

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Kevin J. Phillips,

Case Type: Negligence & Others  
Court File No. 0:09-cv-2447 (RHK/FLN)

Plaintiff,

v.

**AFFIDAVIT OF KEVIN J. PHILLIPS**  
**(PLAINTIFF) IN SUPPORT OF**  
**MOTION TO AMEND COMPLAINT**  
**TO CLAIM PUNITIVE DAMAGES**

Speedy SuperAmerica, a wholly  
Owned subsidiary of Marathon Petroleum  
Company, LLC,

Defendant.

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STATE OF MINNESOTA )  
  )ss.  
COUNTY OF HENNEPIN )

I, Kevin J. Phillips, state and allege sworn under oath as follows in the above-referenced case:

1. Initially, acting "pro se", I brought this civil action in Minnesota State Court against Defendant-Speedy claiming, among other things, assault, battery, false imprisonment, negligence, negligent supervision and violation of M.S.A . Chap 363A based upon race discrimination. The Defendant removed this case to Federal Court based upon diversity of jurisdiction. Thereafter, because I had served the Summons and Complaint upon Defendant after the two-year statute of limitations for bringing assault, battery and false imprisonment claims, Defendant made a motion for partial summary judgment to dismiss those claims.

2. Subsequently, I retained Attorney Jesse Gant, III as his legal counsel, and upon Gant reviewing the complaint and the Defendant's documentation supporting its motion for partial summary judgment, Attorney Gant advised me that the Defendant's motion has merit and that I should stipulate to dismiss those claims in question. I agreed and the stipulation was executed.

3. On August 15, 2007, I went to Defendant-Speedy's SuperAmerica Store located at 7720 Nicollet Avenue South, Richfield, MN 55423, which was approximately three weeks prior to my having surgery on my right ankle. While at Defendant's store I was there to purchase Tylenol for my ankle pain. The store did not have the medication I needed, however, I did purchase a "Black and Mild Cigar", then exited the store.

4. On the date in question, Defendant's Caucasian employee seemed to be in charge of the Speedy SuperAmerica store in question. Another employee, (who appeared to be of African descent), came after me outside and who had left the store, to bring me back into the store on suspicion of shoplifting. Where at which time, the Defendant's store employee tackled me to the ground and said to me "Come with me because you are going to jail"; instead of simply asking me to return inside the store for questioning, which I would have complied with if asked. (Note, that Defendant's employees never contacted or had the police come to arrest me). When I asked the store employee why I was being going to jail, the employee responded to me: "Because you are a thief".

5. After Defendant's employee lead me back into the store against my will is where I was verbally berated, harassed in front of other customers, and the Caucasian employee stated to me: "Empty your pockets, I know how you

Black guys from Chicago are". I, on that date in question, had on a Chicago White Soxs Baseball Cap; and I was in fact born and raised in Minnesota and is not from Chicago.

6. The tackling of me by the Defendant's store employee resulted in my receiving injury to my right ankle, head and tooth.

7. When the employee followed me into the parking lot on the right side of the building and grabbed my right shoulder and forced me to the ground, is where my right ankle buckled causing me pain and injury. This is also when I suffered a chipped tooth and later noticed a lump on my head under my hair.

8. I had a witness to the encounter or incident with the store employee as described above, his name is Jeff McMillan, who was waiting for me in the car where I was headed when I left the store. There was another person in the car at that time, named Reginald Bean, but, I have not been able to locate him as of late.

FURTHER AFFIANT SAYETH NOT.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Kevin J. Phillips, affiant

Subscribed and sworn to before me this  
\_\_\_\_\_ of December, 2009.

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Notary Public

