

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 17 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DALE E. PHILLIPS,

Plaintiff - Appellant,

v.

SOUTH COAST PLAZA; et al.,

Defendants - Appellees.

No. 18-56070

D.C. No. 8:18-cv-00812-AG-JDE
U.S. District Court for Central
California, Santa Ana

MANDATE

The judgment of this Court, entered November 25, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DALE E. PHILLIPS,

Plaintiff-Appellant,

v.

SOUTH COAST PLAZA; et al.,

Defendants-Appellees.

No. 18-56070

D.C. No. 8:18-cv-00812-AG-JDE

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Submitted November 18, 2019**

Before: CANBY, TASHIMA, and CHRISTEN, Circuit Judges.

Dale E. Phillips appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action arising out of a trespass warning he received from South Coast Plaza mall. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal of a complaint for failure to state a claim under

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Federal Rule of Civil Procedure 12(b)(6), *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002), and we affirm.

The district court properly dismissed Phillips's § 1983 action because Phillips failed to allege facts sufficient to show the violation of a constitutional right, or the presence of state action. *See Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015) ("Dismissal of a § 1983 claim following a Rule 12(b)(6) motion is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element."); *id.* at 1035-36 (setting forth elements of § 1983 claim); *Brewster v. Board of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 981 (9th Cir. 1998) (setting forth elements of procedural due process claim).

The district court did not abuse its discretion in denying leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No. SACV 18-00812 AG (JDEx) Date July 16, 2018
 Title DALE E. PHILLIPS v. SOUTH COAST PLAZA ET AL.

Present: The Honorable ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [IN CHAMBERS] ORDER REGARDING DEFENDANT’S
MOTION TO DISMISS AND MOTION TO STRIKE**

Plaintiff Dale E. Phillips filed a lawsuit in the Orange County Superior Court against Defendants South Coast Plaza, Rolex Watch USA, Inc., and certain unknown defendants referred to as “does,” after he was issued a temporary ban from South Coast Plaza. Plaintiff is representing himself in this lawsuit, what’s referred to in federal court as “acting *pro se*.” His complaint purports to allege claims for (1) “discrimination in business dealings” under the Unruh Act, Cal. Civ. Code § 51.5; (2) “deprivation of due process” under 42 U.S.C. § 1983; and (3) intentional infliction of emotional distress. (Compl., Dkt. No. 1, at Ex. A, ¶¶ 41–50.)

South Coast Plaza timely removed the case asserting federal question jurisdiction. (Notice of Removal, Dkt. No. 1.) Now South Coast Plaza moves to dismiss Plaintiff’s complaint under Federal Rule of Civil Procedure 12(b)(6), and to strike Plaintiff’s prayer for punitive damages.

The Court GRANTS the motion to dismiss regarding Plaintiff’s second claim WITHOUT LEAVE TO AMEND. (Dkt. No. 10.) The case is REMANDED to the appropriate state court. All other matters are VACATED.

1. BRIEF BACKGROUND

Unless otherwise stated, the following facts are taken from Plaintiff’s complaint. At this stage, the Court assumes that all factual allegations in the complaint are true. *See Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 18-00812 AG (JDEx) Date July 16, 2018
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South Coast Plaza is a shopping mall in Costa Mesa, California. Plaintiff had been a frequent visitor of the mall for several years. On some visits, he would make purchases. On others, he would just look around.

One day when Plaintiff was window shopping, two South Coast Plaza security guards in uniform approached him. The guards told him that they had received complaints about him. But when Plaintiff asked who made the complaints, the guards refused to answer. So eventually Plaintiff walked away.

About two minutes later, the same security guards approached Plaintiff once again. This second exchange between the guards and Plaintiff was similar to the first: the guards mentioned complaints; Plaintiff asked who made them; the guards wouldn't answer; Plaintiff walked away.

After a few minutes reading on his phone, Plaintiff made his way toward the parking lot. The two security guards started walking beside him. One of the guards asked for Plaintiff's identification to issue him a "trespass warning." (Compl., Dkt. No. 1, at Ex. A, ¶ 37.) Plaintiff gave the guard his identification. By that point, Plaintiff and the two guards were outside South Coast Plaza.

Two other uniformed officers, who Plaintiff "believes were members of the Costa Mesa Police Department," joined them. (Compl., Dkt. No. 1, at Ex. A, ¶ 38.) One of the officers eventually mentioned Plaintiff standing outside the Rolex store for over an hour. Plaintiff asked to see the mall surveillance videos and asked when he was supposedly standing outside the Rolex store. No one answered Plaintiff's questions.

But Plaintiff received a "trespass warning" stating that he was not allowed on South Coast Plaza for five years. The trespass warning also said that if Plaintiff returns to South Coast Plaza before the end of the five years, he "may be arrested for violation of California Penal Code Section 602.1(a) Trespassing." (Compl., Dkt. No. 1, at Ex. A, ¶ 39.)

Plaintiff sued South Coast Plaza and Rolex in state court. South Coast Plaza timely removed the action. The only ground for removal that South Coast Plaza asserted was federal question jurisdiction based on Plaintiff's purported § 1983 claim. (Notice of Removal, Dkt. No. 1 at

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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¶ 5.) South Coast Plaza filed the pending motions soon after its notice of removal. (*See* Mot. to Dismiss, Dkt. No. 10; Mot. to Strike, Dkt. No. 11.) And Rolex filed a “notice and request for joinder” in the South Coast Plaza motion to dismiss. (Dkt. No. 16.)

2. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

2.1 Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” With that liberal pleading standard, the purpose of a motion under Rule 12(b)(6) is “to test the formal sufficiency of the statement of the claim for relief.” 5B C. Wright & A. Miller, *Federal Practice and Procedure* § 1356, p. 354 (3d ed. 2004). To survive a motion to dismiss, a complaint must contain sufficient factual material to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “[D]etailed factual allegations” are not required. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). A claim is facially plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

In analyzing the complaint’s sufficiency, a court must “accept[] all factual allegations in the complaint as true and constru[e] them in the light most favorable to the nonmoving party.” *Skilstaf*, 669 F.3d at 1014. But the assumption of truth doesn’t apply to legal conclusions. *Iqbal*, 556 U.S. at 678.

