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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/12/2015 at 09:32:00 AM
Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

10 **Robin Marien,**
11 Gabriel Jebb, and
12 Air California Adventure, Inc.,
13
14 Plaintiffs,

15 vs.

16 **Robert Michael Kuczewski,**
17 and DOES 1 through 20, inclusive,
18
19 Defendants.

Case No.: 37-2015-00015685-CU-DF-CTL

Assigned for all purposes to:
Hon. Joel M. Pressman
Dept. C-66

**Defendant Robert Kuczewski's Answer to
First Amended Complaint**

Action Filed: May 11, 2015
Trial Date: Not Set

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21 Defendant Robert Michael Kuczewski answers the First Amended Complaint (“FAC” or
22 “Complaint”) as follows:

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24 **GENERAL DENIAL**

25 1. Unless specifically admitted, Defendant denies each and every allegation of the
26 Complaint.

27 **PARTIES**

28 2. Defendant does not deny that **Robin Marien (“Marien”)** is a resident of San Diego

1 County, and admits that the Torrey Pines Gliderport (the “Gliderport”) is in the La Jolla section
2 of San Diego and is part of the Torrey Pines City Park.

3 3. Defendant admits that **Air California Adventure, Inc. (“ACA”)** is a corporation
4 organized under the laws of California with its principal place of business in San Diego County.

5 4. Defendant does not deny that **Gabriel Jebb (“Jebb”)** is a resident of San Diego County.

6 5. Defendant admits that **Robert Michael Kuczewski (“Kuczewski”)** is a resident of San
7 Diego County.
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10 **JURISDICTION AND VENUE**

11 6. Defendant admits that venue is proper in this court.
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13 **FACTS**

14 7. Defendant admits that the Gliderport site is world renowned for its beauty.

15 8. Defendant contends that Plaintiffs’ allegation that the Gliderport is an “airport” is a legal
16 conclusion that cannot be admitted nor denied. Defendant otherwise denies the Gliderport is an
17 “airport”.

18 9. Defendant cannot admit or deny that Exhibit A to the Complaint is true and correct copy
19 of the lease between the City of San Diego and the concessionaire of the Gliderport. Defendant
20 denies that ACA or any other Plaintiff is a party to the lease.
21

22 10. Defendant asserts that he has witnessed numerous safety violations and other dangerous
23 conditions at the Gliderport. Defendant further asserts that he has personally witnessed several
24 people crash and receive serious injuries as a result of Plaintiffs’ negligence.

25 11. Defendant admits that he regularly videotapes activities at the Gliderport with the
26 intention of documenting safety violations in order to improve public safety at the Gliderport.
27 When Defendant videotapes at the Gliderport, he openly documents activities occurring in public
28 from public property.

1 12. Defendant has never assaulted or attempted to intimidate any other pilots or students at
2 the Gliderport. The only altercations that have ever occurred were initiated by the Plaintiffs and
3 are the subject of Defendant's concurrently filed Cross-Complaint.

4 13. Defendant has used information obtained from his videos in presentations to the San
5 Diego City Council. The information is germane to various matters of public concern, including
6 the City's policy decision to give Plaintiffs the exclusive, rent-free right to profit from the
7 Gliderport; the City's oversight of the Gliderport; and whether there should be an advisory board
8 to provide additional oversight of the Gliderport.

9 14. The videos, still frames excerpted from the videos, audio clips from the videos, and other
10 information obtained from the videos have been posted on the Internet to promote further
11 discussion of these public matters.

12 15. Defendant denies that any of the videos are or were defamatory.

13 16. Defendant asserts that his statements made at City Council meetings and their alleged
14 republication is privileged.

15 17. In addition to speaking before the City Council, Defendant testified against Plaintiffs in a
16 lawsuit filed by an ACA student who was injured in a crash as a result of Plaintiffs' negligence.

17 18. As a result of Defendant's deposition testimony, Plaintiffs were forced to settle the case
18 for an undisclosed sum of money.

19 19. Defendant asserts that Plaintiffs have engaged in a scorched earth campaign to exclude
20 him from the Gliderport in order to retaliate against him for his deposition testimony and his
21 comments before the San Diego City Council.

22 20. Plaintiffs retaliation against Defendant includes several instances where Plaintiffs placed
23 Defendant under citizen's arrest.

