

LAW OFFICE OF CHAD D. MORGAN
Chad D. Morgan, Esq. SBN 291282
1101 California Ave., Ste. 100
Corona, CA 92881
Tel: (951) 667-1927
Fax: (866) 495-9985
chad@chadmorgan.com

Attorney for Defendant and Cross-Complainant
Robert Michel Kuczewski

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

Robin Marien,
Gabriel Jebb, and
Air California Adventure, Inc.,

Plaintiffs,

vs.

Robert Michael Kuczewski,
and DOES 1 through 20, inclusive,

Defendants.

Robert Michael Kuczewski,

Cross-Complainant,

vs.

**Robin Marien,
Gabriel Jebb,
Air California Adventure, Inc.,
Air California Adventure, LLC,
David Jebb,
Maya Jebb, and
DOES 21 through 40, inclusive,**

Cross-Defendants.

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

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

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

Defendant Robert Kuczewski's Cross-Complaint for

- 1. Assault & Battery**
- 2. False Imprisonment & Arrest**
- 3. Agency Liability**
- 4. Alter Ego Liability**
- 5. Deprivation of Rights**
- 6. Protection of Rights**

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

TABLE OF CONTENTS

Introduction.....	1
Parties.....	1
A. Existing Parties from the Underlying Action	1
B. New Parties Added in the Cross-Complaint	2
Facts Common to All Causes of Action.....	3
A. The Torrey Pines Gliderport is one of San Diego’s preeminent public properties.	3
B. The City delegated management of the Gliderport to Cross-Defendants David Jebb and ACA LLC without transferring a cognizable interest in the property.	3
C. Cross-Complainant has been critical of the “lease” and Cross-Defendants’ management of the Gliderport.	4
D. Cross-Complainant has used video recordings to document Cross-Defendants’ mismanagement of the City’s Gliderport.	5
E. Cross-Defendants are engaged in scorched earth campaign to silence Cross-Complainant and prevent him from documenting their mismanagement.	6
F. Cross-Defendants’ scorched earth campaign has resulted in malicious trampling of Cross- Complainant’s individual rights.....	8
First Cause of Action Assault	9
Second Cause of Action: Battery	10
Third Cause of Action: Assault & Battery.....	11
Fourth Cause of Action: False Imprisonment without Arrest.....	13
Fifth Cause of Action: False Imprisonment with Arrest.....	14
Sixth Cause of Action: False Imprisonment with Arrest	16
Seventh Cause of Action: Agency Liability	17
A. Marien, Gabriel Jebb, and DOES 21-40 were acting as agents of ACA Inc.	17
B. ACA Inc. was acting as an agent of ACA LLC	18
C. Marien, Gabriel Jebb, and DOES 21-40 were acting as agents of ACA LLC.....	18
Eighth Cause of Action: Alter Ego Liability	19

1	A. ACA Inc. is Robin Marien’s alter ego.	19
2	B. ACA LLC is David and Maya Jebb’s alter ego.	19
3	Ninth Cause of Action: 42 U.S.C. § 1983 – Deprivation of Rights	20
4	A. Cross-Defendants are government actors.	20
5	B. Cross-Defendants violated Cross-Complainant’s rights.	21
6	C. Cross-Defendants denied Kuczewski his rights under color of state law.	22
7	Tenth Cause of Action: Civ. Code § 52 – Protection of Rights	23
8	Prayer for Relief	24

1 Defendant and Cross-Complainant Robert Michael Kuczewski alleges as follows:

3 INTRODUCTION

4 1. This case relates primarily to Defendant Robert Kuczewski's individual right to petition
5 the City of San Diego government concerning the out-sourced management of the City's Torrey
6 Pines Gliderport.

7 2. Plaintiffs are the current operators of the Gliderport who purport a real property interest
8 in the Gliderport through a "lease agreement" with the City of San Diego.

9 3. Defendant Kuczewski has criticized the no-bid, no-fee "lease" through which Plaintiffs
10 claim an interest in the Gliderport. Kuczewski has also criticized Plaintiffs management of the
11 Gliderport.

12 4. In retaliation for Kuczewski's statements, Plaintiffs sued him for defamation and other
13 related causes of action. The underlying action is a retaliatory and frivolous attempt to silence
14 Kuczewski's First Amendment right to free speech on matters of public concern.

15 5. This Cross-Complaint relates to the other ways Cross-Defendants have tried to silence
16 Kuczewski's speech. Cross-Defendants have, under color of state authority delegated to them by
17 the City of San Diego, committed assault, battery, false imprisonment and arrest, and have
18 otherwise trampled on rights secured to Kuczewski through the U.S. and California
19 Constitutions as well as state and federal law.
20

21 PARTIES

22 A. Existing Parties from the Underlying Action

23 6. Cross-Complainant **Robert Michael Kuczewski** is the Defendant in the underlying
24 action. He is a resident of San Diego and hang glider pilot who has flown hang gliders since 1978.
25 While Kuczewski prefers hang gliders, he's also flown paragliders since 1990.
26
27
28

1 7. Cross-Defendant **Air California Adventure, Inc. (“ACA Inc.”)** is a California
2 Corporation holding itself out as holding a lease with the City of San Diego to manage the
3 Gliderport at Torrey Pines City Park.

4 8. Cross-Defendant **Robin Marien** is a Plaintiff in the underlying action. Marien is the
5 principal shareholder and President of ACA Inc., the operator and self-purported leaseholder of
6 the Gliderport concession at San Diego’s Torrey Pines City Park.

7 9. Cross-Defendant **Gabriel Jebb** is a Plaintiff in the underlying action. He is Cross-
8 Defendant David Jebb’s son and Marien’s second in command at the Gliderport.
9

10 **B. New Parties Added in the Cross-Complaint**

11 10. Cross-Defendant **Air California Adventure, LLC (“ACA LLC”)** is a suspended
12 California Limited Liability Company. This LLC is a party to the “lease” agreement with the
13 City of San Diego for the operation of the Gliderport at Torrey Pines City Park.