If a court dismisses certain claims, “[l]eave to amend should be granted unless the district court ‘determines that the pleading could not possibly be cured by the allegation of other facts,’” *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)), or “if the plaintiff had several opportunities to amend its complaint and repeatedly failed to cure deficiencies.” *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (citation omitted).

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2.2 Analysis

For the reasons stated in the next section, the Court’s analysis focuses on Plaintiff’s second purported claim for) “deprivation of due process” under 42 U.S.C § 1983. “To state a claim under 42 U.S.C § 1983 the plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under the color of law.” *Naffe v. Frey*, 789 F.3d 1030, 1035–1036 (9th Cir. 2015) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)). Plaintiff’s complaint is fatally deficient regarding both elements.

First, a due process claim must involve the deprivation of a protected liberty or property interest. *Nozzi v. Hous. Auth.*, 806 F.3d 1178, 1190–91 (9th Cir. 2015) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)); *Shinault v. Hawkes*, 782 F.3d 1053, 1057 (9th Cir. 2015) (citing *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972)); *Hayes v. Phoenix-Talent Sch. Dist. No. 4*, 893 F.2d 235, 237 (9th Cir. 1990) (citing *Roth*, 408 U.S. at 569)). So a claim for violation of procedural due process “hinges on . . . two elements: (1) a protected liberty or property interest, and (2) a denial of adequate procedural protections.” *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 716 (9th Cir. 2011) (alterations omitted) (citing *Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998)); *see also Roth*, 408 U.S. at 569. But here the inability to shop at a private mall like South Coast Plaza doesn’t implicate any protected interest.

Second, with limited exceptions that do not apply here, “[t]he United States Constitution protects individual rights only from *government* action, not from *private* action.” *Single Moms, Inc. v. Dorscher*, 331 F.3d 743, 746 & n.3 (9th Cir. 2003) (emphasis in original). “Individuals bringing actions against private parties for infringement of their constitutional rights, therefore, must show that the private parties’ infringement somehow constitutes state action.” *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1999) (per curiam) (citation omitted). “In § 1983 actions, ‘color of state law’ is synonymous with state action.” *Id.* (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)). A defendant “acts under color of state law when [it] exercises power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” *Naffe*, 789 F.3d at 1036 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). Put differently, “state action may be found if, though only if, there is such a close nexus between the State and the challenged action that

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seemingly private behavior may be fairly treated as that of the State itself.” *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 295 (2001) (citation omitted).

Here, Plaintiff doesn’t dispute that Defendants are private entities. And his only argument for state action concerns the reference to the California Penal Code on the trespass warning. But for one thing, the trespass warning doesn’t involve Rolex. More importantly, the Penal Code reference just informed Plaintiff of a relevant statutory provision. The applicability of that code section isn’t related to its citation on the trespass warning. So Plaintiff does not and cannot allege facts that would make either Defendant a state actor under these circumstances. *See Brentwood Acad.*, 531 U.S. at 296 (reviewing fact patterns that may involve state action by a private entity).

The allegation of other facts could not cure all the deficiencies identified here. The Court therefore dismisses Plaintiff’s § 1983 claim without leave to amend. *See Knappenberger*, 566 F.3d at 942.

3. FEDERAL JURISDICTION

The only asserted basis for removal here was federal question jurisdiction, relying on Plaintiff’s § 1983 claim. But the Court has determined that Plaintiff cannot state a claim under § 1983, and Plaintiff’s other purported claims arise under state law.

Federal courts possess “only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). “It is to be presumed that a cause lies outside of [a federal court’s] limited jurisdiction,” and “the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.* Thus, principles of federalism, due respect for the state courts, comity, and judicial economy require courts to “scrupulously confine their [removal] jurisdiction to the precise limits which [Congress] has defined.” *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109 (1941). Since the only asserted basis for removal jurisdiction no longer applies, this Court no longer has jurisdiction over this case. “Nothing is to be more jealously guarded by a court than its jurisdiction.” *United States v. Ceja-Prado*, 333 F.3d 1046, 1051 (9th Cir. 2003) (citation omitted). The Court REMANDS this case to the Orange County Superior Court.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 18-00812 AG (JDEx) Date July 16, 2018
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4. DISPOSITION

The Court GRANTS the motion to dismiss regarding Plaintiff's second claim WITHOUT LEAVE TO AMEND. (Dkt. No. 10.) The case is REMANDED to the appropriate state court. All other matters are VACATED.

Initials of Preparer lmb : 0

APPENDIX C

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 01/23/2019

TIME: 02:24:00 PM

DEPT: C01

JUDICIAL OFFICER PRESIDING: Assistant Presiding Judge Erick L. Larsh

CLERK: L. Labrador

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2018-00984005-CU-BT-CJC CASE INIT.DATE: 04/04/2018

CASE TITLE: **Phillips vs. South Coast Plaza**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT ID/DOCUMENT ID: 72970922

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having read and considered the Request to File New Litigation by Vexatious Litigant, Robert Lacambra, and Request to Waive Court Fees, now rules as follows:

Denied. Robert Lacambra failed to meet the requirements of *Code of Civil Procedure § 391.7*, subdivision (b).

Request to Waive Court Fees was tentatively granted. The Request to File New Litigation by Vexatious Litigant Robert Lacambra having been denied, the Request to Waive Court Fees is ordered moot.

Court orders Clerk to give notice.

APPENDIX D

1 DANIEL R. SULLIVAN (State Bar No. 96740)
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7 Attorneys for Defendant
COUNTY OF ORANGE

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

11 ROBERT LACAMBRA,
12
13 Plaintiffs,

14 v.