24 21. Defendant denies that Plaintiffs were ever "forced" to call the police and that every time
25 Plaintiffs have called the police, they have done so voluntarily.

1 22. Defendant denies that police have ever ordered him to leave. Instead, Defendant asserts
2 that police have communicated Plaintiffs' desire for him to leave.

3 23. Defendant admits that the San Diego Superior Court refused to grant Plaintiff's request
4 for a restraining order that would have prevented Defendant from entering the Gliderport
5 property.

6 24. Defendant asserts that in numerous instances, police have allowed him to remain at the
7 Gliderport and have told Plaintiffs that Defendant has a right to remain at the Gliderport.
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9 25. Defendant asserts that in the few instances where he was arrested, prosecutors have
10 refused to file criminal charges.

11 **FIRST CAUSE OF ACTION**

12 Intentional Interference with Prospective Economic Advantage
13 (Marien & ACA as to Kuczewski)

14 26. Defendant incorporates by reference each preceding paragraph in this Answer.

15 27. This cause of action for alleged interference with the relationship between ACA and
16 Marien is not actionable because Marien is ACA's principal shareholder. Marien, as President of
17 ACA, determines the extent of his relationship with ACA. He is ACA. Whatever economic
18 relationship Marien has with ACA is a relationship with himself, which cannot be affected by
19 Defendant or any other outside factors.

20 28. Defendant denies every other allegation in this cause of action and disputes the legal
21 conclusions stated therein.

22 **SECOND CAUSE OF ACTION**

23 Intentional Interference with Prospective Economic Advantage
24 (Jebb as to Kuczewski)

25 29. Defendant incorporates by reference each preceding paragraph in this Answer.

26 30. Defendant asserts that all of the statements he's made were proper. In each instance,
27 Defendant's statements were true or substantially true and made for the purpose of debating
28 matters of public concern without actual malice. In each instance, Defendant's statements were
privileged.

1 31. While Defendant is aware of the economic relationship between Jebb and ACA,
2 Defendant was and is not aware of any economic relationship between Jebb and ARC.

3 32. In each instance, Defendant's statements were made with the intent to debate matters of
4 public interest. Defendant did not make any statement with intent to interfere with any of Jebb's
5 economic interests.

6 33. Defendant denies that any of his statements have actually interfered with any of Jebb's
7 economic relationships. However, to the extent that any statement might have resulted in
8 interference, the interference was incidental to privileged debate on matters of public concern.

9 34. As to Jebb and ACA, Defendant denies that Jebb's relationship with ACA has been
10 harmed in anyway. If anything, the mutual aggression Marien (ACA's President and principal
11 shareholder) and Jebb share for Defendant has served only to strengthen the relationship between
12 Jebb and ACA.

13 35. As to Jebb and ARC, Defendant denies that there has been any harm to the relationship
14 between Jebb and ARC. To the extent that the relationship has been harmed, the harm is not the
15 result of Defendant's statements or is incidental to Defendant's proper and privileged
16 statements.

17 36. Defendant denies every other allegation in this cause of action and disputes the legal
18 conclusions stated therein.

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20 **THIRD CAUSE OF ACTION**

21 **Defamation**

22 **(Marien, Jebb, & ACA as to Kuczewski & DOES 1-20)**

23 37. Defendant incorporates by reference each preceding paragraph in this Answer.

24 38. Defendant denies each and every of the allegations in this cause of action.

25 39. Defendant denies that any of the statements alleged in this cause of action are defamatory.

26 40. Defendant denies that Plaintiffs have been harmed as a result of any of the statements
27 alleged in this cause of action. To the extent that Plaintiffs perceive themselves to be harmed, any
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1 such harm is incidental to their public role as the City’s contracted managers of the Gliderport
2 concession. Any perceived harm is a natural and expected consequence of proper public debate
3 concerning the propriety of their no-bid, no-fee “lease” and whether they have provided the type
4 of “Competent Management” required by the “lease agreement” between the City of San Diego
5 and Air California Adventure, LLC.

6 **FOURTH THROUGH NINETEENTH**
7 **CAUSES OF ACTION**
8 Defamation
(Marien & ACA as to Kuczewski & DOES 1-20)

9 41. Defendant incorporates by reference each preceding paragraph in this Answer.

10 42. Defendant denies each and every of the allegations in these causes of action.

11 43. Defendant denies that any of the statements alleged in these causes of action are
12 defamatory.

