

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MUNIR ZANIAL,)	
)	
Plaintiff,)	
)	
vs.)	Case № 2:18-CV-02124-JAR-JPO
)	
SPIRIT BOEING EMPLOYEES' ASSOCIATION,)	
)	
Defendant.)	

**DEFENDANT’S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

COME NOW, Defendant, Spirit Boeing Employees’ Association, by and through its attorneys of record, Michelle R. Stewart and Jennifer R. Johnson of HINKLE LAW FIRM LLC, and pursuant to Rules 56 and 56.1, hereby moves the Court for Summary Judgment with respect to each of Plaintiff’s claims against the Defendant. In support of its Motion, Defendant states:

I. INTRODUCTION

Spirit Boeing Employees Association (the “SBEA”), is a member-owned, non-profit organization that owns a recreational lake property. Plaintiff is Malaysian, Muslim, a Spirit Aerosystems employee, and is one of SBEA’s members.

SBEA members are permitted to rent pavilion space at SBEA’s lake for private parties. On September 2, 2017, Plaintiff rented picnic space from the SBEA and hosted in excess of 60 guests at the facility. There is a dispute as to what occurred during the rental, but it is uncontroverted that Plaintiff’s membership privileges were restricted by the SBEA Board of Directors following the September 2, 2017 rental. Specifically, Plaintiff was prohibited from renting SBEA property for private parties from September 14, 2017 through March 14, 2018. During that time, it is uncontroverted that Plaintiff’s membership was otherwise active, and that Plaintiff accessed the SBEA recreational lake property for fishing.

The SBEA attributed the restriction of Plaintiff's membership to conduct in violation of the SBEA rules and regulations during the September 2, 2017 rental. Plaintiff claims the SBEA Board restricted his membership because of his race and ancestry.

On January 10, 2018, Plaintiff called to reserve a facility at the SBEA for March 24, 2018. At that time, Plaintiff was directed to SBEA's Executive Director, Trish Pullium, Ms. Pullium subsequently notified Plaintiff by phone and by letter that his membership had been restricted through March 14, 2018. The SBEA held the rental requested by Plaintiff for March 24, 2018 because, as of that date, the restriction period would have expired. Plaintiff subsequently declined to proceed with the March 24, 2018 rental.

Plaintiff also complains about a report he alleges the SBEA made to his employer related to concerns regarding Plaintiff's activities at the SBEA on September 2, 2017, and his Facebook posts, which the SBEA was concerned indicated a potential affiliation between Plaintiff and ISIS. His employer, Spirit, forwarded the report to the FBI, who investigated the matter. No charges resulted. In fact, the FBI never interviewed Plaintiff. The report did not affect Plaintiff's employment with Spirit Aerosystems in any way.

Plaintiff brings this action under two civil rights statutes. First, he alleges that the SBEA interfered with his right to make and enforce contracts, in violation of 42 U.S.C. § 1981. Second, he alleges that the SBEA denied him the full enjoyment of facilities, privileges, advantages and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 2000a.

As articulated and outlined below, Plaintiff's claims under both Section 1981 and Section 2000a fail as a matter of law because Plaintiff did not sustain an actual loss of his contractual privileges, nor was he actually denied the facilities, privileges, advantages, or accommodations of a place of public accommodation. While his a portion of his membership was restricted for a period of time, Plaintiff never attempted to avail himself of that privilege by seeking to rent said property for a date during the period of

his suspension. Accordingly, he was not actually deprived of a contractual privilege or public accommodation and, under established Tenth Circuit precedent, his claims fail as a matter of law.

Further, Plaintiff claims that the report to his employers related to concerns Plaintiff may be affiliated with ISIS did not affect any contract. Plaintiff remains employed with Spirit Aerosystems, and his employment did not suffer any adverse effects as a result of the report. Accordingly, his Section 1981 claim premised on the report also fails as a matter of law.

II. STATEMENT OF UNCONTROVERTED FACTS

1. Spirit Boeing Employees Association (SBEA) is a member-owned nonprofit organization that owns a recreational lake property. (See Pretrial Order, Doc. 31, Stipulated Fact No. 2, attached hereto as *Exhibit 1*).

2. Plaintiff is employed at Spirit Aerosystems. (See Pretrial Order, Doc. 31, Stipulated Fact No. 10, attached hereto as *Exhibit 1*).

3. Plaintiff is Malaysian and a Muslim. (See Pretrial Order, Doc. 31, Stipulated Fact No. 11, attached hereto as *Exhibit 1*).

