

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ROUTH GUYS, LLC d/b/a KUNG FU)
SALOON, WASHINGTON GUYS, LLC)
d/b/a KUNG FU SALOON, GRANDE)
GUYS, LLC d/b/a KUNG FU SALOON,)
)
Defendants.)
)
_____)

CIVIL ACTION NO. 3:15-cv-02191

CONSENT DECREE

I. Introduction

1. This Consent Decree resolves the Complaint by the United States of America (“United States”) against Routh Guys, LLC d/b/a Kung Fu Saloon, Washington Guys, LLC d/b/a Kung Fu Saloon, and Grande Guys, LLC d/b/a Kung Fu Saloon (hereinafter “the Defendants”), which alleges that the Defendants violated Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.*, by discriminating against African American and Asian patrons.

2. Each of the Defendants does business as “Kung Fu Saloon.” There are three Kung Fu Saloon locations: 2911 Routh Street in Dallas, Texas; 5317 Washington Avenue in Houston, Texas; and 510 Rio Grande Street in Austin, Texas (hereinafter “Kung Fu Saloons”).

3. In the Complaint, the United States alleges that the Defendants have engaged in a pattern or practice of denying to African American and Asian patrons, on the basis of race, color, or national origin, the full use and enjoyment of the goods, services, facilities, privileges,

advantages, and accommodations of Kung Fu Saloons on the same basis as such are provided to white members of the general public through, among other things, the implementation of a dress code.

4. Specifically, the United States alleges that Defendants have engaged in practices which include but are not limited to the following acts: (a) denying African-American and Asian patrons entry into the establishment based on dress code when similarly-dressed white patrons were permitted to enter; (b) denying African American and Asian patrons entry by claiming that the establishment is at capacity while allowing white patrons to enter thereafter; (c) requiring African American and Asian patrons to wait longer to enter than white patrons who arrived thereafter; and (d) screening event booking requests to limit the number of event bookings by African American or Asian parties.

5. The Defendants deny the allegations in the United States' Complaint.

6. The parties stipulate that, at all times relevant to the allegations of the United States, Kung Fu Saloons are "place[s] of public accommodation" within the meaning of 42 U.S.C. § 2000a(b)(3), and that their operations "affect commerce" within the meaning of 42 U.S.C. § 2000a(c).

7. The United States and the Defendants have agreed that, in order to avoid protracted and costly litigation, this case should be resolved without further litigation through the terms of this Decree.

It is hereby, ORDERED, ADJUDGED, and DECREED that:

II. Injunction

8. All provisions of this Decree shall apply to Routh Guys, LLC, Washington Guys, LLC, and Grande Guys, LLC in the conduct of business at Kung Fu Saloons. All provisions of this Decree shall also apply to the employees and agents of same, to all successors to the extent that their cooperation is required to implement this Decree, and to anyone acting in whole or in part under the direction of any of the Defendants in connection with any Kung Fu Saloon.

9. The Defendants, their agents, employees, successors, and all others actively participating with them in the ownership and operation of any Kung Fu Saloon are enjoined from denying to any person, because of race, color, or national origin, the full and equal enjoyment of all of the goods, services, facilities, privileges, advantages, and accommodations of such establishment. Such prohibited conduct includes: (a) failing or refusing to admit any person to the premises of such establishment on account of race, color, or national origin; (b) offering different terms, conditions, or privileges of admission or event booking at such establishment or providing different information about the terms, conditions, or privileges of admission or event booking on the basis of race, color, or national origin; and (c) denying or deterring admission or event booking at such establishment by adopting any practice or procedure designed to discourage persons from patronizing such establishment or booking an event on the basis of race, color, or national origin.

III. Training

10. Within 90 days of the entry of this Decree, the Defendants' owners, partners, employees, and any other person who in any way provides management, security, or services to the public at Kung Fu Saloons shall attend a program of educational training concerning the

substantive provisions of Title II and their responsibilities under the law. This training, which shall be no less than two hours in duration, shall be conducted by a person or organization, approved by the United States, with experience in providing training on civil rights issues. The costs of this program shall be borne by the Defendants. All persons attending such a program shall have their attendance certified in writing by the person or organization conducting the educational program.

