yourself.

3 MR. MERRIWEATHER: Can you stop talking bad about me personally and just tell
4 me what my insubordination is that I'm being clocked out of work for? That's all I
5 ask.

6 MS. MILLER: Because you're continuing to talk back to me. Continually.

7 MR. MERRIWEATHER: So the initial insubordination for me clocking out is --

8 MS. MILLER: Because you mouth off to me right there when I was standing there.

9 MR. MERRIWEATHER: But you called me over and started talking to me.

10 MS. MILLER: Correct.

11 MR. MERRIWEATHER: And I walked away.

12 MS. MILLER: And I have every right to address your hair.

13 MR. MERRIWEATHER: And if you're irate and disrespectful, I just have to take it?

14 MS. MILLER: And Jesse was standing right there. I was not being disrespectful.

15 MR. MERRIWEATHER: You were.

16 MS. MILLER: You completely said --

17 MR. MERRIWEATHER: You raised your voice.

18 MS. MILLER: No, I didn't. When I was standing right there?

19 MR. MERRIWEATHER: You told me I'm being insubordinate and started telling me
20 all these things that I am and saying I'm insubordinate.

21 MS. MILLER: Oh, my God.

22 MR. MERRIWEATHER: And telling me that I'm disrespectful and you told me to
23 basically --

24 MS. MILLER: Figure out if you can work with me.

25 MR. MERRIWEATHER: When you said I can't work here. You walked up to me.

26 MS. MILLER: Anthony, can I be honest with you?

27 MR. MERRIWEATHER: Just take your lunch. Maybe you're hungry. Maybe you
28 need to take a break.

1 MS. MILLER: Go ahead and clock out.
2 MR. MERRIWEATHER: I think you need to take a break.
3 MS. MILLER: No, go ahead and clock out.
4 MR. MERRIWEATHER: Am I being instructed to clock out?
5 MS. MILLER: No, I need you to go home and then when you come back I see you.
6 I'll document it. Go ahead, clock out. It will be fine.
7 MR. MERRIWEATHER: Are you threatening me? This makes no -- how are you
8 threatening me? Like, this makes no sense. You're telling me next time you see me -
9 -
10 MS. MILLER: Anthony, please. I need you to clock out right now. And I'm not -- I
11 need you to go ahead and clock out. I can't --
12 MR. MERRIWEATHER: You're telling me to clock out. I'll clock out on your
13 instruction. You are forcing me to clock out.
14 MS. MILLER: I'm not forcing you to clock out.
15 MR. MERRIWEATHER: You're forcing me to clock out against my will.
16 MS. MILLER: I can't have you here when you're insubordinate and you're talking
17 back to me and talking at me and talking about me. Like, that's absolutely insane.
18 Nobody talks to their boss like that. I'll check you out.
19 MR. MERRIWEATHER: You can see all my stuff. Forced to clock out. I'm now
20 clocked out against my will at 1:14 on Rhonda's instruction. I did not want to clock
21 out.
22 MS. MILLER: Have a good day. Have a good day.
23 MR. MERRIWEATHER: Am I fired? Should I come to work tomorrow?
24 MS. MILLER: Have a good day, Anthony. You're on the shift tomorrow. You
25 should be here.
26 MR. MERRIWEATHER: Okay.
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1 **FIRST CAUSE OF ACTION**

2 Hostile Work Environment Harassment — Conduct Directed at Plaintiff
3 Gov. Code, § 12940(j)
4 (By Plaintiff against all defendants)

5 10. All the preceding paragraphs are incorporated hereunder.

6 11. Merriweather claims that he was subjected to harassment based on his race at Oakley,
7 causing a hostile or abusive work environment.

8 12. That Merriweather was an employee at Oakley retail store in San Diego, California.

9 13. Merriweather was subjected to unwanted harassing conduct because he was an African
10 American male.

11 14. That the harassing conduct was severe or pervasive.

12 15. That a reasonable man in Merriweather’s circumstances would have considered the work
13 environment to be hostile or abusive.

14 16. That Merriweather considered the work environment to be hostile or abusive.

15 17. That Oakley’s store general manager, Rhonda Miller, engaged in the conduct.