4. Plaintiff pays membership dues to be a member of Spirit Boeing Employees Association. (See Pretrial Order, Doc. 31, Stipulated Fact No. 12, attached hereto as *Exhibit 1*).

5. One of the benefits of SBEA membership is that members can utilize the SBEA lake property, where members are permitted to fish, picnic, rent paddle boats, and rent pavilions on site for private parties. (Pulliam Depo., attached hereto as *Exhibit 2*, p. 16:4-13).

6. Plaintiff rented a picnic area at SBEA on September 2, 2017. (See Pretrial Order, Doc. 31, Stipulated Fact No. 14, attached hereto as *Exhibit 1*).

7. Plaintiff signed a rental agreement in order to rent the picnic area at Spirit Boeing Employees Association. (See Pretrial Order, Doc. 31, Stipulated Fact No. 15, attached hereto as *Exhibit 1*).

8. More than 60 guests attended Plaintiff's September 2, 2017 private event at the SBEA lake. (See Pretrial Order, Doc. 31, Stipulated Fact No. 17, attached hereto as *Exhibit 1*).

9. On September 14, 2017, Defendant's Board met and suspended Plaintiff's rental privileges, which the SBEA attributed to incidents that occurred during the September 2, 2017 rental. (See Pretrial Order, Doc. 31, Stipulated Fact No. 18, attached hereto as *Exhibit 1*; Pulliam Letter to Plaintiff, attached hereto as *Exhibit 3*).

10. The suspension of Plaintiff's privileges to rent pavilion space for private parties was for a period of 6 months, ending on March 14, 2018. (Pulliam Letter to Plaintiff, attached hereto as *Exhibit 3*).

11. Plaintiff contends that this suspension was motivated by discriminatory animus. (See Plaintiff's Factual Contentions of the Pretrial Order, Doc. 31, p.5-7, attached hereto as *Exhibit 1*).

12. Plaintiff first learned that the rental privileges associated with his SBEA membership had been suspended in January 2018, when he called to make a request to rent a picnic area at the SBEA property in March 2018. (Plaintiff Depo., attached hereto as *Exhibit 4*, p. 32:16-19).

13. From September 2, 2017 through the time he called to rent space in January 2018 and was notified of the suspension, Plaintiff did not attempt to rent any space at the SBEA. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 32:16-33:1).

14. On February 9, 2018, SBEA's executive director, Trish Pulliam, sent Plaintiff a letter informing the Plaintiff that his rental privileges had been suspended from September 14, 2017, through March 14, 2018, and stated that the suspension was the result of safety and code of conduct related violations on September 2, 2017. (Pulliam Letter to Plaintiff, attached hereto as *Exhibit 3*).

15. Plaintiff received Pulliam's February 9, 2018 letter. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 37:23-40:5).

16. When he called in January 2018, inquiring about a reservation, the date Plaintiff was looking to rent space from the SBEA was *after* March 14, 2018. (Plaintiff Depo., attached hereto as *Exhibit 4*, p. 40:1-15).

17. In March 2018, Pulliam called Plaintiff. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 41:14-43:6).

18. During the call in March 2018, Pulliam and Plaintiff discussed his reservation and the fact that the date he had reserved was after the period of his suspension. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 43:7-45:2).

19. Pulliam stated they were still holding the reservation date for him, and inquired regarding whether Plaintiff intended to use the reservation. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 43:7-45:2).

20. Plaintiff informed Pulliam that he did not intend to use the reservation. (Plaintiff Depo., attached hereto as *Exhibit 4*, pp. 43:7-45:2).

21. From September 2, 2017 through March 14, 2018, Plaintiff continued to access the SBEA property for fishing, and had no problems in doing so. (Plaintiff Depo., attached hereto as *Exhibit 4*, p. 45:3-7).

22. Plaintiff continues to maintain his membership with the SBEA. (Plaintiff Depo., attached hereto as *Exhibit 4*, p. 57:14-15).

23. Plaintiff claims that, based on discriminatory animus, the SBEA made false and/or misleading reports to Plaintiff's employer, Spirit Aerosystems, that the SBEA had concerns Plaintiff was an ISIS affiliate, and that his employer thereafter, Spirit Aeorsystems forwarded the information from the SBEA to the FBI, resulting in an investigation of Plaintiff by the FBI. (See Plaintiff's Factual Contentions of the Pretrial Order, Doc. 31, p.5-7, attached hereto as *Exhibit 1*).