14 11. Cross-Defendant **David Jebb** is a dual resident of San Diego, California and Michigan or
15 Ohio. He was the founder and last manager of record and member of ACA LLC.

16 12. Cross-Defendant **Maya Jebb** is a dual resident of San Diego, California and Michigan or
17 Ohio. She was a member of record of ACA LLC from its inception through suspension.
18

19 13. Cross-Complainant is unaware of the true names and capacities of the Cross-Defendants
20 sued as DOES 21 through 40, inclusive, and therefore sues these Cross-Defendants by such
21 fictitious names. Each of these fictitiously named Cross-Defendants is responsible in some
22 manner for the activities alleged in this Cross-Complainant. Cross-Complainant will amend this
23 Cross-Complainant to add the true names and capacities of the fictitiously named Cross-
24 Defendants once they are discovered.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FACTS COMMON TO ALL CAUSES OF ACTION

A. The Torrey Pines Gliderport is one of San Diego's preeminent public properties.

14. The Torrey Pines Gliderport is a San Diego City Historical Site and is on the National and State Registers of Historic Places and Sites.

15. The Gliderport is part of Torrey Pines City Park.

16. In 1998, the City of San Diego entered into a "lease agreement" with ACA LLC for the management of the Gliderport.

17. Under the terms of the agreement with ACA LLC, the Gliderport is to remain open to the public.

B. The City delegated management of the Gliderport to Cross-Defendants David Jebb and ACA LLC without transferring a cognizable interest in the property.

18. Exhibit A to the First Amended Complaint is a purported "Flat Rate Lease" between ACA LLC and the City of San Diego.

19. While the parties described the agreement as a "lease", the agreement did not transfer all of the rights that might usually be transferred through a lease of real property. The "lease agreement" between ACA LLC and the City had numerous restrictions, including but not limited to, limits on allowed fees, operating hours, and rule-making ability. The "lease" also repeatedly reinforces the City's requirement that the Gliderport be open to the public and be identified as City property.

20. The "lease agreement" also required the personal service of David Jebb, as owner of ACA LLC. Jebb was required to report to the City Manager, who would oversee his management of the Gliderport.

21. In short, the "lease" does not give the lessee exclusive use of the property and includes restrictions and oversight provisions more consistent with an operating agreement than a lease agreement. Rather than leasing real property, David Jebb and ACA LLC stepped into the City of San Diego's shoes to manage the Gliderport on the City's behalf and for the public's benefit

1 22. Furthermore, ACA LLC is and was not required to pay rent to the City of San Diego for
2 the benefits it received through the “lease.” It can be inferred from the restrictions contained in
3 the agreement that rent-free use of the property was the City’s form of compensation paid to
4 David Jebb for managing the Gliderport under the City Manager’s supervision.

5 23. In statements made to the media, Cross-Defendants’ counsel has reinforced this
6 conclusion by stating the rent-free agreement was justified because the “lease” shields the City
7 from liability for any injuries that might occur at the Gliderport. Cross-Complainant asserts only
8 that this illustrates the true purpose of the agreement, but does not concede that this is true or is
9 justification for a no-rent “lease.”

10 24. Even if Cross-Defendants do have a real property interest in the Gliderport, the
11 conditions in the agreement show the governmental nature of Cross-Defendants’ role as lessee
12 and manager of the Gliderport. Kuczewski, like all members of the public, is an intended
13 beneficiary of the agreement between ACA LLC and the City of San Diego.

14
15 **C. Cross-Complainant has been critical of the “lease” and Cross-Defendants’**
16 **management of the Gliderport.**

17 25. Kuczewski first met David Jebb, Gabriel Jebb, and Marien in or about 2004. Even though
18 the Gliderport is supposed to accommodate all forms of non-motorized aviation, David Jebb was
19 openly hostile to hang glider pilots. He told Kuczewski “all the professional people are into
20 paragliding.”

21 26. Cross-Complainant is informed and believes that Cross-Defendants prefer paragliding to
22 hang gliding because, among other reasons, it is easier to sell tandem paraglider rides to non-
23 pilots making it more profitable for them to encourage paragliding over hang gliding.

24 27. In 2007, to help protect and preserve hang glider pilots’ interests at the Gliderport,
25 Kuczewski founded the Torrey Hawks Hang Gliding Club. That same year, the club became an
26 official chapter of the United States Hang Gliding and Paragliding Association (“USHPA”).
27
28

1 28. Kuczewski began to raise concerns about the propriety of the no-bid, no-fee “lease” when
2 it appeared the City was not exercising any of its oversight authority over the agreement and the
3 lease was in a perpetual holdover state after being improperly “assigned” to ACA Inc.

4 29. Kuczewski also began to notice ACA Inc. was relaxed about safety procedures at the
5 Gliderport. Kuczewski reported several violations and accidents to the San Diego City Council.

6 30. Kuczewski has questioned whether the City’s failure to exercise oversight of the
7 Gliderport was the result of Jerry Sanders’ 2005-2012 service as Mayor of San Diego. Sanders
8 was the first Mayor to serve in the role of a “strong Mayor” whereby the Mayor was the City’s
9 Chief Executive and charged with duties traditionally performed by the City Manager. Sanders
10 and David Jebb served on the San Diego Police Department together and are thought to be close
11 friends.
12

13 **D. Cross-Complainant has used video recordings to document Cross-Defendants’**
14 **mismanagement of the City’s Gliderport.**

15 31. To document Cross-Defendants’ mismanagement of Gliderport, Kuczewski has made
16 video recordings of safety violations and other activities that take place at the Gliderport.

