

1 Legorreta states that he and nephew Proo arrived at the Walmart Free-Speech zone on the
2 Walmart site early and that during the day he primarily sat around and solicited signatures by
3 calling out to persons exiting the Walmart store. A rival group of petitioners led by Cobham,
4 appeared at the site and commenced competing with Legorreta and Proo for signatures by
5 attempting to solicit signatures from the same group of persons. The Cobham group did not have a
6 booth or table and did not confine themselves to one area but circulated in and around the exit
7 soliciting signatures including the area adjacent to the location of the Proo/Legorreta booth.

8 During the day-long signature gathering efforts, stress and tensions arose between the
9 different groups of signature gatherers and it significantly increased with Cobham and Trujillo
10 arrived. Legorreta, who identifies as gay, was repeatedly verbally assaulted by Cobham and his
11 group with epithets calling him a “fucking faggot” and a “fucking loser.” Mr. Proo was engaging in
12 criticism of Cobham’s team because of the name calling directed to Legorreta and himself, his
13 perception that the Cobham team was violating the rules of solicitation of signatures by following
14 people into the parking lot, and because Cobham was “stealing signatures.” The two groups accused
15 each other of signature stealing, that is, getting a Walmart customer who was exiting the store to
16 sign for one but not the other group’s petition. There was no evidence that Legorreta was the
17 aggressor in any of the back-and-forth insults, accusations, and name calling. There is convincing
18 evidence, however, that Legorreta was being insulted and intimidated by the Cobham group.

19 Toward the evening hours (around 5:45 p.m.) Cobham came up to the table where Legorreta
20 was sitting and shook the table and called him, as he had in a number of prior insults of the same
21 nature, a “fucking faggot.” Proo interpreted this as threatening Legorreta with physical harm.
22 (Exhibit 1, Page 4, Paragraph 9.) Cobham then left the immediate area. Legorreta then stood up to
23 go inside the Walmart store to complain about Cobham and his crew’s repeated insults and what
24 Legorreta perceived as rude and unfair competition (signature stealing, insults.) Exhibit 2, a tape
25 from Walmart’s security camera, documents without audio the pertinent series of events. Exhibit 1,
26 the Police Report, at Page 5, full paragraph 6, which the parties stipulated to admit into evidence
27 states regarding the video:
28

1 “V/Legorreta approaches S/Cobham in from the “Wal-Mart” northeast entrance sliding
2 doors. S/Cobham suddenly forcefully pushed V/Legorreta backwards out of view of the camera.
3 S/Cobham appears to rush forwards into V/Legorreta with raised fists then moves out of view.”

4 The Sheriff’s report and investigation supports the conclusion that Cobham is the aggressor
5 in the fight and that Legorreta did not constitute a threat of physical violence to Cobham. The police
6 report recommends that Cobham be charged with a violation of Penal Code §368(b)(1) for willfully
7 causing an elder to suffer unjustifiable physical pain, a felony, punishable by imprisonment of three
8 years.

9 The court has also reviewed the video with the additional information provided by the
10 testimony of the parties. Prior to the summary of events in the Police Report, Exhibit 2 shows
11 Legorreta heading from the area out of view where he had been sitting and toward the store exit and
12 then he stopped. He testified he stopped as he realized he had to go to a different door being used as
13 the entrance. Before Cobham arrived, Legorreta was standing facing Mr. Trujillo, one of Cobham’s
14 crew as store customers filed out between them with their carts full of goods. Elijah Trujillo was 21
15 years old at that time and had been directing insults to Plaintiff and Mr. Proo since he and Cobham
16 arrived earlier. The video appears to show Trujillo again addressing Mr. Legorreta. Legorreta, who
17 referred to Trujillo as “green shirt guy,” testified that Trujillo was making insulting comments to
18 him as he approached the doorway area where he intended to turn around to enter the other door
19 that was used as the entrance. Mr. Trujillo is visible wearing a green shirt in the video. As Trujillo
20 was orally engaging Legorreta, he appears to be approaching a stationary Legorreta.

21 In the video, the court notes that as Trujillo approached Legorreta, Cobham suddenly
22 jumped in between Trujillo and Legorreta. Mr. Cobham is younger, more fit, and muscular. The
23 police report indicates that Cobham was 42 years of age at the time. On the contrary, Mr. Legorreta
24 was older at age 68 and not fit or muscular. The court agrees with the police description of
25 Legorreta as “frail, having pail (sic) weathered skin” with an “unsteady gait.” Mr. Cobham admitted
26 to the police that he knew Legorreta, as is obvious in the videos, was old or an elder, although
27 Cobham now denies he said that to the police. Mr. Cobham immediately pushed himself onto
28 Legorreta in what appears to be an effort at bodily intimidation. They were standing with Cobham’s

1 chest or belly against or near to Legorreta's belly. They were face to face when there was a verbal
2 exchange. The content of the verbal exchange is in dispute at trial. Mr. Cobham claims that Mr.
3 Legorreta put his left arm on Mr. Cobham but the court's view of the evidence is that this did not
4 happen, and the investigating officer did not describe this either. After the verbal comment, Mr.
5 Cobham forcefully pushed (as described by the police who viewed the video) and then beat Mr.
6 Legorreta. Prior to Cobham's assault and battery, there is no evidence that Mr. Legorreta was in any
7 way a threat to Cobham and it also appears that Legorreta did not even try to defend himself.