11. No later than 21 days after entry of this Decree, the Defendants shall provide a copy of this Decree to every owner, partner, employee, and any other person who in any way provides management, security, or services to the public at any Kung Fu Saloon. The Defendants shall direct each such owner, partner, employee, agent, and other person covered by this paragraph to review and read a copy of this Decree. Each owner, partner, employee, agent, and other person covered by this paragraph shall sign a statement in the form of Attachment A acknowledging that he or she has read and understands this Decree and declaring that he or she will perform his or her duties in accordance with this Decree. For the duration of this Decree, all new employees who provide management, security, or services to the public at any Kung Fu Saloon shall be provided a copy of this Decree when their employment commences, shall be directed to read a copy of this Decree, and shall sign a statement in the form of Attachment A no later than five days following their first day of employment.

IV. Nondiscrimination Policies and Procedures

12. Within 15 days of the date of entry of this Decree, the Defendants shall erect and maintain at each public entrance to the Austin, Houston and Dallas locations of Kung Fu Saloon a printed sign stating that the establishment is open to all members of the public without regard to race, color, or national origin. Such sign shall be printed in dark letters on a contrasting

background and shall be located and maintained in a place that is well-lit and clearly visible to all patrons as they enter the premises. Such sign shall include a statement that any person who believes he or she has been discriminated against on the basis of race, color, or national origin may speak immediately with a manager, and that if he or she disagrees with the manager's decision, may file a written complaint and/or may call the United States Department of Justice at (800) 896-7443 ext. 9991 and/or the Defendants' complaint number to be established within 30 days of the effective date of this Decree. The text for such sign, and the size of the text, is specified in Attachment B.

13. The Defendants shall place on the homepage of each Kung Fu Saloon website and Facebook page and shall include in any advertisements in television, newspaper, or internet media (except online banner ads and social media ads), information indicating that Kung Fu Saloons are open to all members of the public on an equal basis, without regard to race, color, or national origin. The following wording shall be sufficient for purposes of compliance with this paragraph: "Kung Fu welcomes everyone on an equal basis without regard to race, color, or national origin."

14. To the extent that Kung Fu Saloons accept bookings for private parties or events, Kung Fu Saloon's webpage shall clearly convey the procedures for booking a private party or event and that private parties or events are available on a space-limited basis to all members of the public on an equal basis, without regard to race, color, or national origin. For purposes of private parties or events, Kung Fu Saloons agree to use the Kung Fu Reservation Agreement which became effective on the effective date of this Decree. In addition to the foregoing, Kung Fu Saloon will report to the Department of Justice instances in which it declines a request for an event booking for any reason other than the following: the event space is unavailable due to other

bookings, remodeling/renovation, or any other reason that closes the event space to all persons requesting event bookings at that time; and no event bookings are being offered at the date or time requested. In addition, Kung Fu Saloons agrees to make available for inspection by the United States, upon request, a copy of any and all Kung Fu Reservation Agreements submitted to Kung Fu Saloons for the duration of this Consent Decree.

15. To the extent that the Defendants adopt, enforce, or otherwise use a dress code with respect to admission to Kung Fu Saloons, such dress code must be in writing, must clearly convey what manner of dress is required and what specific types of apparel are prohibited, and must be posted and prominently displayed outside all entrances to Kung Fu Saloons in clear view of prospective patrons. A copy of the proposed dress code shall be provided to the United States for review and approval within 15 days of the date of entry of this Decree. The United States shall have 15 days from the date of receipt of the proposed dress code to review and comment on provisions of the dress code before it shall take effect. Once the United States has approved the dress code, any proposed changes to the dress code during the duration of this Decree must be provided by facsimile and next-day delivery to the United States for its review and comment at least 30 days before being implemented. The proposed changes shall be considered approved upon the expiration of the 30th day unless the Defendants receive a written objection from the United States within the 30-day notice period. To the extent the United States objects to any changes to the dress code proposed in accordance with this paragraph, and the parties cannot resolve the dispute among themselves, such dispute shall be submitted to the Court in accordance with the dispute resolution provisions of paragraphs 34–35.