15 ALISO VEIJO LIBRARY, THE
16 NEIGHBORHOOD CUP, ORANGE COUNTY
SHERIFFS DEPARTMENT, and DOES 1 to
100,

17 Defendants.
18

Case No. 30-2014-00706834-CU-PO-CJC
Complaint Filed: 2/26/14

Assigned for All Purposes To:
Judge: Hon. Kirk H. Nakamura
Dept.: C-15

NOTICE OF RULING

Hearing Date: January 22, 2015
Time: 2:00 p.m.
Dept.: C-15

19
20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE**, that on the regularly-scheduled hearing of Defendant's Motion
22 for Vexatious Litigant Determination, Plaintiff Robert Lacambra appeared in pro per, Anthony V.
23 Martinez appeared on behalf of defendant County of Orange, and James E. Mahfood appeared on
24 behalf of defendant Match Point Co Inc. After consideration of the moving papers, opposition, and
25 supplemental briefing, as well as arguments of counsel and Plaintiff in pro per, the court adopted its
26 tentative ruling and ordered as follows:

27 Defendant County of Orange's motion to have plaintiff Lacambra declared a
28 vexatious litigant, pursuant to *C.C.P.* § 391(b)(1), is GRANTED.
With consideration of defendant County of Orange's second request for judicial
notice, as well as the initial papers and request for judicial notice, defendant County
of Orange has established 5 or more litigations that have been resolved adversely to

plaintiff Lacambra that are now final. The court notes that an appeal constitutes a separate litigation when resolved adversely to a party for purposes of the vexatious litigant statute. *See, Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1168. The following 5 litigations were shown to be final and to have been resolved adversely to plaintiff Lacambra: (1) *Lacambra v. Shea Properties*, O.C.S.C. Case No. 07CC10666, (2) *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, (3) *Lacambra v. Public Storage*, O.C.S.C. Case No. 30-2008-00107467, (4) *Lacambra v. First Team Real Estate, et al.*, O.C.S.C. Case No. 07CC11357, and (5) *Lacambra v. Orange County Sheriff's Department*, D.C. No. 8:10-cv-00670-CAS-MLG, Ninth Circuit Court of Appeal Case No. 10-56721. The court notes that there are other litigations that are final and resolved adversely to plaintiff Lacambra, which are set forth in defendant's initial request for judicial notice, but a minimum of 5 is sufficient. *See, C.C.P. § 391(b)(1)*.

Next, while a bond appears warranted in this civil action, defendant County of Orange failed to present evidence of its reasonable future litigation expenses to provide a basis for the sum of a bond. *See, Muller v. Tanner* (1969) 2 Cal.App.3d 445, 465. The court therefore requires the plaintiff to post a bond in the amount of \$5000 forthwith.

Finally, defendant County of Orange's request that plaintiff Lacambra be required to obtain a pre-filing order before initiating any further civil action in pro per is GRANTED. *See, C.C.P. § 391.7(a)*.

2) The joinder by defendants The Neighborhood Cup and Match Point Co., Inc. in defendant County of Orange's motion to have plaintiff Lacambra declared a vexatious litigant, pursuant to *C.C.P. § 391(b)(1)*, is GRANTED. Same rationale as Motion No. 1 of 2.

Next, while a bond appears warranted in this civil action, defendant County of Orange failed to present evidence of its reasonable future litigation expenses to provide a basis for the sum of a bond. *See, Muller v. Tanner* (1969) 2 Cal.App.3d 445, 465. The court therefore requires the plaintiff to post a bond in the amount of \$5000 forthwith.

Finally, the joinder by defendants The Neighborhood Cup and Match Point Co., Inc. in defendant County of Orange's request that plaintiff Lacambra be required to obtain a pre-filing order before initiating any further civil action in pro per is GRANTED. *See, C.C.P. § 391.7(a)*.

IT IS FURTHER ORDERED:

On Plaintiff Robert Lacambra's representation to the court that he cannot and will not comply with the bond requirement of \$5,000 pursuant to *C.C.P. § 391.3*, the Court orders the entire action dismissed without prejudice.

IT IS FURTHER ORDERED

Defendant County of Orange's Request for Judicial Notice: Defendant County of Orange requested that the court take judicial notice of the following documents in support of defendant County of Orange's motion for vexatious litigant determination against plaintiff Robert Lacambra: Exhibit A, Plaintiff Lacambra's complaint in *Lacambra v. Aliso Viejo Library, et al.*, O.C.S.C. Case No. 30-2014-00706834, Exhibit B, Plaintiff's Motion Ordering Public Entities to Provide Service on Fee Waiver in *Lacambra v. Aliso Viejo Library, et al.*, O.C.S.C. Case No. 30-2014-00706-834, Exhibit C, Plaintiff Lacambra's complaint in *Lacambra v. Shea Properties*, O.C.S.C. Case No. 07CC10666, Exhibit D, Minute Order sustaining