24. In connection with its investigation, the FBI visited SBEA, spoke to SBEA employees, and obtained the guest list from Plaintiff's party and a printed copy of Plaintiff's Facebook page. (See Pretrial Order, Doc. 31, Stipulated Fact Nos. 19, 20, attached hereto as *Exhibit 1*).

25. Plaintiff was never interviewed by the FBI. (See Pretrial Order, Doc. 31, Stipulated Fact No. 21, attached hereto as *Exhibit 1*).

26. Plaintiff was never interviewed by Spirit Aerosystems related to any conduct at SBEA on September 2, 2017. (See Pretrial Order, Doc. 31, Stipulated Fact No. 22, attached hereto as *Exhibit 1*).

27. Plaintiff did not lose his employment or receive any poor performance reviews as a result of any report made to Spirit Aerosystems regarding any conduct at SBEA on September 2, 2017. (See Pretrial Order, Doc. 31, Stipulated Fact No. 23, attached hereto as *Exhibit 1*).

28. Plaintiff remains currently employed by Spirit Aerosystems. (Plaintiff's Depo., attached hereto as *Exhibit 4*, p. 16:20-21).

III. ARGUMENTS AND AUTHORITIES

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *McDaniels v. McKinna*, Case No. 03-1231, 2004 WL 887356, *2 (10th Cir. April 27, 2004) (quoting Fed.R.Civ.P. 56(c)). The Court views the evidence in the record in the light most favorable to the nonmoving party. *Id.*

Initially, the moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Id.* Once that burden is met, the nonmoving party "may not rest on mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Id.* (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

B. PLAINTIFF'S CLAIMS MADE PURSUANT TO SECTION 42 U.S.C. § 1981 FAIL AS A MATTER OF LAW BECAUSE THERE IS NO EVIDENCE PLAINTIFF SUSTAINED AN ACTUAL LOSS OF A CONTRACT INTEREST.

1. Plaintiff Claims The SBEA Interfered With His Right To Make And Enforce Contracts In Violation Of 42 Usc § 1981.

In Count I of his Complaint, Plaintiff alleges that the Defendant, the SBEA, discriminated against Plaintiff in the making and enforcement of a contract, and in the performance and enjoyment of his contractual relationships. Specifically, Count I of Plaintiff's Complaint alleges:

29. Defendant engaged in intentional discrimination on the basis of Mr. Zaniel's perceived race, ethnicity, and national origin in causing him to be investigated by the FBI and denying him membership benefits. Defendant's actions deprived Mr. Zaniel of the right to make and enforce contracts regardless of his race, in violation of 42 U.S.C. § 1981.

30. In causing Mr. Zaniel to be investigated by a federal law enforcement agency, Defendant engaged in intentional discrimination on the basis of Mr. Zaniel's race, ethnicity, and national origin. In doing so, Defendant deprived Mr. Zaniel of the same rights enjoyed by white citizens in the performance and enjoyment of their contractual relationships.

31. By restricting Mr. Zaniel's membership rights and alleging to his employer that he is affiliated with ISIS, Defendant SBEA discriminated against Mr. Zaniel in the making and enforcement of his contracts with the association, namely his membership agreement.

(Compl., Doc. 1, p. 6-7, attached hereto as *Exhibit 5*).

The Plaintiff's claims were not amended. In the Pretrial Order, Plaintiff made the following general statement related to his claims under Section 1981:

Zanial brings an action under 42 U.S.C. § 1981 based on (1) SBEA's decision to report him to his employer and instigate an FBI investigation into him because of his race and ancestry; and (2) SBEA's decision to suspend his rental privileges because of his race and ancestry. The association cannot harass racial and religious minorities based on discriminatory stereotypes about their criminal propensities. The Tenth Circuit has repeatedly held that subjecting a minority patron to additional scrutiny or law enforcement contact based on unfounded suspicions of criminal conduct constitutes a violation of their statutory civil rights. It is likewise a violation of statutory civil rights for an association to restrict contractual membership benefits on the basis of these same discriminatory stereotypes.

(Pretrial Order, Doc. 31, pp. 9-10, attached hereto as *Exhibit 1*). Plaintiff did not request any amendment to his claims at the Pretrial Conference.