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14 44. Defendant denies that Plaintiffs have been harmed as a result of any of the statements
15 alleged in these causes of action. As fully stated above, any harm Plaintiffs have suffered is
16 incidental to their public role as managers of the City’s Gliderport.

17 **TWENTIETH THROUGH TWENTY-NINTH**
18 **CAUSES OF ACTION**
19 Defamation
(Jebb as to Kuczewski & DOES 1-20)

20 45. Defendant incorporates by reference each preceding paragraph in this Answer.

21 46. Defendant denies each and every of the allegations in these causes of action.

22 47. Defendant denies that any of the statements alleged in these causes of action are
23 defamatory.

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25 48. Defendant denies that Plaintiffs have been harmed as a result of any of the statements
26 alleged in these causes of action. As fully stated above, any harm Plaintiffs have suffered is
27 incidental to their public role as managers of the City’s Gliderport.

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THIRTIETH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(Marien, ACA, & Jebb as to Kuczewski & DOES 1-20)

49. Defendant incorporates by reference each preceding paragraph in this Answer.

50. Defendant denies each and every allegation in this cause of action and disputes the legal conclusions stated therein.

51. Defendant further denies that any of the Defendants, including but not limited to ACA (a corporate entity), suffered any actual harm or other emotional distress as alleged in this cause of action.

THIRTY-FIRST CAUSE OF ACTION

Negligent Infliction of Emotional Distress

(Marien, ACA, & Jebb as to Kuczewski & DOES 1-20)

52. Defendant incorporates by reference each preceding paragraph in this Answer.

53. Defendant denies each and every allegation in this cause of action and disputes the legal conclusions stated therein.

THIRTY-SECOND CAUSE OF ACTION

Declaratory Relief

(Marien, ACA & Jebb as to Kuczewski & DOES 1-20)

54. Defendant incorporates by reference each preceding paragraph in this Answer.

55. Defendant denies that there is an actual controversy as to whether Plaintiffs may exclude him from the Gliderport.

56. Any actual controversy concerning this question was resolved in March 2015 when the San Diego County Superior Court rejected Plaintiff's request for a restraining order prohibiting Defendant from accessing the Gliderport property. (San Diego County Superior Court 37-2014-00038828-CU-PT-CTL).

57. Evidence of Defendant's alleged bad acts, as well as the prior arrests, was considered in the prior action.

1 58. In each of the prior arrests, Defendant was arrested as the result of a citizen's arrest
2 enacted by Plaintiffs. In each instance, the City Attorney did not file criminal charges. Each of
3 these arrests is the subject of a cause of action for false imprisonment and arrest in Defendant's
4 concurrently filed Cross-Complaint.

5 59. This cause of action is barred by res judicata because the issues raised in this cause of
6 action were considered or should have been considered in the 2014 restraining order case that
7 was decided earlier this year.

8 60. Plaintiffs Marien and Jebb are in privity with Plaintiff ACA, which was a party to the prior
9 action, and are bound by the prior decision.

10 61. Defendant otherwise denies each and every allegation in this cause of action and disputes
11 the legal conclusions stated therein.

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13 **THIRTY-THIRD CAUSE OF ACTION**

14 **Injunctive Relief**

15 **(Marien, ACA, and Jebb as to Kuczewski & DOES 1-20)**

16 62. Defendant incorporates by reference each preceding paragraph in this Answer.

17 63. This cause of action is barred by res judicata because the court considered and decided on
18 the merits of Plaintiff's 2014 action for injunctive relief to bar Defendant from accessing the
19 Gliderport property. The court in the 2014 case denied Plaintiff's request for restraining order
20 prohibiting Defendant from entering the Gliderport.

21 64. Defendant otherwise denies each and every allegation in this cause of action and disputes
22 the legal conclusions stated therein.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Failure to State a Cause of Action)**

26 1. This Complaint fails to state a cause of action upon which relief may be granted.
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1 SECOND AFFIRMATIVE DEFENSE
2 (Uncertainty)

3 2. This Complaint is uncertain, ambiguous, and unintelligible as to which specific allegations
4 give rise to any cause of action or how Plaintiffs were harmed.

5 THIRD AFFIRMATIVE DEFENSE
6 (Standing)

7 3. Plaintiffs do not have standing to assert any causes of action related to any rights they
8 purport to have arising out of the Gliderport lease because no Plaintiff is a party to the lease nor
9 does any Plaintiff have any rights under the lease.

