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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 AMELIA MOLITOR,

Plaintiff,

21 v.
22

23 JOE MIXON,

Defendant.
24 _____/

Case No.: 3:16-CV-4139

**COMPLAINT FOR DAMAGES FOR
NEGLIGENCE, WILLFUL AND
WONTON MISCONDUCT;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; PUNITIVE
DAMAGES**

1 Plaintiff AMELIA MOLITOR complains of defendant JOE MIXON and alleges the
2 following:

3 **JURISDICTION & VENUE**

4 1. Jurisdiction of the subject matter of this action is established in this court
5 under 28 U.S.C. §1332 on the basis complete diversity exists between all parties to this
6 action and the amount in controversy exceeds the jurisdictional limits of this court.

7 2. Pursuant to 28 U.S.C. §1391, this is the proper venue for this action because
8 the defendant's permanent residence is located in Contra Costa County, California.

9 3. At all times herein mentioned, Plaintiff Amelia Molitor (hereinafter
10 "MOLITOR") was, and is, a resident of Tarrant County, Texas.

11 4. At all times herein mentioned, defendant Joe Mixon (hereinafter "MIXON")
12 was, and is, a resident of Contra Costa County, California.

13 5. The acts complained of herein occurred in the City of Norman, County of
14 Cleveland, State of Oklahoma, on or about July 25, 2014.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 6. On or about July 25, 2014, MOLITOR was out for an evening socializing with
17 her friends near the Campus Corner district in Norman, Oklahoma. During the evening,
18 MOLITOR and her friends engaged in a discussion with MIXON while standing outside,
19 near the front door of Pickleman's Gourmet Café (hereinafter "PICKLEMEN'S") located at
20 759 Asp Avenue in Norman. The discussion between MIXON and MOLITOR became
21 heated and animated.

22 7. MOLITOR and her friend next entered PICKLEMEN'S to purchase
23 some refreshments, use the facilities and convene with other friends. MOLITOR and her
24 friend settled in at a table with others.

25 8. MIXON then entered PICKLEMEN'S and approached MOLITOR and her
26 friend. MIXON initiated another discussion with them. The discussion became more heated.

27 9. In an effort to end the discussion, MOLITOR pushed MIXON away from their
28

1 table. MIXON, who was and is a University of Oklahoma NCAA Division 1 football player
2 with great physical stature and strength, forcefully struck MOLITOR in her face with a closed
3 fist causing her to sustain fractured bones in her face and other serious and lasting physical
4 injuries.

5 10. As a result of MIXON's negligent, willful and wanton acts and omissions,
6 MOLITOR has suffered substantial physical injuries, emotional distress and other damages,
7 including, but not limited to, past, present, and future medical expenses. MOLITOR's
8 damages continue to accrue.

9 **FIRST CAUSE OF ACTION**

10 **(Negligence)**

11 MOLITOR alleges the following against MIXON:

12 11. MOLITOR hereby incorporates by reference the general allegations and
13 realleges the same as though set forth in full herein.

14 12. Under Oklahoma law, negligence is the failure to exercise ordinary care to
15 avoid injury to another's person or property. Ordinary care is the care which a reasonably
16 careful person would use under the same or similar circumstances.

17 13. By engaging in the above-described conduct, including forcefully striking
18 MOLITOR, and considering the circumstances including MIXON's physical stature in
19 comparison to MOLITOR's more slight stature, MIXON failed to exercise ordinary care
20 which a reasonably careful person would have exercised to avoid causing serious injury to
21 MOLITOR.

22 14. As a result of MIXON's conduct, MOLITOR has sustained economic losses
23 including but not exclusively medical expenses, in amounts presently unascertained, but
24 within the jurisdictional limits of this court; MOLITOR hereby reserves the right to allege
25 such damages as they are incurred or ascertained.

26 15. As a result of MIXON's conduct, MOLITOR has suffered severe anxiety,
27 embarrassment, depression, humiliation, and emotional distress and has sustained non-

1 economic losses in amounts as yet unascertained, but within the jurisdictional limits of this
2 court.

3 **SECOND CAUSE OF ACTION**

4 **(Willful and Wanton Misconduct)**

5 MOLITOR alleges the following against MIXON:

6 16. MOLITOR hereby incorporates by reference the general allegations and
7 realleges the same as though set forth in full herein.

8 17. Based on MIXON's physical stature, particularly as compared to MOLITOR's
9 relatively slight physical stature, there was substantial certainty that MIXON's forcefully
10 striking her with a closed fist would serious bodily injury to MOLITOR. Despite such
11 certainty, MIXON made an affirmative decision to strike MOLITOR as described herein.

12 18. MIXON's course of action before, during and following his striking
13 MOLITOR in the face was deliberate and demonstrated a callous indifference and reckless
14 disregard for MOLITOR's and others' safety, life, liberty, well-being and peace of mind.

15 19. As a result of MIXON's conduct, MOLITOR has sustained economic losses
16 including but not exclusively medical expenses, in amounts presently unascertained, but
17 within the jurisdictional limits of this court; MOLITOR hereby reserves the right to allege
18 such damages as they are incurred or ascertained.

19 20. As a result of MIXON's conduct, MOLITOR has suffered severe anxiety,
20 embarrassment, depression, humiliation, and emotional distress and has sustained non-
21 economic losses in amounts as yet unascertained, but within the jurisdictional limits of
22 this court.

23 21. MIXON's conduct was willful, malicious, oppressive, despicable, and was
24 carried out in conscious and reckless disregard of MOLITOR's, and by way of punishment
25 and example and to prevent future similar treatment of other employees, MOLITOR prays
26 that punitive damages be assessed against MIXON.

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THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

MOLITOR alleges the following against MIXON:

22. MOLITOR hereby incorporates by reference the general allegations and all allegations set forth in the Second Cause of Action and realleges the same as though set forth in full herein.

23. As a result of MIXON's actions, MOLITOR experienced, and continues to experience, severe emotional distress, including, but not limited to, humiliation, embarrassment, anger, grief, anxiety, fright, horror, depression, disappointment, worry, distrust, and disconnect.

24. These emotional injuries have hindered and continue to hinder MOLITOR's ability to fully engage with family and friends in meaningful relationships.

25. MOLITOR's reputation, peace of mind and safety has likewise been damaged, diminished, and tarnished as a result of MIXON's striking her on July 25, 2014.

26. MIXON's actions, whether done intentionally or recklessly, caused severe emotional distress to MOLITOR which is beyond that which a reasonable person could be expected to endure.

27. MIXON intentionally caused MOLITOR's emotional distress, or knew, or should have known that such distress was substantially certain to result from his conduct.

28. As a result of MIXON's conduct, MOLITOR has sustained economic losses including but not exclusively medical expenses, in amounts presently unascertained, but within the jurisdictional limits of this court; MOLITOR hereby reserves the right to allege such damages as they are incurred or ascertained.

29. As a result of MIXON's conduct, MOLITOR has suffered severe anxiety, embarrassment, depression, humiliation, and emotional distress and has sustained non-economic losses in amounts as yet unascertained, but within the jurisdictional limits of this court.

30. MIXON's conduct was willful, malicious, oppressive, despicable, and was

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns: CITIZENSHIP, PTF, DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: SIGNATURE OF ATTORNEY OF RECORD:

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.