16. The Defendants shall institute policies that ensure that an individual in a supervisory position is on-site and available promptly to speak with any patron who is denied

access to any Kung Fu Saloon. That individual shall have the right to permit the patron to enter. If that individual still denies access to the patron, the individual shall offer the patron a complaint form in the form of Attachment C. All individuals in a supervisory position shall at all times have access to a supply of the complaint forms in the form of Attachment C.

17. The Defendants shall establish and maintain for the duration of this Decree a system of accepting, processing, and investigating any complaints made to Defendants that a patron was denied access, discriminated against in the event booking process, or discriminated against in the provision of any other public services at Kung Fu Saloon, because of his or her race, color, or national origin.

18. Within 30 days of the receipt of any oral or written complaint made to Defendants under paragraph 17 above, the Defendants shall notify the Department of Justice of the complaint and, if requested by the Department of Justice, shall provide the Department of Justice with any existing statements, documents, photographs, videos, or other information related to the complaint.

19. Nothing in this Decree shall prevent the management of Kung Fu Saloons from refusing entry to or removing any individual from its premises who engages in violent, indecent, profane, boisterous, or otherwise disorderly conduct, provided that the management does so in a manner that does not discriminate against individuals on the basis of race, color, or national origin.

V. Mandatory Compliance Testing

20. The Defendants, in consultation with the United States, shall develop and implement a testing program to audit and monitor the Defendants' compliance with federal public accommodations laws and this Decree at Kung Fu Saloons. The testing program will consist of at least three paired tests of each Kung Fu Saloon in each complete 12-month period following the effective date of this Decree, for a total of nine paired tests per year for a total of 27 tests. The Defendants shall bear all costs, fees, and expenses associated with the implementation of the mandatory compliance testing. The tests shall be designed to determine whether the Defendants are providing equal treatment and access to African American and Asian patrons at Kung Fu Saloons.

21. The test procedures shall be developed, and the tests conducted, by an independent company or organization ("Testing Contractor"), pre-approved by the United States, with expertise in conducting paired testing for potential civil rights violations, including public accommodations, and is wholly independent of the Defendants.

22. The Defendants shall enter into a contract with the Testing Contractor that is consistent with the terms of this Decree within 120 days after the entry of this Decree.

23. Test procedures developed by the Testing Contractor shall be submitted to the United States for approval prior to the beginning of the testing program. Should approval not be received, the Defendants shall have an additional 60 days to submit revised testing procedures.

24. At no time shall any owner, partner, employee, or agent of any Kung Fu Saloon be provided with any information concerning the location, procedure, or test plan prior to the completion of the test. At no time shall the Testing Contractor disclose to any owner, partner, employee, or agent of the Defendants the identities of individual testers, or any information that

would reveal the identities of individual testers; this provision ensures that testers can continue to be used on compliance tests without compromising the integrity of the testing process. Nothing in this paragraph prohibits Defendants from reviewing the test procedures described in the foregoing paragraphs 20-23 following completion of all tests, provided that the contractor consents, nor does it prohibit Defendants' counsel from requiring detailed billing information and supporting documentation from the Testing Contractor for any hourly or task-based work, so long as it does not reveal the identities of the testers, or the location, procedure or information about a test prior to the completion of the test.

25. The results of all tests conducted by the Testing Contractor pursuant to this section, along with supporting documentation, shall be reported to the Defendants and to the United States simultaneously within 30 days of the conclusion of each test. The Testing Contractor, however, need not report its results within 30 days if follow-up testing is required to verify a testing result and premature reporting of earlier results would compromise the testing process. Where testing results indicate a possible violation of this Decree, the Defendants shall conduct an investigation of the facts and circumstances underlying such conduct within 30 days of receipt of the testing evidence. Within 15 business days of the completion of the Defendants' investigation, the Defendants shall provide the United States with a report containing the investigation results and the Defendants' plan and timetable for implementation of appropriate actions. The Defendants shall implement this plan within 15 business days unless the United States objects, in which case the parties shall use the dispute resolution procedures described in paragraphs 34–35.