2. *Claims Under Section 1981 Require Evidence Of An Actual Loss.*

Title 42, Section 1981 of the United States Code, as amended by the Civil Rights Act of 1991, protects the right to make and enforce contracts. *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1267 (10th Cir. 1989). When amended in 1991, Section 1981 specifically redefined the right to “make and enforce contracts”, extending the right to include “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.” 42 U.S.C. 1981(b).

It is well established in this Circuit that Plaintiff must establish an actual loss of contract interest to prove his claims, rather than the mere potential loss of opportunities. *Phelps*, 886 F.2d 1262, 1267. In *Phelps*, the Wichita Eagle-Beacon newspaper ran an article about Fred Phelps, and Phelps filed suit, alleging the story interfered with prospective business opportunities in violation of Section 1981. The 10th

Circuit rejected that claim, holding that cognizable claims under Section 1981 must involve the “*actual* loss of employment or other contract interests.” *Id.* (emphasis in original).

While *Phelps* predated the Civil Rights Act of 1991, the Tenth Circuit continues to adhere to this basic principle requiring *actual* interference. See *Harris v. Allstate Ins. Co.*, 300 F.3d 1183 (10th Cir. 2002) (quoting *Hampton v. Dillard Dep’t Stores, Inc.*, 247 F.3d 1091, 1104 (10th Cir. 2001), and recognizing that the 10th Circuit continued post-1991 to rely on *Phelps* “for the proposition that ‘a § 1981 claim for interference with the right to make and enforce a contract must involve the actual loss of a contract interest, not merely the possible loss of future contract opportunities.’”).

In this case, as more fully articulated in points 3 and 4 below, Plaintiff’s claims under Section 1981 fail as a matter of law because the SBEA’s conduct never actually interfered with Plaintiff’s right to make and enforce contracts. Without evidence of actual interference, the SBEA is entitled to judgment as a matter of law as to this claim.

3. *Plaintiff’s Claims Related To SBEA’s Alleged Report To His Employer Related To Suspicions Of Isis Affiliation, Instigating An FBI Investigation, Fail To Allege The Loss Of A Contract Interest, And As Such, Do Not State A Claim Under 42 U.S.C. § 1981.*

The first basis for Plaintiff’s claims under 42 U.S.C. § 1981 asserts that the “SBEA’s decision to report him to his employer and instigate an FBI investigation into him because of his race and ancestry” constitutes a deprivation of his rights under Section 1981. As stated above, Plaintiff is required to establish evidence of an *actual* contractual interference to support his claim, and he has no such evidence.

Specifically, there is no evidence that Plaintiff’s employment relationship with Spirit changed in any way after the report. Plaintiff continues his employment at Spirit to this day, and has not lost any privileges or benefits thereof as a result of the report. (SOF 27-28). Without evidence the report to Spirit affected Plaintiff’s right to make and enforce contracts, Plaintiff’s claim that the report violated Section 1981 fails as a matter of law.

4. *Plaintiff Did Not Attempt To Utilize His Rental Privileges During The Period His Membership Was Restricted, And As Such, He Has No Actionable Claim Under 42 U.S.C. § 1981.*

Plaintiff claims that the SBEA's decision to restrict the rental privileges associated with his SBEA membership violated his right to make and enforce contracts. This claim is likewise fatally flawed, in that he was never actually deprived of the contractual privilege.

First, Plaintiff's SBEA membership remained intact, and was not itself suspended. He was permitted to, and did, access the SBEA lake property for recreational use during the period at issue, September 14, 2017 through March 14, 2018. (SOF 21). To establish his claim, Plaintiff relies on the fact that the SBEA restricted his privileges to rent SBEA property for six months (i.e., to rent pavilions for private parties).

The facts here are unique, and a specific case on point is unavailable. However, precedent evaluating applicability of Section 1981 to similar commercial claims (as distinguished from Section 1981 employment claims) are informative. For example, in Section 1981 retail transaction cases, Courts charged with evaluating the viability of a claim look to the extent to which the Plaintiff was actually prevented from making a purchase that he or she would have attempted to make but for the Defendant's interference. *See Hunter v. The Buckle*, 488 F.Supp. 1157, 1172 (D. Kan. 2007) (citing *Wesley v. Don Stein Buick, Inc.*, 42 F.Supp.2d 1192, 1200 (D. Kan. 1999)). If the Defendant's conduct did not prevent the purchase, the claim fails. *Id.* (holding that the fact that Plaintiff had selected a pair of jeans to try on at the time the Defendant intervened was insufficient to establish actual interference, and rather demonstrated at most that defendant's conduct interfered with a possible future contract opportunity). Here, the SBEA did not actually prevent the Plaintiff from renting the pavilion by virtue of the restriction placed on his membership because - as he admits - he never attempted to rent SBEA property for that timeframe. As such, he did not sustain an actual loss of his contractual privileges, and has no claim under Section 1981.