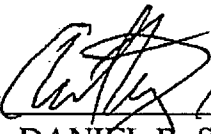
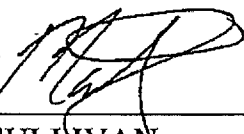
Defendants' Demurrer to Amended Complaint, without leave to amend, in *Lacambra v. Shea Properties*, O.C.S.C. Case No. 07CC11357, Exhibit E, Plaintiff Lacambra's complaint in *Lacambra v. First Team Real Estate*, O.C.S.C. Case No. 07CC11357, Exhibit F, Minute Order on OSC in *Lacambra v. First Team Real Estate*, O.C.S.C. Case No. 07CC11357 dismissing plaintiff's entire action with prejudice, Exhibit G, Plaintiff Lacambra's complaint in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, Exhibit H, Court's Docket in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, Exhibit I, Minute Order of 8-22-08 sustaining Defendants' Demurrer to Amended Complaint in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, Exhibit J, Minute Order of 4-13-09 Dismissing Plaintiff's Complaint in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, Exhibit K, Plaintiff Lacambra's Complaint in *Lacambra v. Public Storage*, O.C.S.C. Case No. 30-2008-00107467, Exhibit L, Order granting Defendant Public Storage's Motion for Summary Judgment in *Lacambra v. Public Storage*, O.C.S.C. Case No. 30-2008-00107467, Exhibit M, Plaintiff's Lacambra's Complaint in *Lacambra v. America's Best Inn*, O.C.S.C. Case No. 30-2008-00111417, Exhibit N, Minute Order of 5-1-09 on OSC re: Sanctions/Dismissal where plaintiff's action was dismissed without prejudice, Exhibit O, Plaintiff Lacambra's complaint in *Lacambra v. Del Rey Sales*, O.C.S.C. Case No. 30-2010-00378004, Exhibit P, Minute Order of 11-19-10 on OSC re: Sanctions/Dismissal where plaintiff's action was dismissed without prejudice, Exhibit Q, Plaintiff Lacambra's complaint in *Lacambra v. Orange County Sheriff's Department*, U.S District Court, Central District, 8:10-cv-00670-CAS-MLG filed 6-3-10, Exhibit R, Judgment in *Lacambra v. Orange County Sheriff's Department*, where the district court ordered the action dismissed with prejudice, Exhibit S, Plaintiff Lacambra's complaint in *Lacambra v. Staples, Inc.*, O.C.S.C. Case No. 30-2014-00705389 filed 2-10-14, Exhibit T, Court's Docket in *Lacambra v. Staples, Inc.*, O.C.S.C. Case No. 30-2014-00705389, Exhibit U, Plaintiff Lacambra's complaint in *Lacambra v. Ralphs Grocers*, O.C.S.C. Case No. 30-2014-00723048, Exhibit V, Court's Docket in *Lacambra v. Ralphs Grocers*, O.C.S.C. Case No. 30-2014-00723048, Exhibit W, Court's Docket in *Lacambra v. Aliso Viejo Library, et al.*, O.C.S.C. Case No. 30-2014-00706834, and Exhibit X, Defendant County of Orange's Demurrer in *Lacambra v. Aliso Viejo Library, et al.*, O.C.S.C. Case No. 30-2014-00706834. GRANTED as to Exhibits A through X, but as to Exhibits A, B, C, E, G, H, K, M, O, Q, S, T, U, V, W and X such notice is limited to the filing of these pleadings with the court or that the court dockets are true and correct copy of the respective court's docket but not as to the truth of any claims, contentions or entries set forth therein. *See, Evidence Code* § 452(d) and *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.

Defendant County of Orange's Second Request for Judicial Notice: Defendant County of Orange filed a second request for judicial notice requesting that the court take judicial notice of the following documents: Exhibit A, Judgment in Favor of Defendant Gary J. Gough following Anti-SLAPP Motion by Defendant Gary J. Gough in *Lacambra v. Shea Properties dba City Lights Apartments, et al.*, O.C.S.C. Case No. 07CC10666, Exhibit B, Judgment in Favor of Shea Properties Management Company, Inc. in *Lacambra v. Shea Properties dba City Lights Apartments, et al.*, O.C.S.C. Case No. 07CC10666, Exhibit C, Notice of Ruling on Plaintiff Lacambra's Motion to Vacate Judgment in *Lacambra v. Shea Properties dba City Lights Apartments, et al.*, O.C.S.C. Case No. 07CC10666, Exhibit D, Notice of Ruling on Demurrer to First Amended Complaint in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725, Exhibit E, Minute Order of 3-20-09 in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725 Sustained with Leave to Amend, Exhibit F, Judgment in *Lacambra v. Glass, et al.*, O.C.S.C. Case No. 07CC11725 in Favor of Defendant Susan Angell, Exhibit G, Judgment by Court Order in *Lacambra v. Public Storage*, O.C.S.C. Case No. 30-2008-00107467 entered 2-8-09, Exhibit H, Order for Terminating Sanctions, Striking First Amended Complaint and Dismissing the Action

1 with Prejudice in *Lacambra v. First Team Real Estate, et al.*, O.C.S.C. Case No.
2 07CC11357, Exhibit I, Minute Order
3 10-1-10 setting OSC re: Sanctions/Dismissal for 11-19-10 in the case of *Lacambra v.*
4 *Del Rey Sales*, O.C.S.C. Case No. 30-2010-00378004, Exhibit J, Order Dismissing
5 Appeal in *Lacambra v. Orange County Sheriff's Department* by the Ninth Circuit
6 Court of Appeals on 10-5-10, Exhibit K, Verified First Amended Complaint in
7 *Lacambra v. The County of Orange, et al.*, O.C.S.C. Case No. 30-2014-00706834.
8 GRANTED as to Exhibits A, B, C, D, E, F, G, H, I, J and K, but as to Exhibits C, D
9 and J such notice is limited to the filing of these pleadings with the court but not as to
10 the truth of any claims or contentions set forth therein. *See, Evidence Code* § 452(d)
11 and *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.

12 DATED: January 27, 2015

SULLIVAN, BALLOG & WILLIAMS, LLP

13 By: 
14 
15 DANIEL R. SULLIVAN
16 MICHAEL S. VASIN
17 ANTHONY V. MARTINEZ
18 Attorneys for Defendants
19 COUNTY OF ORANGE
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PROOF OF SERVICE
[C.C.P. 1013A]

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 400 North Tustin Avenue, Suite 120, Santa Ana, California 92705.

On the date set forth below, I served the following document(s) described as: **NOTICE OF RULING** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as stated below:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** The envelope was mailed with postage thereof fully prepaid, for collection and mailing on that date following ordinary business practices in the United States Mail in Santa Ana, California, addressed as shown below. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY FACSIMILE TRANSMISSION:** By transmitting via facsimile on this date from fax number (714) 541-2120 the foregoing documents to the addressee at the facsimile number indicated therefor. The transmission was completed before 5:00 p.m. The facsimile machine I used complied with California Rules of Court, Rule 2003 and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission.

☐ **BY OVERNIGHT DELIVERY:** By depositing copies of the above document(s) in a box or other facility regularly maintained by FEDEX, in an envelope or package designed by FEDEX with delivery fees paid or provided for and sent to the person(s) named on the attached service list [C.C.P. §1013, 2015.5].


☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) listed on the service list.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on January 27, 2015, at Santa Ana, California.


