

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY**

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
by LETITIA JAMES, Attorney General of the	:	
State of New York,	:	
	:	Index No.
Plaintiff,	:	
	:	
-against-	:	SUMMONS
	:	
DAVID ELMENDORF,	:	Date Index No. Purchased:
	:	March 10, 2021
	:	
Defendant.	:	
----- X	:	

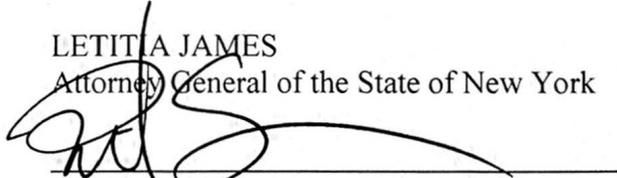
TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue pursuant to CPLR § 503(a) is that the Defendant lives in the County of Schenectady and a substantial part of the events or omissions giving rise to this cause of action occurred there.

Dated: New York, New York
March 10, 2021

LETITIA JAMES
 Attorney General of the State of New York



Richard Sawyer
Special Counsel for Hate Crimes
 New York State Office of the Attorney General
 28 Liberty Street, 20th Floor
 New York, New York 10005
 (212) 416-8250

To: DAVID ELMENDORF
255 Marshall Ave.
Schenectady, NY 12304

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COUNTY OF SCHENECTADY**

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THE PEOPLE OF THE STATE OF NEW YORK,	:	
by LETITIA JAMES, Attorney General of the	:	
State of New York,	:	
	:	Index No.
Plaintiff,	:	
	:	
-against-	:	COMPLAINT
	:	(Injunctive Relief Requested)
DAVID ELMENDORF,	:	
	:	
	:	
Defendant.	:	
-----	X	

I. INTRODUCTION

1. The Attorney General brings this civil action against Defendant David Elmendorf for injunctive and other relief under New York Civil Rights Law (“CRL”) §§ 79-n and 40-c and Executive Law § 63(12).

2. Elmendorf violated various New York laws over the course of two days in June 2020 when he made multiple armed threats, including death threats using derogatory racist language, against peaceful Black protestors and made false reports to the police regarding those protestors. The Civil Rights Law prohibits racially motivated acts of violence or intimidation, including targeting anyone for harm, making unjustified misrepresentations to the police, and interfering with another person’s civil rights.

3. The Attorney General seeks to enjoin Elmendorf from engaging in these illegal activities in the future. Such relief will protect the rights of all New Yorkers to peacefully protest without race-based threats and harassment.

II. PARTIES AND JURISDICTION

4. Plaintiff, the People of the State of New York, represented by and through their Attorney General, Letitia James, is a sovereign state and brings this action pursuant to CRL §§ 79-n and 40-c and Executive Law § 63(12).

5. Defendant David Elmendorf resides in Schenectady, New York and is the former owner of Bumpy's Polar Freeze, a restaurant in Schenectady, New York. The restaurant is now under new ownership and operates under a different name.

6. This Court has jurisdiction over this action pursuant to CRL § 79-n and the New York Civil Practice Law & Rules (CPLR) § 301.

7. Venue is proper under CPLR § 503(a) because a substantial part of the events giving rise to the claims here occurred in the County of Schenectady.

III. FACTS

8. In June 2020, local activists began protesting Elmendorf's ice cream shop, Bump's Polar Freeze, after learning that Elmendorf, who is white, allegedly wrote a string of racist text messages. The messages included racial slurs and Elmendorf admitting, "I don't hire black people." In response, Black community groups coordinated several rallies outside of Bumpy's beginning June 28, 2020.

9. On June 30, 2020, at approximately 4 a.m., Elmendorf physically and verbally threatened a group of Black protesters who stood peacefully on the porch of a private house near Bumpy's. For approximately fifteen minutes, he harangued the protestors with racist language, calling them "n****rs," "coons," and "monkeys." He threatened their lives, shouting, "If you come over here I'm going to shoot you" and "I'll kill all you f*****g n****rs." Elmendorf

threatened the protestors with a baton and told them he was going into Bumpy's to get a gun. In fear for their safety, the protestors retreated inside or left the scene.