17 32. In every instance, Kuczewski makes the recordings openly without any concealment while
18 on public property. The activities he records are taking place in the open on land open to the
19 public.
20

21 33. The purpose of Kuczewski’s video recordings is to document (or as it is when Plaintiffs
22 interrupt his recordings, attempt to document) the safety violations and other management
23 problems he observes at the Torrey Pines City Park Gliderport. The videos relate to matters of
24 public concern.

25 34. Kuczewski’s right to make these videos is protected.

26 35. One such video shows Gabriel Jebb not wearing a helmet while instructing students with
27 an inflated paraglider. This is particularly dangerous because many paragliding accidents happen
28 prior to takeoff when the pilot is on the ground and the paraglider is inflated. Additionally, the

1 students were dependent on the instructor not only to set a good example, but also for their own
2 safety. If the instructor were injured during a lesson, the students would be without guidance and
3 could cause serious injury to themselves or others.

4 36. At the time of the recording, wearing a helmet when attached to a glider was considered a
5 common sense best practice but was not required by USHPA guidelines. Within weeks of
6 Kuczewski's publication of the video, USHPA updated its guidelines to require helmets
7 whenever a pilot is strapped into a paraglider. This is just one instance where Kuczewski's video
8 resulted in an immediate improvement to public safety at the Gliderport.

9 37. Another video shows Marien, the self-purported Gliderport Flight Director, smoking a
10 cigarette in front of the Gliderport's "No Smoking" sign. This violated both Gliderport rules and
11 the San Diego Municipal Code.

12 38. In the respective videos, both Gabriel Jebb and Marien made comments to Kuczewski
13 about his filming. Kuczewski informed Jebb that he should be wearing a helmet and showed
14 Marien the no smoking sign.

15 39. Instead of putting out his cigarette, Marien exaggerated his smoking next to the
16 Gliderport's "No Smoking" sign.

17 40. Instead of putting on a helmet, Gabriel Jebb assaulted Kuczewski for making the video.
18 Marien joined Gabriel Jebb in the assault. Gabriel Jebb eventually struck Kuczewski. Even though
19 Kuczewski was taping events taking place in public from public property, Marien placed
20 Kuczewski under citizen's arrest for trespassing. The City Attorney did not file charges.

21
22
23 **E. Cross-Defendants are engaged in scorched earth campaign to silence Cross-**
24 **Complainant and prevent him from documenting their mismanagement.**

25 41. In September 2014, Kuczewski testified against ACA Inc. in a personal injury lawsuit
26 brought by a student who was injured as a result of Cross-Defendants' negligence. After
27 Kuczewski's testimony, ACA Inc. was forced to settle the lawsuit for an undisclosed sum of
28 money.

1 42. Plaintiffs Marien and Gabriel Jebb both attended Kuczewski's deposition. Afterwards,
2 they intensified their scorched earth campaign to exclude Kuczewski from the Gliderport.

3 43. Shortly after Kuczewski gave his deposition testimony, he went to the Gliderport on
4 November 9, 2014, the second Sunday of the month, for a meeting of the Torrey Hawks Hang
5 Gliding Club ("Torrey Hawks"). When Kuczewski attended the meeting, Plaintiffs assaulted and
6 battered him and falsely arrested him for trespass. No charges were filed.

7 44. Plaintiffs then filed an action in San Diego County Superior Court to obtain a restraining
8 order preventing Kuczewski from entering the Gliderport. This excluded Kuczewski from the
9 Gliderport during the pendency of the action, effectively extending his arrest until March 5, 2015
10 when the court denied Plaintiffs' request for a restraining order enjoining Kuczewski from
11 entering the Gliderport.

12 45. The first Torrey Hawks meeting after the court denied the restraining order was March 8,
13 2015. Plaintiffs again assaulted, battered, and falsely arrested Kuczewski for trespass even though
14 the court refused to grant their request for a restraining order.

15 46. On April 12, 2015, while charges were still pending related to the March 8 arrest,
16 Kuczewski again attempted to enter the Gliderport. Plaintiffs assaulted him again and since
17 charges were still pending related to the March 8 arrest, he voluntarily left. Ultimately, the San
18 Diego City Attorney did not file charges in connection with the March 8 arrest.

19 47. On May 10, 2015, Cross-Defendants imprisoned Kuczewski while they called the police
20 to have him removed from the property. The responding officers affirmed Kuczewski's right to
21 be at the property, and Kuczewski was allowed to stay.

22 48. On June 14, 2015, while Kuczewski was at the City Park's Gliderport he noticed Cross-
23 Defendants had improperly subleased the Gliderport property to a special event and was
24 attempting to record the evidence. When Marien and Gabriel Jebb noticed Kuczewski recording
25 the scene, they attacked him and called the police. The responding officers did not arrest
26
27
28

1 Kuczewski, but took his report for assault and battery against Marien and Jebb. The officers
2 informed Kuczewski that Marien would arrest him if he did not leave. Kuczewski left.

3 49. On July 12, 2015, Gabriel Jebb intercepted Kuczewski in the parking lot as Kuczewski
4 arrived for the monthly Torrey Hawks meeting. Jebb attacked Kuczewski, striking him several
5 times, shoving him, and grabbing his clothing. Jebb blocked Kuczewski and tried to prevent him
6 from entering the City Park. After Kuczewski asserted his right to enter the park, Gabriel Jebb
7 pushed him over a guardrail and falsely arrested him for assault and/or battery even though Jebb
8 himself was the only aggressor.

9
10 **F. Cross-Defendants' scorched earth campaign has resulted in malicious trampling of**
11 **Cross-Complainant's individual rights.**

12 50. Instead of addressing the concerns Kuczewski has raised in his statements to the San
13 Diego City Council, videos, and deposition testimony, Cross-Defendants have been aggressively
14 retaliating against him for his past speech and trying to silence any future speech.

15 51. Cross-Defendants' efforts to retaliate against and silence Kuczewski have manifested in
16 efforts to prevent Kuczewski from accessing the park or flying from the Gliderport; infringements
17 on Kuczewski's right to video tape and photograph public activities at the City park; and
18 culminated with assault, battery, and false arrest.