Sandy Waggle

SERVICE LIST
ROBERT LACAMBRA VS. ALISO VIEJO LIBRARY
Our File No. 0001-089

Counsel of Record	Phone/Fax Nos.	Party
Robert Lacambra No Current Address robertsjustice@live.com		Pro Per
James E. Mahfood, Esq. Law Office of James E. Mahfood 25283 Cabot Road, Suite 116 Laguna Hills, CA 92653 jmahfood@mahfoodlaw.com	Phone: 949.830.3700 Fax: 949.830.3239	

APPENDIX E

FILED

Mar 17, 2015

Deputy Clerk: A. Reynoso

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT LACAMBRA,

Plaintiff and Appellant,

v.

COUNTY OF ORANGE et al.,

Defendants and Respondents.

G051166

(Super. Ct. No. 30-2014-00723048)

O R D E R

Appellant submitted a Civil Case Information Statement (CCIS) for filing on December 22, 2014, which was marked "Received" only. The CCIS cannot be filed because the proof of service shows appellant served it on opposing counsel by email and appellant signed the proof of service. The proof of service must be served by mail and must be signed by a person not a party to the action. Appellant was given 10 days to file a CCIS with a proper proof of service or the appeal would be dismissed. He has failed to do so. Accordingly, the appeal is DISMISSED.

O'Leary, P.J.

O'LEARY, P. J.

APPENDIX F

1 DALE E. PHILLIPS, In Pro Per
2 4150 Patrice Road
3 Newport Beach CA 92663
4 Phone: (916)807-0772
5 Email: dalephillips5607@yahoo.com

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

04/04/2018

Clerk of the Superior Court
By T.Rabb, Deputy Clerk

6
7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER, SANTA ANA**
9 **(UNLIMITED JURISDICTION)**

Judge Melissa McCormick

11 DALE E. PHILLIPS,

12 Plaintiff,

13 vs.

14 SOUTH COAST PLAZA, ROLEX WATCH USA,
15 INC, DOES 1-25,

16 Defendants,

CASE NO.: 30-2018-00984005-CU-BT-CJC

VERIFIED CIVIL RIGHTS COMPLAINT FOR
DECLARATIVE RELIEF; INJUNCTIVE RELIEF
AND; DAMAGES

DISCRIMINATION IN BUSINESS DEALINGS
UNRUH ACT - CIVIL CODE § 51.5; 42 USC §
1983 - DEPRIVATION OF DUE PROCESS;
INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS

20
21
22 1. May it please the court, Plaintiff Dale E. Phillips, hereinafter referred to as (PLAINTIFF)
23 PHILLIPS, brings this civil action against DEFENDANTS "SOUTH COAST PLAZA" hereinafter referred to as
24 SOUTH COAST PLAZA and ROLEX WATCH USA, INC, hereinafter referred to as ROLEX and collectively referred
25 herein as "DEFENDANTS." Plaintiff sues them individually and seeks the court's equitable powers to make
26 available for him the opportunity to seek justice, to right a wrong and to heal. He alleges upon information
27 and belief, except as to allegations against him, as follows:
28

INTRODUCTION

2. SOUTH COAST PLAZA through its individual and shared advertising and other marketing efforts with tenant partners induced PLAINTIFF to engage their company in a business relationship, which included patronizing tenant partners whose business included, but is not limited to, purveying food products, retail, merchandise and entertainment.

3. ROLEX through its individual and shared advertising efforts with SOUTH COAST PLAZA induced PLAINTIFF to engage the company in a business relationship, directly and subliminally instructing him to partake in the dream of exclusivity and through an association with their brand through ownership of their fine watches, whether now or in the future.

4. SOUTH COAST PLAZA & ROLEX through their shared procedures, norms and culture caused the banishment of PLAINTIFF in all their properties, including but is not limited to, the SOUTH COAST PLAZA at 3333 Bristol Street Costa Mesa CA, including the Retail Center, South Coast Plaza Village, The Offices, Harbor Gateway and all parking lot for a period of 5 years ending on April 5, 2022. The citation that became the basis for this notice states that the violation was "G25 ACTIVITY LOOKING AT EMPLOYEES (ROLEX)."

JURISDICTION AND VENUE

5. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The Statutes under which this action is brought do not specify any other basis for jurisdiction.

6. The California Superior Court has jurisdiction over all Defendants because, based on information and belief, each is a corporation and/or entity and/or person organized under the laws of the State of California, a foreign corporation or association authorized to do business in California and registered with the California Secretary of State or that has sufficient minimum contacts in California, is a citizen of California, does sufficient business in California, or otherwise intentionally avails itself of the California

1 market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional
2 notions of fair play and substantial justice.

3 7. Venue is proper in this court pursuant to California Code of Civil Procedure § 395 in that
4 the case concerns acts that have taken place within the County of Orange.

5 8. Furthermore, Defendants (SOUTH COAST PLAZA & ROLEX) have purposefully availed
6 themselves of the benefits and the protections of the laws within the State of California and within Orange
7 County. Defendants have had sufficient contact such that the exercise of jurisdiction would be consistent
8 with traditional notions of fair play and substantial justice.

9 9. Plaintiff individually seeks relief that is within the jurisdictional limits of this court, which
10 will exceed the amount of \$25,000 (FOR UNLIMITED) including reimbursement damages, attorneys' fees, or
11 any other element of damages sought in this lawsuit.

12
13 **THE PARTIES**

14 **10. PLAINTIFF**

15 11. PLAINTIFF PHILLIPS is a new member of the Uber and Lyft driving team, whose primary
16 area of operation includes the immediate areas of the South Coast Metro, Costa Mesa, Newport Beach and
17 all other cities of the County of Orange, Los Angeles and San Diego or as required by his client passenger.

18 12. At the time of incident described on the complaint herein, PLAINTIFF PHILLIPS was a
19 homeless individual and a regular at the SOUTH COAST PLAZA, where he engaged the retail
20 shops in business through the purchase of food, drinks and when financially feasible clothing and other
21 merchandise.

