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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
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20 AMELIA MOLITOR,

21 Plaintiff,

22 v.

23 JOE MIXON,

24 Defendant.
25 _____/

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
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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-
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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