19 52. Cross-Defendants' motivations were evident during the November 9, 2014 assault, which
20 occurred just weeks after Kuczewski testified against ACA Inc., when Gabriel Jebb referred to
21 Kuczewski as "Mr. Expert." The "Mr. Expert" reference related to Kuczewski's role as an
22 expert witness in the personal injury case on matters related to gliding safety.

23 53. The motivation behind Cross-Defendants' actions shows the hatred, ill will, and
24 contempt they have for Kuczewski. In acting on this hatred, ill will, and contempt, Cross-
25 Defendants have acted with malice, fraud and oppression in reckless disregard for Kuczewski's
26 individual rights. This malice, fraud, and oppression is grounds for punitive damages as to each of
27 the causes of action described below.
28

FIRST CAUSE OF ACTION
Assault

(As to Marien, Gabriel Jebb, DOES 21-40 and ACA Inc.)

54. Cross-Complainant restates and incorporates by reference each prior allegation.

55. On November 9, 2014, March 8, April 12, May 10, and June 14, 2015 Marien and Gabriel Jebb accosted Kuczewski at the Gliderport.

56. Marien and Gabriel Jebb accosted Kuczewski by getting in his face, yelling, making aggressive and menacing gestures, and blocking Kuczewski's path as he tried to move around the park.

57. On each of these dates DOES 21-40 were between 5 and 20 feet away encouraging Marien and Gabriel Jebb to continue the assault.

58. Marien, Gabriel Jebb, and DOES 21-40 acted in this manner for the purpose of causing Kuczewski to leave the park.

59. Kuczewski did not consent to the threats against him.

60. Both the threat of contact and the resulting contact had it occurred, were and would have been harmful and/or offensive to Kuczewski. The harm includes, but is not limited to, emotional distress and mental pain and suffering related to the imminent threat of harmful and/or offensive contact.

61. The harm Kuczewski suffered was the direct result of the threats made by Marien and Gabriel Jebb. DOES 21-40, by encouraging Marien and Gabriel Jebb, also substantially caused the harm because Marien and Gabriel Jebb would not have been so aggressive or acted in such a threatening manner if they were not encouraged by the numerous individuals who supported them.

62. At all times, as fully set forth in the Seventh Cause of Action below, Marien, Gabriel Jebb, and DOES 21-40 were acting as agents of ACA Inc.

**SECOND CAUSE OF ACTION:
Battery**

(As to Marien, Gabriel Jebb, DOES 21-40, and ACA Inc.)

63. Cross-Complainant restates and incorporates by reference each prior allegation.

64. The apprehension of imminent harmful or offensive contact Kuczewski felt was well founded.

65. On November 9, 2014 and June 14, 2015, Gabriel Jebb followed through on his threats and actually contacted Kuczewski.

66. In both instances, the contact included physical strikes, shoving, and chest bumping. Gabriel Jebb's physical contact with Kuczewski was strong enough to push Kuczewski backwards against his will. The contact also included contact with Kuczewski's personal property, which was in his possession and under his immediate control. More specifically, Jebb tried to hit Kuczewski's camera out of his hands.

67. On November 9, 2014, the contact also included contact with Kuczewski's hang glider, which was tied just a few feet away from him. In a continued effort to try to make Kuczewski leave the City Park, Marien untied Kuczewski's hang glider. This was dangerous because it was a windy day and if the glider blew away, it could have struck someone and caused serious injury. The threat posed by unsecured hang gliders is more than hypothetical, untied gliders have recently blown away and caused serious injuries at other hang gliding sites.

68. When Gabriel Jebb made contact with Kuczewski, he intended to cause injury and/or offense to Kuczewski so he would leave the Gliderport. In doing so, he acted with indifference as to whether Kuczewski would be injured.

69. When Marien untied Kuczewski's hang glider, he did so to offend Kuczewski and cause him to leave the Gliderport. In doing so, Marien acted with reckless indifference as to the safety of his students and any other innocent bystanders who could have suffered physical harm if the unsecured glider blew away.

1 70. DOES 21 through 40 encouraged the assault with the intent of causing Marien and
2 Gabriel Jebb to make additional and more forceful contact with Kuczewski.

3 71. Kuczewski did not consent to the touching of his person or personal property.

4 72. The contact was patently offensive to Kuczewski. He suffered, among other harms,
5 emotional distress and mental pain and suffering as a result of the offensive contact.
6

7 73. Any reasonable person would have been similarly offended and harmed by the contact.

8 74. Kuczewski has never defended himself against any of Cross-Defendants' attacks. As a
9 result he has developed a reputation for being weak. This not only increased the emotional and
10 mental harm that results from the attacks, but also increases the frequency and intensity of the
11 attacks because Cross-Defendants know they are free to bully Kuczewski at will without threat
12 that Kuczewski will make any attempt at self-defense.

13 75. An increase in the intensity of the attacks is seen from November 9, 2014 through the July
14 12, 2015 attack at issue in the Third Cause of Action.

15 76. At all times, as fully set forth in the Seventh Cause of Action below, Marien, Gabriel Jebb,
16 and DOES 21-40 were acting as agents of ACA Inc.
17

18 **THIRD CAUSE OF ACTION:**
19 **Assault & Battery**

20 (As to Gabriel Jebb and ACA Inc.)

21 77. Cross-Complainant restates and incorporates by reference each prior allegation.

22 78. On July 12, 2015, Kuczewski arrived at the park for the monthly meeting of the Torrey
23 Hawks Hang Gliding Club as he usually does on the second Sunday of every month.

24 79. Gabriel Jebb, expecting Kuczewski to show up to the meeting, was waiting for him to
25 arrive.
26

27 80. When Kuczewski arrived, Gabriel Jebb rapidly approached him in an aggressive manner
28 with intent to intercept Kuczewski as he walked from the parking lot to the City Park.