22
23 **13. DEFENDANTS**

24 14. SOUTH COAST PLAZA is a California corporation registered as SOUTH COAST PLAZA.
25 It was incorporated on April 23, 1964. They are a domestic stock company that operates under the
26 corporate ID# C0469449. (EXHIBIT A)

1 15. SOUTH COAST PLAZA is a retail mall located in the South Coast Metro and boasts the
2 enviable claim of being one of the most successful retail mall establishments in the world. According to
3 Wikipedia, "South Coast Plaza is a shopping mall in Costa Mesa, California. The largest mall on the West
4 Coast of the United States, its sales of over \$1.5 billion annually are the highest in the United States. Its
5 250 retailers represent the highest concentration of design fashion retail in the U.S, with the second
6 highest sales-volume in California at \$800 per square foot (\$8,600/m²)—second only to Westfield Valley
7 Fair in San Jose-Santa Clara, at \$809 per square foot (\$8,710/m²). The national average is \$411 per
8 square foot (\$4,420/m²). The mall is anchored by three Macy's stores, Sears, Nordstrom, Bloomingdale's,
9 and Saks Fifth Avenue."
10

11 16. SOUTH COAST PLAZA includes all affiliate and any and all parents, subsidiaries, affiliates,
12 divisions, franchises, partners, joint venturers and organizational units of any kind, their predecessors,
13 successors and assigns and their present officers, directors, employees, agents, representatives and other
14 persons acting on their behalf.
15

16 17. At all times relevant hereto, PLAINTIFF engaged SOUTH COAST PLAZA in business at
17 their retail mall located at 3333 Bristol Street, Costa Mesa, CA 92626.
18

19 18. ROLEX is a company domiciled in New York that was incorporated on May 31, 1978.
20 It is a foreign stock company that operates in California under the corporate ID# CO847658. (EXHIBIT B)
21

22 19. ROLEX is a Swiss luxury watch manufacturer with retail space inside the SOUTH
23 COAST PLAZA. They are a 113-year-old company that produces some of the most celebrated and desired
24 time-pieces on the planet. As an example, on 26 October 2017, a Rolex Daytona (model 6239) watch
25 formerly owned by the actor Paul Newman was sold for US\$17.75 million
26

27 20. At all times relevant hereto, PLAINTIFF PHILLIPS engaged ROLEX in window shopping
28 at their retail space located at 3333 Bristol Street, Costa Mesa, CA 92626.

1 21. ROLEX includes all affiliate and any and all parents, subsidiaries, affiliates, divisions,
2 franchises, partners, joint venturers and organizational units of any kind, their predecessors, successors and
3 assigns and their present officers, directors, employees, agents, representatives and other persons acting on
4 their behalf.

5
6 **GENERAL ALLEGATIONS**

7 22. PLAINTIFF incorporates by reference the allegations in all preceding paragraphs of this
8 complaint as though fully set forth in this paragraph.

9 23. PLAINTIFF PHILLIPS is informed and believes, and based thereon alleges, that in
10 committing the acts alleged herein, each and every managing agent, agent, representative and/or employee
11 of DEFENDANTS was working within the course and scope of said agency, representation and/or employment
12 with the knowledge, consent, ratification and authorization of the DEFENDANTS and its directors, officers
13 and/or managing agents.

14 24. At all times material to this action, DEFENDANTS were directly involved, exercised
15 supervisory control and/or consulted in the design, research, development, testing, redevelopment, studying,
16 investigation and creation of all procedures and systems as it relates to the service offering of DEFENDANTS.
17 This includes, but is not limited to, providing security.
18

19 25. The true names and capacities, whether individual, corporate, associate, or otherwise, of
20 Defendants named herein as DOES 1 through 25, and each of them, are unknown to PLAINTIFF whom,
21 therefore, sues said DEFENDANTS by such fictitious names and will ask leave to amend this Complaint to
22 state said DEFENDANTS' true identities and capacities when the same have been ascertained.

23 26. PLAINTIFF is informed and believes and based thereupon alleges that each of the
24 DEFENDANTS designated the manner how the banishment complained hereon was to proceed and
25 participated with the DEFENDANTS in all matters referred to herein and was in some manner responsible for
26 the injuries and losses suffered by PLAINTIFF.
27
28

1 27. PLAINTIFF is informed and believes and based thereupon alleges that at all times herein
2 mentioned each of the DEFENDANTS was the agent, servant and/or employee or occupied other
3 relationships with each of the other named DEFENDANTS and at all times herein mentioned acted within the
4 course and scope of said agency and/or employment and/or other relationship and each other DEFENDANT
5 has ratified, consented to, and approved the acts of his agents, employees, and representatives, and that
6 each actively participated in, aided and abetted, or assisted one another in the commission of the
7 wrongdoing alleged in this Complaint.
8

9 28. At all times herein mentioned, DEFENDANTS and their agents had an obligation not to
10 violate any laws of the State of California including regulations that govern their respective industry as it
11 specifically applies to the retail business.

12 29. It is PLAINTIFF'S belief that on several occasions he went window shopping near or
13 around ROLEX' retail store at the South Coast Plaza. And in the course of those visits, someone at the one of
14 the stores erroneously reported him as looking at them through their windows and specifically identifying
15 him as "none buyer." It is also unclear how many times the incidence of PLAINTIFF looking was reported,
16 which in the end culminated in a banishment notice on April 5, 2017. One of the uniformed officers who was
17 part of the citing detail said that they were called by the ROLEX Store several times prior to investigate a non-
18 shopper identified as the PLAINTIFF.
19

20 30. It is PLAINTIFF'S contention that he periodically engaged in window shopping,
21 interspersed with the purchase of food and drinks at the mall. With limited funds he engaged in thoughtful
22 consideration of purchases requiring several visits before making a purchase commitment. The design of the
23 stores lent itself to such activities as the companies domiciled therein spent considerable time and resources
24 to understand and deploy retail psychology, resulting in potential customers giving attention to their product
25 and service offerings.
26
27
28

1 31. For specificity, who exactly did what, when, how and why is currently a subject for
2 discovery. But, the essential facts are hereon described. PLAINTIFF will seek leave of court to insert the very
3 precise information as soon as they are ascertained.
4

5
6 **CHRONOLOGY OF EVENTS**
7

8 32. 2015 – 2017
9

10 33. PLAINTIFF PHILLIPS had been a regular at the SOUTH COAST PLAZA where he engaged in
11 window shopping, eating & drinking, reading and partaking in the SOUTH COAST PLAZA experience.