8 Mr. Legorreta told the police, as documented by Exhibit 1, the Sheriff's report that before
9 the battery, Cobham and he engaged in the following verbal exchange: "This is why I voted for
10 Trump, because of you people." Cobham replied: "What do you mean, you people." Mr. Legorreta
11 claims he then said: "You know what I mean." (Exhibit 1, Page 4, Paragraph 5.)

12 Cobham agreed with Legorreta's version of the conversation and reported to the police the
13 nearly identical conversation. (Exhibit 1, Page 5, 4th full paragraph.) This agreement in content of
14 the conversation is the strongest evidence of the verbal exchange and that it did not include
15 Legorreta's use of the "N" word. In that statement, Cobham did not tell the police that Legorreta
16 called him the "N" word. However, at trial Cobham now states that Legorreta called him a "Nigger"
17 in that confrontation. Mr. Legorreta, a former civil rights activist, claims he did not make this
18 statement and would never use this term. This denial is credible to the court even in light of the
19 prior statement to police. Proo testified that he was nearby and did not hear Legorreta make this
20 statement. Exhibit 3, video of the later portion of the beating, supports that it was only Cobham who
21 used the "N" word. Mr. Cobham, who employed Mr. Trujillo, did not bring Trujillo in as an
22 important witness to corroborate his claim, which causes the court to distrust Cobham's version of
23 events. (e.g. Evidence Code §412.)

24 A vague handwritten statement that Mr. Legorreta admits that he gave to a police officer in
25 his handwriting appears at first to contradict this finding. Legorreta attempts to explain the letter by
26 saying that he was in the ambulance, confused by the head trauma from the beating, and under
27 duress caused by the officers wanting a statement before he was taken to the hospital. In the
28 statement, Legorreta stated that "Being a practitioner of political issues Black Guy got angry at the

1 fact that I used the ‘N’ word which is Freedom of Speech which is understood by most political
2 workers.” Importantly, the statement does not state that he directed the word at Cobham or that the
3 statement was made immediately before the beating. Since the police report prepared after
4 Legorreta’s statement does not indicate that the beating was incited by the use of the “N” word, the
5 court finds that this statement was not an admission of his use of the word directed to Cobham or
6 that the use of the word had anything to do with the battery.

7 The court finds that Legorreta did not direct any comment using the “N” word to Cobham.
8 In the court’s view, after reading the police report with Legorreta’s statement, Cobham seized upon
9 Mr. Legorreta’s vague statement to the Sheriff regarding the use of the “N” word to create a false
10 narrative about how the incident occurred that in his mind would give justification and defense to
11 his battery on Legorreta. Whether or not Legorreta used this word, Cobham was not justified in
12 punching and beating Mr. Legorreta. It was only after the battery was concluded that the word
13 “nigga” is found on Exhibit 3: Mr. Cobham used it himself, apparently also in an attempt to imply
14 that he had beaten Legorreta because that is what Legorreta had called him. In the courts view there
15 was no prior usage of the term by Legorreta. The video also shows that Mr. Cobham was stating to
16 observers that Legorreta should “get off him”, implying that Legorreta was the aggressor when that
17 was clearly not the fact.

18 Mr. Cobham appears to attempt to justify his battery on Legorreta by stating that Legorreta
19 ran toward him and as an ex-military person, “he is not going to allow anyone to run at him and not
20 do anything about it.” However, both Exhibits 2 and 3 document a different set of facts. Legorreta
21 was responding to Mr. Cobham by calling him an “asshole” but in the portion of the video of the
22 incident admitted as Exhibit 3, he was turned and trying to walk away from Cobham when Cobham
23 rushed him and pummeled him.

24 It should be noted that Exhibit 3 is a compilation of videos that the parties “found” on the
25 internet and that they do not know who recorded these. No witness laid the foundation for these
26 videos. The manipulation and planting of these videos, in the court’s opinion, calls into question
27 whether they are accurate. They do not have any timestamp and do not show the entire set of events
28 in the correct order. It is the court’s belief that it was Mr. Trujillo or one of Cobham’s crew that

1 recorded the original video and that the video has been edited and planted on the internet in order to
2 omit the full chain of events and give a distorted view of events that would support Cobham's
3 defense. In particular, it is the court's belief that there was willful suppression or manipulation of
4 evidence regarding the full original video and that the video would, if fully produced, have
5 confirmed the version of events testified to by Legorreta and Proo. There is a missing gap in the
6 video that would have included any statement by Legorreta of the "N" word if he had made it. The
7 court does not give the video any weight except for the portions endorsed by Legorreta.