The mere fact that Plaintiff's membership privileges were restricted, without evidence Plaintiff attempted to avail himself of those privileges during the restriction period, will simply not give rise to a claim. In 2001, the Fifth Circuit considered a case involving an African American plaintiff who had been arrested for shoplifting at a Dillard's store. *Morris v. Dillard Dept. Stores, Inc.*, 277 F.3d 74, 746-747 (5th Cir. 2001). The plaintiff was banned from the store for a period of time subsequent to her arrest. *Id.* at 751. The plaintiff filed suit against Dillard's, claiming the store violated Section 1981 by instituting the ban. She argued the fact that she was banned from Dillard's following her arrest constituted the requisite loss of an *actual* contract interest. The Fifth Circuit disagreed, relying in part on the *Phelps* case out of the 10th Circuit, holding that "to raise a material issue of fact as to her § 1981 claims, [the plaintiff] must offer evidence of some tangible attempt to contract with Dillard's during the course of the ban, which could give rise to a contractual duty between her and the merchant, and which was in some way thwarted." *Id.* at 752. Finding she failed to offer any such evidence, the Fifth Circuit found that the district court did not err in granting Dillard's summary judgment on the claim asserted under Section 1981:

It is uncontroverted that Morris left Dillard's of her own accord without attempting to make any purchase, or to engage in any other transaction with Dillard's prior to, during, or subsequent to her detention and arrest by Officer Brown. It is likewise uncontroverted that Dillard's banned Morris from the premises after her arrest and that the ban was subsequently lifted. Morris points to no evidence in the record indicating that she made any tangible attempt to purchase, or to return, specified goods at the store, or to enter any other contractual agreement with Dillard's, at any time during the course of the ban. We agree with the district court, therefore, that Morris's allegations based on the ban alone are too speculative to establish loss of any actual contractual interest owed to her by Dillard's. *Morris v. Dillard Dep't Stores, Inc.*, 277 F.3d 743, 752–53 (5th Cir. 2001). The same is true here.

Plaintiff's membership was restricted by the suspension of his rental privileges from September 14, 2017, through March 14, 2018. (SOF 9-10). It is uncontroverted that when Plaintiff called the SBEA in January 2018, Plaintiff was looking to rent a pavilion at the SBEA lake property for a date *after* March 14, 2018. (SOF 12, 16). From September 2, 2017 through the date he called the SBEA in January, Plaintiff did not attempt to rent any SBEA property. (SOF 13). Plaintiff also admits that the SBEA offered to, and did, hold the rental date requested for March because it was after the date the restriction expired. (SOF 14, 15, 18, 19, 20). Plaintiff declined to use the reserved date. (SOF 20).

Because Plaintiff never attempted to rent SBEA property during the period that his membership was restricted, Plaintiff did not experience the actual loss of a contractual privilege or benefit. Because an actual loss is required under Section 1981, summary judgment is proper as to this claim.

To the extent Plaintiff argues that Defendant's conduct discouraged him from proceeding with the available rental, thereby giving rise to his claim, that argument also fails as a matter of law. In this case, it is uncontroverted that Plaintiff could have proceeded with the reservation he requested. He declined. His decision to decline the available benefit is insufficient to state a claim.

In *Bagley v. Ameritech Corp.*, 220 F.3d 518 (7th Cir. 2000), the Seventh Circuit addressed a case involving an African American plaintiff, who was a customer at a retail establishment. The plaintiff went to the store counter and asked the sales clerk if a cordless phone he was looking for was in stock. *Id.* at 519. The clerk turned to ask an assistant sales manager if they had the phone in stock, and the manager replied: "I will not serve him." *Id.* at 520. The manager gave the plaintiff the finger, handed the clerk a brochure about the phone, and left the counter. *Id.* The plaintiff was offended, and believed the manager treated him in that manner because he was African American. *Id.* He immediately left the store. *Id.* Later in the day, Plaintiff returned to get the clerk's name, to use him as a witness. *Id.* The clerk gave the plaintiff his name, and asked if he needed any assistance in making a purchase. *Id.* The plaintiff declined the clerk's offer. *Id.* Before he left, the manager gave plaintiff the finger again. *Id.*