12 3. APRIL 5, 2017

13 35. TIME YET TO BE DETERMINED: PLAINTIFF PHILLIPS was stopped inside the SOUTH COAST
14 PLAZA MALL by two uniformed officers who appeared to be private security guards for DEFENDANTS. In the
15 first encounter they greeted PLAINTIFF, "How are you?" In which he responded with "I'm fine, how are you?"
16 To which they retorted, "We've had complaints." PLAINTIFF inquired, "From whom?" The security officers
17 stood beside PLAINTIFF and stared at him without saying anything. PLAINTIFF'S query went unanswered, so
18 he decided to go about his business and walked away. As PLAINTIFF was walking away one of the guards said,
19 "You're not shopping." PLAINTIFF continued walking.

20 36. TIME YET TO BE DETERMINED: PLAINTIFF estimates walking about 2 minutes. The same
21 security guards again approached him and repeated, "We've had complaints." PLAINTIFF repeated the same
22 unanswered query, "From whom?" Like the first encounter, they said nothing and simply stared at PLAINTIFF.
23 In frustration, PLAINTIFF said, "Then, I can't help you." There was no response from the security guards.
24 PLAINTIFF continued on his way and found a cluster of seats on the 2nd floor of the SOUTH COAST PLAZA.
25 PLAINTIFF sat there and did some reading on his smart phone for approximately 10 minutes.
26

27 37. TIME YET TO BE DETERMINED: Having concluded his reading PLAINTIFF stood up and
28 made his way towards the parking to depart in his car. Upon reaching about 15 feet when the same two

1 officers walked along side of PLAINTIFF then said, "I spend money here. I buy clothes at many of the
2 store in this mall." The security guards continued walking beside him for approximately 200 feet. At which
3 point one of the guards stated the he was going to issue PLAINTIFF a "trespass warning" and asked for
4 PLAINTIFF'S identification. At which time, PLAINTIFF handed them his identification card. PLAINTIFF and the
5 two security guards continued walking and arrived outside the SOUTH COAST PLAZA.
6

7
8
9 38. TIME YET TO BE DETERMINED: Outside the property, two more uniformed officers who
10 PLAINTIFF believes were members of the Costa Mesa Police Department joined the PLAINTIFF and the two
11 other security guards. One of the Costa Mesa Police officers then said, "I have grown tired of being called
12 over here because of you." PLAINTIFF responded by asking to view the surveillance tape, "where's the game
13 film." There was no response. The same officer alleged that PLAINTIFF stood outside the ROLEX store for
14 "one hour" and stared into the store for the entire hour. PLAINTIFF responded by saying, "you have no idea
15 what you are talking about." Further, PLAINTIFF queried, "when did this supposedly happen?" To which the
16 officer refused to respond.
17

18 39. 1230PM: An as yet to be identified uniformed officer issued a TRESPASSING WARNING,
19 which in relevant parts state:

20 On 04/05/17 at 1430

21 PHILLIPS, DALE EDWARD

22 Herby acknowledge that I am no longer permitted on South Coast Plaza property (3333
23 Bristol St., Costa Mesa Calif) which includes the Retail Center, South Coast Plaza Village, The Offices, Harbor
24 Gateway and all parking lots, all of which is private property for a period of FIVE YEARS. I also understand that
25 if I return to South Coast Plaza properties prior to 04/05/2022 I may be arrested for violation of California
26 Penal Code Section 602.1(a) Trespassing. (EXHIBIT C)
27
28

1 40. Upon receiving what the officer described as a "warning," PLAINTIFF asked the security
2 guard whether or not he can re-enter the property so he can visit his friends at Nordstroms. To which the
3 security guard responded, "No, you cannot. Not at this location." Then, he was released.
4

5 JUDICIAL NOTICE: The Costa Mesa Police Department is not yet named as a defendant herein. PLAINTIFF is in
6 the motion of complying to presentment procedures as required by the Government Claims Act. PLAINTIFF
7 will request leave of court to add the department as a defendant in the event it is so required.
8

9
10 **FIRST CAUSE OF ACTION**

11 (DISCRIMINATION IN BUSINESS DEALINGS – UNRUH ACT -CIVIL CODE § 51.5)

12 41. PLAINTIFF incorporates by reference the allegations in all preceding paragraphs of this
13 complaint as though fully set forth in this paragraph.
14

15 42. Having identified PLAINTIFF as "looking" and as a "none buyer" DEFENDANTS banned
16 him from their premises simply on the strength of such distinction. They were in fact discriminating upon a
17 homeless individual protected by California Civil Code § 51.5, which provides:

18 51.5. (a) No business establishment of any kind whatsoever shall discriminate
19 against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any
20 person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of
21 Section 51, or of the persons partners, members, stockholders, directors, officers, managers,
22 superintendents, agents, employees, business associates, suppliers, or customers, because the
23 person is perceived to have one or more of those characteristics, or because the person is
24 associated with a person who has, or is perceived to have, any of those characteristics.
25

26 (b) As used in this section, person includes any person, firm, association,
27 organization, partnership, business trust, corporation, limited liability company, or company.
28

1 (c) This section shall not be construed to require any construction, alteration,
2 repair, structural or otherwise, or modification of any sort whatsoever, beyond that
3 construction, alteration, repair, or modification that is otherwise required by other provisions of
4 law, to any new or existing establishment, facility, building, improvement, or any other
5 structure, nor shall this section be construed to augment, restrict, or alter in any way the
6 authority of the State Architect to require construction, alteration, repair, or modifications that
7 the State Architect otherwise possesses pursuant to other laws
8

9
10 **SECOND CAUSE OF ACTION**

11 **(42 USC § 1983 – DEPRIVATION OF DUE PROCESS)**

12 43. PLAINTIFF incorporates by reference the allegations in all preceding paragraphs of this
13 complaint as though fully set forth in this paragraph.
14