1 81. Based on Gabriel Jebb's manner and past interactions between Gabriel Jebb and
2 Kuczewski, Kuczewski was apprehensive Jebb was about to make harmful or offensive physical
3 contact with him.

4 82. Kuczewski's apprehension was well founded. Gabriel Jebb started pushing Kuczewski
5 and repeatedly told him to "get off my property."

6 83. The property Gabriel Jebb referred to is the Torrey Pines City Park, property owned by
7 the City of San Diego. Gabriel Jebb does not own the park or have any interest allowing him to
8 remove Kuczewski from the property.

9 84. Gabriel Jebb is not a party to any agreement with the City of San Diego concerning a
10 "lease" of the Gliderport to David Jebb, ACA LLC, or any purported successors. The City's
11 "lease" with David Jebb and ACA LLC requires the property be kept open to the public.

12 85. Neither the original parties to the lease, David Jebb and ACA LLC, nor the purported
13 successors, Robin Marien and ACA Inc. and their agent, Gabriel Jebb, have the right to exclude a
14 member of the public from the Gliderport and/or Torrey Pines City Park. Kuczewski is a member
15 of the public.

16 86. Even if Cross-Defendants do have a right to exclude a member of the public from the
17 Gliderport, they cannot do so without justification or probable cause. Cross-Defendants were
18 unsuccessful in their attempt to obtain a court order barring Kuczewski from entering the
19 property and do not otherwise have probable cause to exclude Kuczewski from the Gliderport.

20 87. As to July 12, 2015, there could be no justification to deny Kuczewski entry to the
21 property immediately upon his arrival.

22 88. When Kuczewski asserted his right to be at the City Park, Gabriel Jebb's aggression
23 increased. After Kuczewski's assertion of his right to stay at the park, Gabriel Jebb violently
24 pushed him into a guardrail in the parking lot. Kuczewski fell backwards over the guardrail,
25 striking the ground with multiple parts of his body.

1 89. This contact was both harmful and offensive to Kuczewski. Among other harms,
2 Kuczewski suffered physical harm as well mental and emotional injuries from the offensive nature
3 of Gabriel Jebb's contact and resulting physical injury.

4 90. At all times, as fully set forth in the Seventh Cause of Action below, Gabriel Jebb was
5 acting as an agent of ACA Inc.
6

7 **FOURTH CAUSE OF ACTION:**
8 **False Imprisonment without Arrest**

9 (As to Marien, Gabriel Jebb, DOES 21-40, and ACA Inc.)

10 91. Cross-Complainant restates and incorporates by reference each prior allegation.

11 92. On each of the dates described in the First Cause of Action, Marien and Gabriel Jebb
12 intentionally blocked Kuczewski's path and prevented him from freely moving about the park.

13 93. Marien and Gabriel Jebb used their bodies, the threat of physical force, and actual
14 physical force as a barrier to restrict Kuczewski's freedom of movement and confine him to their
15 chosen area.

16 94. On each of the days at issue, DOES 21 through 40 encouraged Marien and Gabriel Jebb,
17 egging on their behavior and reinforcing the strength of Marien and Gabriel Jebb's threat of force
18 if Kuczewski did not comply with the confinement.

19 95. Kuczewski modified his behavior as a result of the actions that confined him. He did not
20 go where he wanted to. Instead, Marien and Gabriel Jebb were able to use force and their
21 blockade to move Kuczewski where they wanted him to go. They backed Kuczewski into the
22 proverbial corner.
23

24 96. Kuczewski did not knowingly or voluntarily consent to the confinement.

25 97. Kuczewski was harmed by the confinement. Among other harms, Kuczewski suffered loss
26 of liberty, inconvenience, emotional harm, and damage to his reputation.
27
28

1 98. Marien, Gabriel Jebb, and DOES 21 through 40 each participated in the actions giving rise
2 to Kuczewski's confinement. All of their conduct was a substantial factor in causing Kuczewski's
3 harm.

4 99. At all times, as fully set forth in the Seventh Cause of Action below, Marien, Gabriel Jebb,
5 and DOES 21-40 were acting as agents of ACA Inc.
6

7 **FIFTH CAUSE OF ACTION:**
8 **False Imprisonment with Arrest**

9 (As to Marien, Gabriel Jebb, DOES 21-40, and ACA Inc.)

10 100. Cross-Complainant restates and incorporates by reference each prior allegation.

11 101. On each of the days described in the First Cause of Action, police were called to the
12 Gliderport. On each of these dates, Marien and/or Gabriel Jebb tried to have Kuczewski arrested.

13 102. On May 10, 2015, the police properly rejected Marien and Gabriel Jebb's request that
14 they take custody of Kuczewski after a citizen's arrest.
15

16 103. However, on November 9, 2014 and March 8, 2015, Marien and/or Gabriel Jebb were
17 successful in their attempt to have Kuczewski arrested. On these days, Cross-Defendants
18 intentionally caused Kuczewski to be arrested by providing false information to law enforcement
19 and/or requesting the police place him under citizen's arrest. Neither Marien nor Gabriel Jebb
20 had a warrant for Kuczewski's arrest.

21 104. Marien and Gabriel Jebb encouraged each other to cause Kuczewski to be arrested. DOES
22 21 through 40 encouraged Marien and Gabriel Jebb to cause Kuczewski to be arrested.

23 105. The arrests were not justified. Kuczewski was on public property and was engaged in
24 activities protected by the United States and California Constitutions. Neither Marien nor
25 Gabriel Jebb had the right to expel Kuczewski from the property, let alone arrest him for refusing
26 to leave.

27 106. The San Diego City Attorney refused to file charges as a result of the arrests.
28

1 107. Kuczewski was harmed by the arrests. Among other harms, Kuczewski suffered loss of
2 liberty, inconvenience, emotional harm, and damage to his reputation. The effect of this harm
3 was magnified compared to the harm Kuczewski suffered when he was falsely imprisoned without
4 arrest.