10 4. ACA does not have standing to assert a claim for intentional or negligent infliction of
11 emotional distress because ACA is a corporation that cannot suffer emotional distress.

12 FOURTH AFFIRMATIVE DEFENSE
13 (Substantial Truth)

14 5. The Complaint and each purported cause of action alleged therein is barred because the
15 statements the Defendant allegedly published are substantially true.

16 FIFTH AFFIRMATIVE DEFENSE
17 (Fair Comment / Opinion)

18 6. The Complaint and each purported cause of action alleged therein is barred because the
19 statements the Defendant allegedly published are expressions of opinion or fair comment on
20 matters of public concern.

21 SIXTH AFFIRMATIVE DEFENSE
22 (Privilege)

23 7. The Complaint and each purported cause of action alleged therein is barred because
24 Defendant's conduct was privileged.

25 SEVENTH AFFIRMATIVE DEFENSE
26 (First Amendment to U.S. Constitution)

27 8. The Complaint and each purported cause of action alleged therein is barred because
28 Defendant's conduct was protected by the First Amendment to the United States Constitution.

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EIGHTH AFFIRMATIVE DEFENSE
(Article I, § 2 of the California Constitution)

9. The Complaint and each purported cause of action alleged therein is barred because Defendant's conduct was protected by the guarantees of Article I, Section 2 of the California Constitution.

NINTH AFFIRMATIVE DEFENSE
(Absence of Malice)

10. The Complaint and each purported cause of action alleged therein is barred because Plaintiffs are and were public figures and Defendant did not act with "actual malice" while speaking on matters of public concern.

TENTH AFFIRMATIVE DEFENSE
(Good Faith)

11. The Complaint and each purported cause of action alleged therein is barred because Defendant acted innocently, in good faith, and in the exercise of reasonable judgment that the statements he allegedly published were substantially true.

ELEVENTH AFFIRMATIVE DEFENSE
(California Code of Civil Procedure § 425.16)

12. The Complaint and each purported cause of action alleged therein is barred by California's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, Code of Civil Procedure §§ 425.16 *et seq.*

TWELFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

13. The Complaint and each purported cause of action alleged therein is barred by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

14. The Complaint and each purported cause of action alleged therein is barred because Plaintiffs failed to mitigate their alleged damages, injuries, or losses.

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FOURTEENTH AFFIRMATIVE DEFENSE
(Intervening and Superseding Causes)

15. The Complaint and each purported cause of action alleged therein is barred because Plaintiffs' alleged injuries and damages, which Defendant denies, were the proximate result of acts or omissions of persons or entities other than Defendant, which comprise intervening and superseding causes of Plaintiffs' alleged injuries and damages.

FIFTEENTH AFFIRMATIVE DEFENSE
(No Cognizable Injury)

16. The Complaint and each purported cause of action alleged therein is barred because Plaintiffs have suffered no cognizable injury as a result of the acts or omissions alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

17. The Complaint and each purported cause of action alleged therein is barred because this action was not timely filed within the appropriate statute of limitations.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Res Judicata)

18. The Thirty-Second and Thirty-Third Causes of Action involve issues that were addressed or should have been addressed in a prior case involving the same parties and are barred by res judicata.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

19. As Defendant currently lacks sufficient information to determine all of the defenses available to him, Defendant fully reserves his right to assert additional applicable defenses as the precise nature of the Complaint is ascertained upon further investigation and discovery. Defendant further reserves the right to amend this answer or these affirmative defenses accordingly, and to delete affirmative defenses that Defendant determines are not applicable as a result of subsequent investigation and discovery. Defendant has not knowingly or intelligently waived any applicable affirmative defenses.

1 PRAYER FOR RELIEF

2 Wherefore, Defendant prays that:

- 3 1. The Complaint be dismissed with prejudice;
- 4 2. Judgment be entered for Defendant;
- 5 3. Plaintiff take nothing by this action;
- 6 4. The Court award Defendant his attorneys' fees and costs of suit incurred herein; and
- 7 5. The Court award Defendant such other and further relief as the Court may deem just and
- 8 proper.
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11 Dated: August 11, 2015

Respectfully submitted,
LAW OFFICE OF CHAD D. MORGAN

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13 By: 

14 CHAD D. MORGAN
15 Attorney for Defendant
16 Robert Michael Kuczewski

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