26. The United States may provide the Testing Contractor with any information received about customer complaints with the exception of information that would specifically

identify the individuals making complaints. Such information shall also be delivered to Defendants.

27. The United States may also conduct testing of Kung Fu Saloons for the purpose of determining whether the Defendants are violating the provisions of Title II of the Civil Rights Act of 1964 and/or the terms of this Decree.

VI. Reporting Requirements

28. The Defendants shall, no later than 75 days after the date of entry of this Decree, serve a report on the United States evidencing their compliance with this Decree. This report shall include the following:

- a. A photograph of each public entrance to Kung Fu Saloons clearly showing the signs required under paragraphs 12 (including the complaint line telephone number) and 15;
- b. A list of all advertisements covered by paragraph 13, made public in any manner since the entry of this Decree, together with representative samples of such advertisements;
- c. The statements signed pursuant to paragraph 11;
- d. Written certification by the person or organization conducting the educational program pursuant to paragraph 10; and
- e. A copy of the notice conveying the procedures for booking a private party or event (Kung Fu Saloon Reservation Agreement) referenced in paragraph 14.

29. Six months after the report of compliance described in paragraph 28, and every

six months thereafter for three years from the date of entry of this Decree,¹ the Defendants shall serve upon the United States a written report evidencing continuing compliance with this Decree. This report shall contain the following information:

- a. Representative samples of all advertising for the preceding six-month period covered by paragraph 13;
- b. Any and all new statements signed during the preceding six-month period, as referenced in paragraph 11;
- c. Information regarding any change in the name or location of Kung Fu Saloons during the preceding six-month period, including the updated address and the dates of operation at that address;
- d. Notification of any transfer, sale, change in ownership, or ceasing of licensing or operation of any Kung Fu Saloon by any of the Defendants during the preceding six-month period;
- e. A copy of any changes to the dress code adopted during the preceding six-month period pursuant to paragraph 15;
- f. A copy of any changes to the Kung Fu Saloon Reservation Agreement made during the preceding six-month period pursuant to paragraph 14;
- g. A breakdown (by Kung Fu Saloon location) of the number of Kung Fu Saloon Reservation Agreements submitted during the preceding six-month period pursuant to paragraph 14;
- h. A list of any private party or event booking requests that were declined

¹ Except that the last report shall be submitted one month before the three-year anniversary of the Decree.

in the preceding six-month period for any reason other than the reasons set forth in paragraph 14, along with the contact information, if known, for at least one representative of the person or entity making the request that was denied;

- i. Copies of any and all complaints of discriminatory treatment submitted during the preceding six-month period, including those submitted pursuant to paragraph 17; and
- j. Copies of any and all testing results pursuant to paragraph 20 for the preceding six-month period.

30. All documents or other communications required by this Decree to be sent to the United States shall be sent by facsimile to (202) 514-1116 or by overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street NW, Suite 7032, Washington, D.C. 20006.

31. The Defendants shall maintain all records relating to implementation of and compliance with all provisions of this Decree. Upon request, the Defendants shall provide the United States with copies of any records maintained as required by this Decree.

VII. Duration and Enforcement of Consent Decree

32. This Court shall retain jurisdiction of this case for purposes of enforcing this Decree, which shall be effective for a period of 36 months following the date of entry by the Court. The United States may move the Court to extend the duration of the Decree in the interests of justice.

33. Any time limits for performance imposed by this Decree may be extended by written agreement of the parties. The other provisions of this Decree may be modified by written

agreement of the parties, provided the parties file the written agreement with the Court. The agreement shall take effect upon filing and shall remain in effect for the duration of the Decree or until such time as the Court indicates through written order that it has not approved the modification.