5 108. As a result of the November 9, 2014 and March 8, 2015 arrests, Kuczewski spent
6 approximately 24 hours in the San Diego City Jail. He incurred costs related to bail and attorneys
7 fees for anticipated defense of charges that never came.

8 109. After the November 9, 2014 arrest, ACA Inc. filed suit requesting a workplace violence
9 restraining order to prevent Kuczewski from entering the park. This suit effectively extended the
10 arrest until March 5, 2015, when the court rejected the request.

11 110. On April 12, 2015, approximately one month after the March arrest, it was not yet clear
12 whether the City Attorney would file charges. When Kuczewski went to the Gliderport for the
13 April Torrey Hawks Hang Gliding Club meeting, he did not assert his right to remain on the
14 property as a result of the possibility of charges from the March 8 arrest. This effectively
15 extended the March 8 arrest through April 12.
16

17 111. The City Attorney did not file charges with respect to the March 8 arrest.

18 112. The damage to Kuczewski's reputation resulted in his expulsion from membership in the
19 United States Hang Gliding and Paragliding Association ("USHPA"). Membership in USHPA is
20 required to fly at most locations throughout the United States. The result of this is there are few
21 places Kuczewski may fly his hang glider.

22 113. Kuczewski's inability to fly his hang glider at many locations throughout the United
23 States has diminished the value of Kuczewski's investments in hang gliding lessons and
24 equipment and has caused immeasurable emotional harm and mental anguish.
25

26 114. The actions of Marien, Gabriel Jebb, and DOES 21 through 40 substantially caused the
27 harm Kuczewski has suffered.
28

1 115. At all times, as fully set forth in the Seventh Cause of Action below, Marien, Gabriel Jebb,
2 and DOES 21-40 were acting as agents of ACA Inc.

3
4 **SIXTH CAUSE OF ACTION:**
5 **False Imprisonment with Arrest**
6 (As to Gabriel Jebb and ACA Inc.)

7 116. Cross-Complainant restates and incorporates by reference each prior allegation.

8 117. On July 12, 2015, after Gabriel Jebb pushed Kuczewski over the guardrail, Kuczewski
9 called the police to report the assault. Gabriel Jebb made false statements to the responding
10 officers and/or insisted on Kuczewski's citizen's arrest causing Kuczewski to be arrested for
11 trespass, assault, and/or battery.

12 118. Gabriel Jebb did not have probable cause or justification to arrest or report Kuczewski for
13 trespass because Kuczewski had a right to access the public park, and Gabriel Jebb did not have
14 the right to exclude him from the park.

15 119. Gabriel Jebb did not have probable cause or justification to arrest or report Kuczewski for
16 assault or battery because Kuczewski did not threaten to make any contact with Gabriel Jebb.
17 Video of the incident shows Kuczewski didn't even make contact with Gabriel Jebb in order to
18 defend himself. Gabriel Jebb was the only aggressor.

19 120. This is consistent with the parties' prior interactions. Whenever Gabriel Jebb or Marien
20 has attacked Kuczewski, Kuczewski has never fought back, not even to defend himself.

21 121. As a result of the July 12, 2015 arrest, Kuczewski spent the night in jail and incurred legal
22 expenses in order to prepare for a possible criminal defense.

23 122. The San Diego Police Department obtained and reviewed video from the July 12 incident.
24 Neither the San Diego City Attorney nor the San Diego County District Attorney filed charges in
25 the case.
26

27 123. At all times, as fully set forth in the Seventh Cause of Action below, Gabriel Jebb was
28 acting as an agent of ACA Inc.

**SEVENTH CAUSE OF ACTION:
Agency Liability**

(As to ACA Inc. and ACA LLC)

124. Cross-Complainant restates and incorporates by reference each prior allegation.

A. Marien, Gabriel Jebb, and DOES 21-40 were acting as agents of ACA Inc.

125. ACA Inc. is the self-purported leaseholder of the Gliderport. Marien is the corporation's principal shareholder.

126. All of the actions complained of in this Cross-Complaint were intended to silence Kuczewski's criticisms of ACA Inc., including its safety record, management practices, and the City's no-bid, no-rent "lease agreement" with ACA LLC for the Gliderport property.

127. At all times, Marien, as principal shareholder and President of ACA Inc., was acting both on his own accord and on behalf of the corporation.

128. In addition, Marien instructed employees and agents of ACA Inc. to exclude Kuczewski from the Gliderport. The actions of Gabriel Jebb and DOES 21-40, which are the subject of this Cross-Complaint, were intended to carry out this order.

129. Even if Marien did not directly order Gabriel Jebb and DOES 21-40 to remove Kuczewski from the property, Gabriel Jebb and DOES 21-40 observed Marien's efforts to remove Kuczewski, and in the scope of their employment and/or agency, followed Marien's lead and assisted him in attempting to remove Kuczewski from the property. Furthermore, Marien never did anything to stop Gabriel Jebb's conduct.

130. While ACA Inc. purportedly caters to all non-motorized types of aviation, there is a schism between many pilots of paragliders and hang gliders. ACA Inc. favors paragliders, as does Marien, Gabriel Jebb, DOES 21-40, and most users of the Gliderport. As a pilot who flies both paragliders and hang gliders but also defends hang gliders, Kuczewski is not in favor with the paraglider pilots.

1 131. Many paragliding customers of ACA Inc., share Marien, Gabriel Jebb, and David Jebb's
2 hostility towards hang gliding. In the ongoing schism between paraglider and hang glider pilots,
3 many of Cross-Defendants' paragliding customers are inspired by Cross-Defendants' favoritism
4 towards them and have joined and support Cross-Defendants' attacks against Kuczewski. In co-
5 opting their customers' participation in the attacks, Cross-Defendants have made the customers
6 agents of ACA Inc. for the purpose of taking actions intended to cause Kuczewski to leave the
7 City Park.

