

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



In the Matter of:

Cuba Libre DC, LLC

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

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This Assurance of Voluntary Compliance (“Assurance”) is entered into between the Office of Consumer Protection of the Office of the Attorney General for the District of Columbia (the “Office of Consumer Protection”) and Cuba Libre DC, LLC (“Respondent”). The Office of Consumer Protection and Respondent agree as follows:

I. THE PARTIES

1. The Office of Consumer Protection is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia’s consumer protection laws, including the Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*

2. Respondent Cuba Libre DC, LLC, is a District of Columbia limited liability company that owns, operates, and manages the Cuba Libre Restaurant & Rum Bar in Washington, D.C.

II. DISTRICT’S ALLEGATIONS

3. The District of Columbia Human Rights Act (“HRA”) provides that “it shall be an unlawful discriminatory practice to...based on...gender identity or expression...deny, directly or

indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations.” D.C. Code § 2–1402.31(a)(1). District law also specifically prohibits refusing to allow individuals to use bathrooms or facilities that are congruent with their gender identity or expression. *See* 4 DCMR § 802.1. Moreover, entities must “clearly and explicitly communicate the District of Columbia’s laws regarding gender identity or expression and other protected categories to all management, employees, and volunteers.” 4 DCMR § 801.2.

4. Respondent owns and operates the Cuba Libre Restaurant & Rum Bar (“Cuba Libre”) in Washington, D.C. On the evening of June 22, 2018, a transgender individual who identifies as female attempted to use the restroom at Cuba Libre consistent with her gender identity. An employee at Cuba Libre stopped the individual and asked to see her identification. Although the individual was able to use the restroom, a Cuba Libre employee continued to insist after the individual’s use of the restroom that she needed to use the restroom that conformed to her identification.

5. At the time of the incident, Respondent did not maintain a written policy concerning compliance with the District’s human rights laws and regulations as it relates to the use of Cuba Libre’s bathroom facilities. Some employees at Cuba Libre mistakenly believed that the Respondent’s policy was to require individuals to use the bathroom associated with their identification. This policy was in direct violation of the District’s human rights laws and regulations.

6. Following that incident, Cuba Libre conducted an investigation; terminated the employees involved; adopted a written policy on the District’s human rights laws and regulations; provided training from a third-party on the District’s human rights laws and

regulations; changed the signage on its single stall bathroom; and posted notice of the District's human rights laws and regulations on the use of restrooms in its restaurant. Additionally, Cuba Libre entered into a private resolution with the individual patron, which included a charitable donation to a local non-profit organization that provides supports to members of the LGBTQ community.

7. Respondent violated the District's human rights laws and regulations when, on June 22, 2018, it attempted to stop a transgender individual from accessing a restroom consistent with her gender identity. *See* D.C. Code § 2-1402.31(a)(1); 4 DCMR § 802.1.

8. Respondent further violated the District's human rights laws and regulations by failing to clearly and explicitly communicate the District of Columbia's laws and regulations regarding gender identity or expression to its employees. *See* 4 DCMR § 801.2.

9. Respondent's conduct in violation of the District of Columbia's human rights laws and regulations constitute unlawful business practices under the CPPA. *District Cablevision Ltd. Partnership v. Bassin*, 82 A.2d 714, 723 (D.C. 2003) ("Trade practices that violate other laws, including the common law, also fall within the purview of the CPPA."); *see also Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325-26 (D.C. 1999) (CPPA's "extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by [the law] . . . but to all other statutory and common law prohibitions").

10. Cuba Libre denies it has violated any District laws, including the CPPA. Nothing contained in this Assurance is or may be construed to be an admission by Cuba Libre of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing.

III. APPLICATION

11. The provisions of this Assurance shall apply to Respondent Cuba Libre DC, LLC, and all persons or entities that it controls or has the ability to control, including without limitation its principals, officers, directors, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries.

12. The provisions of this Assurance shall apply to Respondent's conduct in connection with the operation of Cuba Libre in Washington, D.C.

IV. INJUNCTIVE TERMS

13. Respondent shall not engage in any unlawful trade practice prohibited by the District's Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et seq.*

14. Respondent shall not engage in any practice that violates the District's human rights laws and regulations as set forth in D.C. Code § 2-1402.31 and 4 DCMR §§ 800, *et seq.*

15. Respondent shall implement and maintain written policies regarding compliance with the District of Columbia's laws and regulations regarding gender identity or expression and other protected categories. Respondent shall provide the policies required under this paragraph to all current employees and management within thirty (30) days of the date of this Assurance. Respondent shall provide the policies required under this paragraph to all new employees and management on the first day of employment.

16. Respondent shall implement and maintain a training program to ensure that all employees and management have sufficient knowledge of the District of Columbia's laws and regulations regarding gender identity or expression and other protected categories. Respondent shall provide the training required under this paragraph to all employees and management within

thirty (30) days of the date of this Assurance and then on an annual basis, or more frequently if appropriate.

17. Respondent shall implement and maintain signage in and around all restrooms at Cuba Libre that are consistent with the District of Columbia's laws and regulations regarding gender identity or expression. The signage under this paragraph shall clearly and conspicuously state that under District of Columbia law individuals are permitted to use the restroom consistent with their gender identity or expression.

18. For a period of two (2) years after entry of this Assurance, on a bi-annual basis (February 15th and July 15th of each year), Respondent shall submit to the Office of Consumer Protection a sworn statement identifying any complaints received by Respondent alleging a violation of the District of Columbia's laws and regulations regarding gender identity or expression and other protected categories. The statement shall include: (i) the date of the complaint and alleged incident; (ii) a summary of the complaint and alleged incident; and (iii) the remedial measures taken by Respondent with respect to the complaint and alleged incident.

V. COSTS AND PENALTIES

19. Within thirty (30) days of the execution date of this Assurance by all parties, Respondent shall pay the District a total of \$7,000 for civil penalties and for costs the District has incurred investigating this matter. Payment under this paragraph shall be made via check made out to the D.C. Treasurer and delivered to the Office of Consumer Protection consistent with instructions from the Office of Consumer Protection.

VI. ADDITIONAL TERMS

20. The parties voluntarily agree to this Assurance without trial or adjudication of any issue of fact or law as a compromise settlement of all claims that the Office of Consumer

Protection could have brought, pursuant to D.C. Code § 28-3909, against Respondent related to the factual issues set out in paragraphs 3 through 7.

21. Respondent shall deliver a copy of this Assurance to all corporate officers and management within thirty (30) days of the date of this Assurance.

22. Respondent shall not cause or encourage any third-parties, or knowingly permit third-parties acting on its behalf, to engage in any practices from which Respondent are prohibited by this Assurance.

23. This Assurance shall be considered effective and fully executed on the last date which any party executes the Assurance. This Assurance may be executed in counterparts, and copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

24. All notices under this Assurance shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District:

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Director, Office of Consumer Protection
Public Advocacy Division
441 4th Street, N.W., Suite 600-South
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For the Respondent:

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FOR THE DISTRICT OF COLUMBIA:

KARL A. RACINE
Attorney General for the District of Columbia



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Dated: 1/15/19

FOR CUBA LIBRE DC, LLC



BARRY GUTIN
Member
Cuba Libre DC, LLC
801 9th Street, NW
Washington, DC 20001

Dated: 1/7/19