16 18. That Merriweather was harmed, including but not limited to, suffering e.g. severe
17 emotional distress and post-traumatic stress. That the defendants’ conduct was a substantial
18 factor in causing the plaintiff’s harm. Defendants engaged in conduct with malice, oppression,
19 outrageous and despicable warranting punitive damages.

20 **Respondeat Superior**

21 19. Merriweather also claims that Oakley is responsible for the harm because Miller was
22 acting as its employee, agent and store general manager when the incident occurred. Miller was
23 Oakley’s employee, and the store’s general manager. That Miller was acting within the scope of
24 her agency, and employment when she harmed Merriweather.

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1 **SECOND CAUSE OF ACTION**

2 Intentional Infliction of Emotional Distress — Conduct Directed at Plaintiff
3 (By Plaintiff against all defendants)

4 20. All the preceding paragraphs are incorporated hereunder.

5 21. Merriweather claims that Miller’s racist and discriminatory conduct caused him to suffer
6 severe emotional distress.

7 22. That Miller’s conduct was outrageous.

8 23. That Miller intended to cause Merriweather emotional distress because Miller’s racist and
9 discriminatory comments was directed at Merriweather.

10 24. That Miller acted with reckless disregard of the probability that Merriweather would
11 suffer emotional distress, knowing that Merriweather was present when the conduct occurred.

12 25. Merriweather was harmed, including but not limited to, suffering e.g. severe emotional
13 distress and post-traumatic stress. That the defendants’ conduct was a substantial factor in
14 causing the plaintiff’s harm. Defendants engaged in conduct with malice, oppression, outrageous
15 and despicable warranting punitive damages.

16 26. That Miller’s conduct was a substantial factor in causing Merriweather’s severe
17 emotional distress.

18 **Respondent Superior**

19 27. Merriweather also claims that Oakley is responsible for the harm because Miller was
20 acting as its employee, agent and store general manager when the incident occurred. Miller was
21 Oakley’s employee, and the store’s general manager. That Miller was acting within the scope of
22 her agency, and employment when she harmed Merriweather.

23 28. Miller’s racist and discriminatory comments were outrageous, malicious, despicable and
24 oppressive and therefore Merriweather seeks punitive damages.

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1 **THIRD CAUSE OF ACTION**

2 Negligent Infliction of Emotional Distress — Conduct Directed at Egg Shell Plaintiff
3 (By Plaintiff against all defendants)

4 29. Merriweather claims that Miller’s racist and discriminatory conduct caused him to suffer
5 serious emotional distress.

6 30. That Miller had a duty to Merriweather because she was the employer or store manager
7 for the employer Oakley.

8 31. Miller breached her duty by making the racist and discriminatory statements stated
9 above.

10 32. Merriweather suffered and continues to suffer serious emotion distress.

11 33. That Miller negligence was a substantial factor in causing Merriweather’s serious
12 emotional distress.

13 **Respondent Superior**

14 34. Merriweather also claims that Oakley is responsible for the harm because Miller was
15 acting as its employee, agent and store general manager when the incident occurred. Miller was
16 Oakley’s employee, and the store’s general manager. That Miller was acting within the scope of
17 her agency, and employment when she harmed Merriweather.

18 35. Miller’s racist and discriminatory comments were outrageous, malicious, despicable and
19 oppressive and therefore warrants punitive damages.

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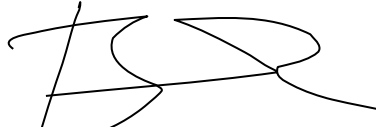
1 **PRAYER**

2 Plaintiff prays for judgement against Defendants, and each of them, as follows:

- 3 1. General damages in an amount to be proven at trial;
- 4 2. Special damages according to proof;
- 5 3. Punitive damages;
- 6 4. Interest according to law;
- 7 5. Attorney’s fees under Government Code §12965.
- 8 6. For costs of suit incurred herein; and
- 9 7. For such other and further relief as this Court deems just and proper.
- 10

11 Dated: September 18, 2019

12 Respectfully submitted,
13 **NAKASE LAW CORPORATION**

14 
15 By: _____
16 Brad Nakase, Esq., Attorney for
17 Plaintiff Anthony Merriweather