10. Elmendorf then called 911, falsely reported that there were "20 armed protestors who were threatening to shoot him," and referred to the Black protestors as "savages" hanging out in "Section 8 housing." Five Schenectady police cars arrived at the scene and questioned the witnesses who remained at the private residence. The police made no arrests.

11. That evening, during another round of protests, Elmendorf threatened a crowd of roughly fifty peaceful protestors with a .22-caliber air rifle. Elmendorf yelled racial slurs and threats at the group, threatening, "I'll run you n****rs over with my truck," "I'll kill all you fucking n****rs," and "I hate you fucking n****rs."

12. For fear of being shot, many of the protestors, who were located just off the Bumpy's property, fled to cover. Others stayed in the area to protect other protestors or help them to safety.

13. After several minutes of advancing towards the protestors with his rifle, Elmendorf lowered his weapon and gestured to the crowd, threatening, "come on you fucking n****rs, I'll kill all you monkeys." Elmendorf continued to move down the street with his weapon until he reached his vehicle and drove away from the scene.

14. After driving a short distance, a Niskayuna police officer stopped Elmendorf when he drove through a stop sign. Police recovered a .22-caliber air rifle, a tin of .22-caliber ammunition, and a rifle scope from Elmendorf's vehicle.

IV. CAUSE OF ACTION

COUNT I

15. Plaintiff repeats, realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 14 of this Complaint.

16. Elmendorf intentionally selected victims for harm in whole or in substantial part because of a belief or perception regarding their race or color.

17. Elmendorf summoned a police officer without reason to suspect a violation of the penal law in whole or in part because of a belief or perception regarding race or color.

18. These rights are secured by CRL § 79-n, which creates a cause of action for the Attorney General to seek an injunctive relief against a person who violates this statute.

COUNT II

19. Plaintiff repeats, realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 14 of this Complaint.

20. Elmendorf has, because of race or color, subjected the victims to discrimination and harassment in the exercising of their right to peacefully protest.

21. The right to be free from discrimination and harassment in the exercising of civil rights is guaranteed by CRL § 40-c, which provides that, “no person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability...be subjected to any discrimination in his or her civil rights, or to any harassment...in the exercise thereof, by any other person.”

V. RELIEF REQUESTED

Plaintiff State of New York respectfully requests that this Court:

1. Enter a permanent injunction enjoining the Elmendorf from:

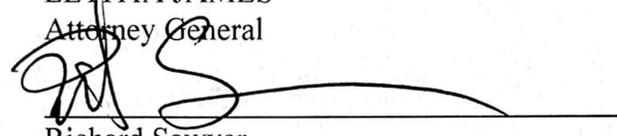
- a. threatening to assault or use physical force or violence, intimidating, coercing, or harassing any person or group of persons based on race or color or perceived race or color;
 - b. threatening to assault or attempting to use physical force or violence on any person or group of persons bias based upon their race or color or perceived race or color;
 - c. possessing or brandishing an air rifle or any other deadly weapon or dangerous instrument, as defined by the New York Penal Law, within 1,000 feet any person or group of persons peacefully protesting;
 - d. threatening to use physical force or violence, intimidating, coercing, harassing, or attempting to assault, threaten, intimidate, coerce or harass any person or causing or attempting to cause damage to or trespass upon the property of any person because he did or might complain or testify about acts alleged in this Complaint or acts prohibited by New York or federal law, or did or might cooperate in any investigation concerning such acts;
 - e. telephoning, writing or otherwise communicating with any of the victims present on June 30, 2020;
 - f. summoning a police or peace officer against any person without reason to suspect a criminal violation in whole or in part because of their race or color or perceived race or color;
 - g. encouraging or causing any other person to engage in conduct prohibited in paragraphs (a)-(e) above or assisting any person in engaging in such conduct.
2. Declare that Elmendorf violated CRL §§ 79-n and 40-c.

3. Order Elmendorf to pay a penalty of up to \$500 for each violation of CRL § 40-c against an individual victim pursuant to CRL § 40-d.
4. Grant reasonable attorneys' fees pursuant to CRL § 79-n.
5. Grant other such relief as is just and proper.

Respectfully submitted,

LETITIA JAMES
Attorney General

Dated: March 10, 2021



Richard Sawyer

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