34. If differences arise between the parties regarding interpretation, implementation, or the Defendants' compliance with the terms of this Decree, the parties shall endeavor to resolve such differences among themselves before seeking the intervention of the Court.

35. In the event of a failure by any of the Defendants to perform in a timely manner any act required by this Decree or otherwise to act in conformance with any provision thereof, and if the voluntary dispute resolution procedure described in paragraph 34 is unsuccessful, the United States may move this Court to impose any remedy authorized by law or equity, including but not limited to an order requiring performance of such act or deeming such act to have been performed, and an award of any costs and attorney's fees that may have been occasioned by the violation and/or failure to perform.

VIII. Litigation Costs

36. Each party shall bear its own costs and attorneys fees.

IX. Termination of Litigation Hold

37. The parties agree that, as of the effective date of this Decree, litigation is not "reasonably foreseeable" concerning the matters described in the United States' Complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information, or things related to matters described in the Complaint, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligation imposed by this Decree.

ENTERED THIS _____ DAY OF _____, 2014

UNITED STATES DISTRICT JUDGE

For Plaintiff United States of America

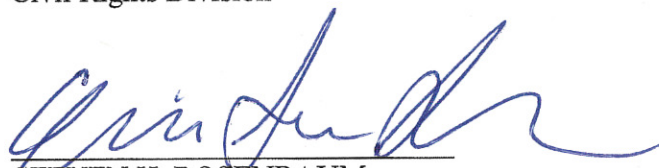
Dated: Jan 30th, 2015

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For Defendants Routh Guys, LLC d/b/a Kung Fu Saloon; Washington Guys, LLC d/b/a Kung Fu Saloon; and Grande Guys, LLC d/b/a Kung Fu Saloon:

Dated: June 30, 2015



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ATTACHMENT A

I have reviewed and read a copy of the Consent Decree entered in United States of America v. Routh Guys, LLC d/b/a Kung Fu Saloon, Washington Guys, LLC d/b/a Kung Fu Saloon, and Grande Guys, LLC d/b/a Kung Fu Saloon, Northern District of Texas, Civil Action No. _____. I understand the terms of that Decree, and I further understand that Federal law guarantees that no person may be denied, on account of their race, color, or national origin, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of places such as Kung Fu Saloons. With that understanding, I agree that, as a condition of my providing goods and/or services on behalf of any Kung Fu Saloon or any other place of public accommodation owned or managed by Routh Guys, LLC, Washington Guys, LLC, or Grande Guys, LLC, I shall not discriminate in any manner on account of race, color, or national origin in the provision of such goods and/or services. If I violate the terms of the Decree, I understand that I may be subject to disciplinary action, up to and including termination of my employment.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Signature

Home Address

Home Telephone Number

ATTACHMENT B

NOTICE

KUNG FU SALOON IS OPEN TO ALL MEMBERS OF THE PUBLIC
WITHOUT REGARD TO RACE, COLOR, OR NATIONAL ORIGIN

IF YOU FEEL YOU HAVE BEEN UNLAWFULLY DENIED ACCESS
YOU MAY TALK TO A MANAGER NOW,
FILE A WRITTEN COMPLAINT, AND/OR CALL:

Kung Fu Saloon Complaint Number

NUMBER

OR

United States Justice Department, Housing and Civil Enforcement Section
Civil Rights Division, 950 Pennsylvania Ave. Washington, D.C. 20530

1 (800) 896-7743, ext. 9991

ATTACHMENT C

COMPLAINT FORM

Name: Address:

Telephone No.:

E-mail address:

Kung Fu Saloon location you visited: Dallas Houston Austin

Were you refused admission to the Kung Fu Saloon?

Date that you were refused admission to Kung Fu Saloon:

Time (or time of day) that you were refused admission to Kung Fu

Saloon: Reason(s) given for why you were refused admission to Kung Fu

Saloon:

Name of the manager or supervisor with whom you spoke, if any:

Anything else about this incident that you would like to explain:

To be filled out by Kung Fu Saloon

Name of manager or supervisor:

Reason(s) for refusing entrance: