

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.

**AMENDED COMPLAINT**

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

Defendant.

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TO: COURT AND DEFENDANT, THROUGH ITS ATTORNEY OF RECORD.

For his Complaint, Plaintiff Kevin J. Phillips by and through his attorney, states and alleges as follows:

1. Plaintiff-Phillips, a Black male, at all times relevant hereto resided in the State of Minnesota, Hennepin County.
2. Defendant-Speedy SuperAmerica, to Plaintiff's knowledge and upon reasonable belief is an Ohio based company doing business in the State of Minnesota.
3. JURISDICTIONAL STATEMENT: This Court has original jurisdiction of this case based upon diversity of jurisdiction. (See, the File).
4. Plaintiff initially, acting "pro se", 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 Plaintiff 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.

5. Subsequently, Plaintiff 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 Plaintiff-Phillips that the Defendant's motion has merit and that he should stipulate to dismiss those claims in question. The Plaintiff agreed and the stipulation was executed. (See, the File).

6. As a result of the Rule 16 Conference, the Court has ordered that any motions to amend the Complaint must be made by January 1, 2010, which I prior to discovery being completed. (See, Pretrial Schedule, dated 12/1/09, from Magistrate Franklin Noel, in the File). Based upon this time constraint and pursuant to M.S.A. 549.191 and claiming punitive regarding a state claim and related to M.S.A. Chap. 363A, the Minnesota Human Rights Act, Plaintiff brings this motion to Amend the Complaint to include a claim for punitive damages.

7. The basis for Plaintiff's civil action and the remaining claims therein, is that

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

8. Defendant’s Caucasian employee or person in charge of the Speedy SuperAmerica store in question had another employee, (who appeared to be of African descent), go after Plaintiff outside and who had left the store, to bring Plaintiff back into the store on suspicion of shoplifting. Where at which time, the Defendant’s store employee tackled Plaintiff to the ground and said to him “come with me because you are going to jail”; instead of simply asking him to return inside the store for questioning. (Note, that Defendant’s employees never contacted or had the police come to arrest Plaintiff). When Plaintiff asked the store employee why he was being going to jail, the employee responded to him: “Because you are a thief”.

9. After Defendant’s employee lead Plaintiff back into the store against his will Is where he was verbally berated, harassed in front of other customers, and the Caucasian employee stated to Plaintiff: “Empty your pockets, I know how you Black guys from Chicago are”. Note, Plaintiff on that date in question had on a Chicago White Soxs Baseball Cap; and Plaintiff was in fact born and raised in Minnesota and is not from Chicago. The tackling of Plaintiff resulted in him receiving injury to his right ankle, head and tooth.

10. Moments after Plaintiff left the store, one of the employees followed Plaintiff into the parking lot on the right side of the building. The employee grabbed Plaintiff's right shoulder and forced him to the ground, where Plaintiff's right ankle buckled causing him pain and injury. Plaintiff also suffered a chipped tooth and later noticed a lump on his head under his hair. Plaintiff was lead back into the store by the employee.

11. Plaintiff had a witness to the encounter or incident with the store employee as described above, his name is Jeff McMillan, who was waiting for Plaintiff in the car where Plaintiff was headed when he left the store. According to Mr. Jeffrey McMillan, he witnessed Plaintiff leaving the store and saw the employee from the store on that August 15, 2007, come from out of nowhere and grab Plaintiff from behind and forced him to the ground. Mr. McMillan states in his affidavit that Plaintiff was visibly in pain after hitting the ground; and that the male employee, who appeared to be of African descent then lead Plaintiff back into the store.

***(See, Exhibit A, Affidavit of Jeffrey McMillan, attached).***

12. Mr. McMillan further states under oath that he witnessed when Plaintiff returned to the car, that he was visibly upset and complaining of pain throughout his body, that his ankle gave-out causing him to bump his head on the pavement and thought that he may have chipped his tooth. ***(See, Ex. A).***

### **COUNT I**

**(“Violation of M.S.A. Chap. 363A, Race Discrimination in Public Accommodations and Services”)**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 12 set forth above, and further states and alleges as follows:

13. Plaintiff claims, based upon the above-referenced facts and allegations, that Defendant, through its employees/agents subjected has him to race discrimination, and harassment in violation of M.S.A. Chap. 363A related to public accommodations and services; and that Defendant-Speedy is liable based upon the doctrine of respondent superior, vicarious liability and agency law.

14. As a direct and proximate result of the above, Plaintiff has suffered emotional distress, mental anguish, fright, humiliation, embarrassment, pain and suffering, discomfort, inconvenience, and makes a claim for punitive damages.

## **COUNT II**

### **(“Negligence ”)**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 14 set forth above, and further states and alleges as follows:

15. Plaintiff claims, based upon the above-referenced facts and allegations, that Defendant, through its employees/agents, were negligent in their treatment of him as a customer on the date in question which resulted injury to Plaintiff. That the negligence of the Defendant stems from their being a duty owed which was breached by the Defendant’s employees as referenced above, resulting injury to Plaintiff, as above-described.

16. As a direct and proximate result of the above, Plaintiff has suffered emotional distress, mental anguish, fright, humiliation, embarrassment, pain and suffering, discomfort and inconvenience.

### **COUNT III**

#### **(“Negligent Supervision”)**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 16 set forth above, and further states and alleges as follows:

17. Plaintiff claims, based upon the above-referenced facts and allegations, that Defendant, through its employees and/or agents negligently supervised store employees on the date in question, by allowing for the employee who followed Plaintiff out of the store and tackle him to the ground causing injury; and by the other employee’s racially motivated conduct towards Plaintiff as mentioned above. Plaintiff claims that Defendant-Speedy is liable based upon the doctrine of respondent superior, vicarious liability and agency law.

18. As a direct and proximate result of the above, Plaintiff has suffered emotional distress, mental anguish, humiliation and embarrassment, pain and suffering, inconvenience, discomfort and fright.

**WHEREFORE**, Plaintiff prays for relief in the form of special, general and/or compensatory damages for emotional distress, mental anguish, humiliation, embarrassment, and pain and suffering, inconvenience, fright, and punitive damages in an amount in excess of \$75,000.00; in addition to claiming attorney’s fees where

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applicable, costs and disbursements, interest; and for any further relief as the Court may deem equitable and appropriate in this case. Plaintiff's claim for punitive damages against Defendant is pursuant to Minn. Stat. Chap. 363A; and Plaintiff gives notice of a claim for a civil penalty against Defendant under the same statute.

JESSE GANT, III, ATTORNEY AT LAW, P.A.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Jesse Gant, III, # 214772  
13091 Taconite Court NE  
Blaine, MN 55449  
Tel: (763) 780-1668

ATTORNEY FOR PLAINTIFF

**ACKNOWLEDGMENT REQUIRED BY**  
**MINN. STAT. § 549.21, SUBD. 2**

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing part or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

JESSE GANT, III, ATTORNEY AT LAW

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Jesse Gant, III, # 214772  
13091 Taconite Court NE  
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ATTORNEY FOR PLAINTIFF