8 **B. ACA Inc. was acting as an agent of ACA LLC**

9 132. ACA Inc. claims a right to the Gliderport property through assignment of the lease
10 agreement between the City of San Diego and ACA LLC. The lease agreement specifically
11 prohibited assignment of the lease, and the City of San Diego never approved the assignment
12 from ACA LLC to ACA Inc.

13
14 133. Since the City never approved the lease assignment, ACA Inc. is not a party to the
15 agreement with the City.

16 134. Since ACA Inc. has been operating the Gliderport since the "assignment," ACA Inc. has
17 been operating the Gliderport as an agent of ACA LLC.

18 **C. Marien, Gabriel Jebb, and DOES 21-40 were acting as agents of ACA LLC.**

19 135. All of the actions taken by Marien, Gabriel Jebb, and DOES 21-40 in furtherance of their
20 agency with ACA Inc. were also in furtherance of their agency with ACA LLC.

21
22 136. Cross-Defendants' hostility towards Kuczewski started when David Jebb and ACA LLC
23 operated the Gliderport.

24 137. Since the "lease" between the City of San Diego and ACA LLC was never assigned to
25 ACA Inc., ACA LLC is still manager of the Gliderport.

26 138. The ACA Inc. policy to retaliate against and exclude Kuczewski from the Gliderport
27 started when David Jebb and ACA LLC managed and operated the Gliderport. Marien, Gabriel
28 Jebb, and ACA Inc. maintain the policy in furtherance of the continued agency with ACA LLC.

**EIGHTH CAUSE OF ACTION:
Alter Ego Liability**

(As to Robin Marien, David Jebb, and Maya Jebb)

139. Cross-Complainant restates and incorporates by reference each prior allegation.

A. ACA Inc. is Robin Marien's alter ego.

140. Marien is the primary shareholder of ACA, Inc.

141. Cross-Defendant is informed and believes that Marien is the only shareholder of ACA, Inc.

142. Cross-Defendant is informed and believes that Robin Marien has never held a meeting of the shareholders or otherwise complied with any corporate formality.

143. Cross-Defendant is informed and believes that ACA Inc. was undercapitalized at its formation.

144. The actions Marien has taken on behalf of ACA, Inc. exceed all bounds of normal decency. His actions are not consistent with the actions one might expect from a business enterprise. Instead, Marien has shown that he is motivated by his vengeful hatred toward Kuczewski because of Kuczewski's willingness to stand up and question Marien's management of the Gliderport. Marien encourages and demands the same behavior from his employees and agents.

145. ACA Inc.'s corporate form is no more than a shell devised to protect Marien from liability not only for his own wrongful actions, but also for the wrongful actions of his employees.

146. To this end, Marien is using the corporate form to fulfill his personal vendetta against Kuczewski and cannot hide behind the corporate form to avoid liability for his personal actions.

B. ACA LLC is David and Maya Jebb's alter ego.

147. David Jebb organized ACA LLC on or about May 3, 1996 as a Limited Liability Company managed by its members.

1 148. In a 1998 Statement of Information, David Jebb identified himself as Manager, CEO, and
2 Member of the LLC. In the Statement, Maya Jebb was identified as a Member. While the
3 Statement did not identify Maya Jebb as a Manager, the Articles of Organization stated that ACA
4 LLC was managed by all of its members.

5 149. In 2006, Maya Jebb signed a Statement of Information indicating there were no changes.
6 She listed herself as CFO.

7
8 150. ACA LLC is currently listed as “Suspended” by the California Secretary of State
9 indicating its powers, rights, and privileges have been suspended by the Secretary and Franchise
10 Tax Board for failing to file required Statements of Information and tax returns.

11 151. Cross-Complainant is informed and believes the members of ACA LLC have not had a
12 meeting since 1998, if ever, and have otherwise failed to comply with all formalities required for
13 the entity’s organization.

14 152. Since ACA LLC is not authorized to do business in California and has not observed the
15 necessary formalities, ACA LLC is the alter ego of its managers and members, David and Maya
16 Jebb.

17
18 **NINTH CAUSE OF ACTION:**
19 **42 U.S.C. § 1983 – Deprivation of Rights**

20 (As to Marien, Gabriel Jebb, ACA Inc., ACA LLC, David Jebb, and Maya Jebb)

21 153. Cross-Complainant restates and incorporates by reference each prior allegation.

22 **A. Cross-Defendants are government actors.**

23 154. As set fully set forth above, the “lease” between the City of San Diego and ACA LLC is
24 more of a management agreement than a lease agreement.

25 155. Under the terms of the “lease”, the City Manager supervises the lessee’s management of
26 the Gliderport, intertwining the relationship between Cross-Defendants and the City of San
27 Diego.

1 156. The nature of the relationship between the City and Cross-Defendants shows Cross-
2 Defendants, in their management of the Gliderport, are state actors and are acting under color of
3 state law.

4 157. This conclusion is reinforced by recognition that a city's management of its parks is
5 traditionally a government function.

6
7 **B. Cross-Defendants violated Cross-Complainant's rights.**

8 158. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to be free
9 from improper arrest and unreasonable seizure.

10 159. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to use the
11 city park.

12 160. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to use the
13 Torrey Pines Gliderport.

14 161. Cross-Defendants prevented Kuczewski from exercising and enjoying his right of transit
15 through navigable airspace.

16 162. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to take
17 photographs and make video recordings of public activities.

18 163. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to be free
19 from harm.

20 164. Cross-Defendants prevented Kuczewski from exercising and enjoying his right to
21 assembly with the Torrey Hawks club.

22 165. Cross-Defendants prevented Kuczewski from having the security of knowing that his
23 individual rights would not be violated through force and/or threats of force and intimidation.

24 166. In each instance, Cross-Defendants have denied Kuczewski his rights without due
25 process, denying him equal protection under the laws.