The defendant, Ameritech, argued that it had not acted to prevent the plaintiff from making a contract, and as such, Plaintiff's claims under Section 1981 failed; the district court agreed, holding that the plaintiff could only show interference with prospective contractual relations, not with a specific contract that it refused to enter or enforce. *Id.* Analyzing the issue, the Seventh Circuit first agreed with Plaintiff that the fact he did not specifically state that he wanted to purchase the phone was not fatal to his claim, in that a specific request to purchase was not a prerequisite to a finding that a customer has made an offer to purchase. However, the court went on: "the case boils down to whether Ameritech refused to contract with [plaintiff], or [plaintiff] opted not to contract with Ameritech." *Id.* The court found that the evidence was insufficient to establish that Ameritech refused service to plaintiff, pointing specifically to the fact that the clerk had specifically inquired with the plaintiff about whether he wanted help making a purchase when plaintiff returned to the store. *Id.* at 521-22. As noted by the Seventh Circuit, "because Ameritech was not responsible for terminating the transaction, it did not violate [Section 1981]."

Similarly, here, Plaintiff could have rented the facility on the date he requested. It was after the restriction period expired. By deciding not to proceed with the rental, the Plaintiff, rather than the SBEA, terminated the transaction.

C. PLAINTIFF'S TITLE II CLAIMS ALSO FAIL AS A MATTER OF LAW BECAUSE HE WAS NEVER DENIED ACCESS TO A PUBLIC ACCOMMODATION, IN THAT HE NEVER ATTEMPTED TO USE HIS RENTAL PRIVILEGES DURING THE PERIOD OF HIS SUSPENSION, AND BECAUSE HE WAS OTHERWISE PERMITTED TO USE THE SBEA LAKE PROPERTY AND ACCESS IT FOR FISHING.

The second Count of Plaintiff's Complaint alleges: "In denying Mr. Zaniel full use of SBEA property because of his race, ethnicity, and religion, Defendant's conduct constituted discrimination in a place of public accommodation in violation of the Civil Rights Act of 1964." (Compl., Doc. 1, pp. 7-8).

Section 2000a states, in relevant part, that "[a]ll persons shall be entitled to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of

public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion or national origin.” 42 U.S.C. § 2000a.

For the same reasons Plaintiff’s claims under Section 1981 fail as a matter of law, so do his claims under Section 2000a. To establish a claim under Section 2000a, by its very terms, the Plaintiff is required to show that he was actually denied the enjoyment of goods, services, facilities, privileges, or advantages” of the use of the SBEA’s recreational lake property. Those benefits, however, were never actually denied to Plaintiff because he never attempted to avail himself of them for the period the SBEA had restricted his membership. Rather, Plaintiff had full access to the SBEA lake property for fishing and other recreational use during the entire period his rental privileges were restricted. Further, with respect to his rental privileges, he never attempted to rent SBEA property for an event during the period of the restriction, and therefore was not denied any accommodation or benefit to which he may arguably be entitled under Section 2000a.

In fact, where courts have been asked to consider claims made pursuant to Section 2000a following a finding that a claim under Section 1981 fails because the Plaintiff failed to establish the actual loss of a contractual benefit/interest, those courts have granted judgment as to Section 2000a arising out of the same set of operative facts as a matter of course. See e.g., *Jeffrey v. Home Depot U.S.A.*, 90 F.Supp.2d 1066, 1070 (S.D.Cal. 2000); *Harrison v. Denny’s Restaurant*, 1997 WL 227963, at *4 (N.D. Cal. Apr. 24, 1997); *Bobbitt by Bobbitt v. Rage, Inc.*, 19 F.Supp.2d 512, 521-22 (W.D.N.C. 1998); *Solomon v. Waffle House, Inc.*, 365 F.Supp.2d 1312, 1331 (N.D. Ga. 2004); *Eddy v. Waffle House, Inc.*, 335 F.Supp.2d 693, 701-702 (D.S.C. 2004).

In this case, for the same reasons Plaintiff’s claims fail under Section 1981, they also fail under Section 2000a, in that Plaintiff was not actually deprived of any privilege, benefit, service, facility or accommodation.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of January, 2019, the foregoing *Memorandum in Support of Defendant's Motion for Summary Judgment* was filed electronically with the Clerk of the US District Court for the District of Kansas; and a copy was served via E-Notification only on the following:

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