15 44. SOUTH COAST PLAZA & ROLEX induced PLAINTIFF to engage them in business. Without
16 requiring that he purchase anything, they invited him to their establishment, to experience their claim as an
17 international destination, to window shop in hopes of one day purchasing something valuable and profitable
18 to them. On several occasions PLAINTIFF did, purchasing food, drinks, clothing and other merchandise. Then,
19 through unlawful procedures under color of law, they banned him for 5 years, violating provisions of 42 USC
20 § 1983, which provides:

21 Every person who, under color of any statute, ordinance, regulation, custom, or
22 usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected,
23 any citizen of the United States or other person within the jurisdiction thereof to the deprivation
24 of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to
25 the party injured in an action at law, suit in equity, or other proper proceeding for redress,
26 except that in any action brought against a judicial officer for an act or omission taken in such
27
28

1 officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was
2 violated or declaratory relief was unavailable. For the purposes of this section, any Act of
3 Congress applicable exclusively to the District of Columbia shall be considered to be a statute of
4 the District of Columbia.

5
6 45. In the encounter of April 5, 2017 where PLAINTIFF was issued a banishment, citing
7 officers failed to provide him with a way in which to question his accusers and determine the veracity of their
8 claims. They denied him a viewing of the surveillance tapes that corroborates the claim that he stared at
9 employees for an hour.

11 **THIRD CAUSE OF ACTION**

12 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

13 46. PLAINTIFF incorporates by reference the allegations in all preceding paragraphs of this
14 complaint as though fully set forth in this paragraph.

15
16 47. The initial questioning was not enough. PLAINTIFF had already been allowed to leave
17 when SOUTH COAST PLAZA Security organized a police posse to detain PLAINTIFF. It started with 2
18 detaining officers and then there were 4 officers. The feeling was they waited for him to get outside the
19 property where there may have been fewer witnesses and conducted an even more mean-spirited
20 detention and questioning. This time, one of the officers asked for his identification and proceeded to
21 write what turned out to be a banishment notice.

22
23 48. From the initial questioning, the team ballooned to 4 men, all exhibiting a mob
24 mentality. One of them menacingly and teasingly told him that they were banning him because
25 PLAINTIFF looked at employees for more than an hour, which wasn't true. It was calculated to humiliate,
26 to provoke anger and to justify a plan to arrest him. PLAINTIFF insists the detention was meant to exact
27 an emotional toll. His behavior and routine had not changed since the many times he has been to the
28

1 SOUTH COAST PLAZA. In th. outrageous actions, they violated a commor. tort of Intentional
2 Infliction of Emotional Distress, which provides:

3 "A cause of action for intentional infliction of emotional distress exists when
4 there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or
5 reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering
6 severe or extreme emotional distress; and (3) actual and proximate causation of the emotional
7 distress by the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it
8 is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the
9 defendant's conduct must be 'intended to inflict injury or engaged in with the realization that
10 injury will result.' " (Hughes v. Pair (2009) 46 Cal.4th 1035, 1050–1051 [95 Cal.Rptr.3d 636, 209
11 P.3d 963])
12
13

14 49. PLAINTIFF suffered bouts of depression over the incident, having been banned from
15 one his favorite places. The strong emotions of fear and puzzlement exist until this day. He even has
16 emotional mini-meltdowns from the thought of an Uber or Lyft customer asking him for a pickup and/or
17 drop off at the SOUTH COAST PLAZA. According to the notice, they could charge him for trespassing just
18 for being on their parking lot.
19

20 50. DEFENDANT'S conduct was outrageous and specifically intended to cause PLAINTIFF
21 emotional distress. DEFENDANTS acted with reckless disregard of the probability that PLAINTIFF would
22 suffer emotional distress. In fact, PLAINTIFF suffered severe emotional distress bringing rise to this
23 action months after it occurred because it causes him sleep depravations and mini-emotional-
24 meltdowns. DEFENDANTS conduct was a substantial factor in causing PLAINTIFF's severe emotional
25 suffering and distress.
26
27
28

REQUEST FOR RELIEF

51. WHEREFORE, PLAINTIFF requests judgment against DEFENDANTS, as set forth herein below.

52. Pursuant to the First, Second, Third causes of action, grant applicable compensatory penalties according to proof;

53. Pursuant to Unruh Act - Civil Code § 51.5, declaratory judgment that DEFENDANTS' issuing of a banishment notice was a violation of PLAINTIFF'S civil rights, specifically discriminating against individuals who are homeless and who DEFENDANTS have branded as "looking" and a "none buyer;" grant damages as provided by the aforementioned law according to proof.

54. Pursuant to 42 USC § 1983, declaratory judgment that DEFENDANTS have violated PLAINTIFF'S civil rights as engendered in the US Constitution, specifically his right to due process; also grant punitive damages provided by the aforementioned law according to proof;

55. Pursuant to common law tort of Intentional Infliction of Emotional Duress, declaratory judgment that DEFENDANTS have inflicted PLAINTIFF with emotional pain and suffering in violation of his rights.

56. Pursuant to California Civil Code § 3294, grant punitive damages according to proof;

57. For a temporary restraining order, preliminary and permanent injunctive order and all such orders required to restore his rights and privileges as a shopper and/or visitor of SOUTH COAST PLAZA, which may have been lost or displaced by means of these unlawful acts, as provided by the laws of California and the US Constitution and other applicable laws;

58. Award Plaintiff his costs of suit;

59. Grant such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

60. The above PLAINTIFF hereby demands a trial by jury by his peers.

Respectfully submitted,

Dated: 4-4-2008



DALE E. PHILLIPS - Plaintiff, In Pro Per

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VERIFICATION

I, Dale E. Phillips, am the Plaintiff in the above-entitled action. I have read the foregoing "Complaint for Damages" and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at ~~Aliso Viejo~~ **NEWPORT BEACH**, California.

Dated: 4-4-2018



DALE E. PHILLIPS - Plaintiff, In Pro Per

**Additional material
from this filing is
available in the
Clerk's Office.**