1 167. As fully set forth in each of the prior Causes of Actions, Kuczewski was harmed as a result
2 of these violations. In each instance, Cross-Defendants were a substantial cause of Kuczewski's
3 harm.

4 **C. Cross-Defendants denied Kuczewski his rights under color of state law.**

5 168. When Marien and Gabriel Jebb engaged in the activities that prevented Kuczewski from
6 exercising and enjoying the rights described above, they were doing so in furtherance of their
7 official duties as principal and employee of ACA Inc., which is an agent of ACA LLC. Marien and
8 Gabriel Jebb's role at ACA Inc. is to fulfill the government role of managing the City's Gliderport
9 on behalf of ACA LLC and the City of San Diego.

10 169. Marien, as ACA Inc.'s CEO, is Gabriel Jebb's immediate supervisor. Marien, as Gabriel
11 Jebb's supervisor, not only knew about the wrongful conduct, but also encouraged and demanded
12 it. Marien knew Jebb's conduct was likely to cause Kuczewski harm and encouraged the conduct
13 because he wanted Kuczewski to suffer harm in the hope this would cause Kuczewski to leave the
14 Gliderport. Marien's supervision of Gabriel Jebb was a substantial factor in the harm Kuczewski
15 suffered.

16 170. Reinforcing the conclusion that Marien encourages and supports Gabriel Jebb's attacks
17 against Kuczewski is the fact that Marien has witnessed the attacks but done nothing to stop them
18 and does not appear to have ever disciplined Jebb as a result of the attacks.

19 171. Marien's encouragement and personal involvement in the actions giving rise to
20 Kuczewski's harm represent the official policy of ACA Inc. Marien and Gabriel Jebb were agents
21 of ACA Inc., and intentionally deprived Kuczewski of the rights stated herein because of the
22 official policy. ACA Inc. and its policy of retaliation against Kuczewski was a substantial cause of
23 Kuczewski's harm.

24 172. The ACA Inc. policy goes back to the days when the Gliderport was operated by ACA
25 LLC and David Jebb. David Jebb started the policy when he was manager of ACA LLC. Gabriel
26 Jebb is David Jebb's son and is an employee and/or agent of both ACA LLC and ACA, Inc.
27
28

1 Marien was David Jebb's employee and successor as manager of the Gliderport. Since ACA LLC
2 did not properly assign the Gliderport lease to ACA, Inc., Marien is still an agent of ACA LLC.
3 As agents of ACA Inc. Gabriel Jebb and Marien continued the policy as first implemented by
4 ACA LLC.

5 173. Since ACA LLC did not properly assign the lease to ACA Inc., ACA LLC is still manager
6 of the Gliderport. ACA Inc. is ACA LLC's agent for the purpose of managing the Gliderport and
7 continuing the policies that ACA LLC first established.

8 174. Since ACA Inc. is ACA LLC's agent, ACA LLC is also a substantial cause of
9 Kuczewski's harm.

10 175. Since ACA LLC is not authorized to do business in California, it is the alter ego of its
11 members and managers. As such, David and Maya Jebb are also a substantial cause of the harm
12 Kuczewski has suffered.

13
14
15 **TENTH CAUSE OF ACTION:**
16 **Civ. Code § 52 - Protection of Rights**

17 (As to Marien, Gabriel Jebb, ACA Inc., ACA LLC, David Jebb, and Maya Jebb)

18 176. Cross-Complainant restates and incorporates by reference each prior allegation.

19 177. Cross-Defendants used threats of force and intimidation to interfere with Kuczewski's
20 exercise and enjoyment of individual rights.

21 178. Civil Code section 52.1 permits equitable and declaratory relief to recognize and prevent
22 interference of an individual's exercise and enjoyment of individual rights by threat or use of
23 force.

24 179. Declaratory relief is necessary to determine whether Cross-Defendants have the right to
25 expel Kuczewski from a public park; whether Kuczewski has the right to fly his hang glider at the
26 Gliderport; and whether Kuczewski has the right to make video recordings and take photographs
27 of public activities on matters related to the public interest while on public property.

28 180. Injunctive relief is necessary to prevent future deprivations of Kuczewski's rights.

PRAYER FOR RELIEF

Wherefore, Cross-Complainant prays that this court:

1. Award Cross-Complainant special damages, jointly and severally or proportioned, from all Cross-Defendants, according to proof at trial;

2. Award Cross-Complainant general damages, jointly and severally or proportioned, from all Cross-Defendants according to proof at trial;

3. Award Cross-Complainant punitive damages, jointly and severally or proportioned, from Cross-Defendants Robin Marien, Gabriel Jebb, Air California Adventure, Inc., Air California Adventure, LLC, David Jebb, and Maya Jebb according to proof at trial;

4. Award Cross-Complainant his costs of suit and reasonable attorneys fees, both by statute and as damages for false imprisonment, payable jointly and severally or proportioned by all Cross-Defendants;

5. Declaratory judgment that the Gliderport is a public park and that Cross-Defendants do not have the right to arbitrarily exclude Cross-Complainant from the park without due process;

6. Declaratory judgment that Cross-Complainant has the right to make video recordings and take photographs of public activities at Torrey Pines City Park and the Gliderport.

7. Injunctive relief prohibiting Cross-Defendants from denying Kuczewski access to the Torrey Pines City Park or Gliderport;

8. Injunctive relief prohibiting Cross-Defendants from interfering with Cross-Complainant's right to make video recordings and take photographs at Torrey Pines City Park and the Gliderport.

9. For such other and further relief as the court deems proper.

//

//

//

1 Dated: August 11, 2015

Respectfully submitted,
LAW OFFICE OF CHAD D. MORGAN

2
3 By:

A handwritten signature in blue ink, appearing to read "Chad Morgan", is written over a horizontal line.

4 CHAD D. MORGAN
5 Attorney for Defendant
6 Robert Michael Kuczewski
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28