8 9 **FINDINGS AND CONCLUSIONS OF LAW**

10 Elements of the claim of Battery. Legorreta proved that he was the victim of Cobham's
11 battery. Plaintiff proved to the preponderance of evidence all of the elements of the cause of action
12 as set required by CACI No. 1300; *Kaplan v. Mamelak* (2008) 162 Cal.App.4th 637; and *So v. Shin*
13 (2013) 212 Cal. App. 4th 652, 669. Cobham touched and repeatedly punched Mr. Legorreta.
14 Plaintiff did not consent to the touching or punching. Mr. Legorreta was clearly severely harmed by
15 the pushing and punching. There is no doubt from the evidence that Mr. Cobham intended to punch
16 and hurt Mr. Legorreta. The video tape shows that Mr. Cobham aggressively rushed Mr. Legorreta
17 at the outset of the beating after Mr. Legorreta appeared to turn away from Cobham. Further, any
18 reasonable person in Legorreta's position would be offended by the beating he received. This is a
19 clear case of battery. The evidence does not provide any basis of a defense.

20 Other claims. There is insufficient evidence of intentional infliction of emotional distress
21 and the claim for assault is subsumed in the substantiated claim for battery.

22 Affirmative Defense of Consent. This affirmative defense has no factual support in this case.

23 Affirmative Defense of Self Defense. Cobham has the burden of proof in proving to a
24 preponderance of evidence that he battered Plaintiff in an effort to defend himself. "The
25 right to use force against another has long been limited by the condition that the force be no more
26 than "that which reasonably appears necessary, in view of all the circumstances of the case, to
27 prevent the impending injury.' " (*Vaughn v. Jonas* (1948) 31 Cal. 2d 586, 600 [191 P.2d 432]; *Boyer*
28 *v. Waples* (1962) 206 Cal. App. 2d 725, 727 [24 Cal. Rptr. 192]; *Fraguglia v. Sala* (1936) 17 Cal.

1 App. 2d 738, 745 [62 P.2d 783].) When the amount of force used is justifiable under the
2 circumstances, it is not willful and the actor may escape liability for intentionally injurious conduct
3 that is otherwise actionable. (See *Haeussler v. De Loretto* (1952) 109 Cal. App. 2d 363, 364-365
4 [240 P.2d 654].) But if force is applied in excess of that which is justified, the actor remains subject
5 to liability for the damages resulting from the excessive use of force. (See *Townsend v. Briggs*
6 (1893) 99 Cal. 481, 483 [34 P. 116]; *Fraguglia v. Sala*, supra, 17 Cal. App. 2d at p. 745; see also
7 *Stowell v. Evans* (1931) 211 Cal. 565 [296 P. 278].) This is consonant with the general principle that
8 an actor is subject to liability for an intentionally injurious act only if his or her conduct "is
9 generally culpable and not justifiable under the circumstances." (Rest.2d Torts, §870; 5 Witkin,
10 Summary of Cal. Law (9th ed. 1988) Torts, §17, pp. 77-79.) When an alleged act of self-defense or
11 defense of property is at issue, the question of what force was reasonable and justified is peculiarly
12 one for determination by the trier of fact. (*Fawkes v. Reynolds* (1922) 190 Cal. 204, 212-213 [211 P.
13 449]; *McLean v. Colf* (1918) 179 Cal. 237, 239 [176 P. 169]; *Boyer v. Waples*, supra, 206 Cal. App.
14 2d at p. 730.)

15 While Mr. Legorreta may have been calling Cobham an "asshole" and making other
16 comments, and even if he called Cobham the "N" word these events do not justify or provide a
17 defense of self-defense. Mr. Legorreta was an older frail man who was merely standing in his own
18 space when Mr. Cobham pushed up against him in the ongoing course of events. Mr. Legoretta did
19 not run toward Cobham and was in fact turning away when he was attacked. The video does not
20 show that Legoretta touched Cobham or constituted a threat to Cobham before the beating. No force
21 of any kind was justified to Cobham. The damages sustained by Legorreta were entirely the fault of
22 Mr. Cobham.

23 Damages: The battery was a substantial factor in causing harm to Legorreta.

24 Legorreta testified that in the battery, Mr. Cobham "used me like a punching bag." He
25 claims to have been punched in the face and head very hard 8 or more times. He has had headaches
26 since the injury. His eyes were bloody. His hands and lungs were destroyed as well as his back and
27 shoulders. He stated that he had hardware in his wrist from a prior surgery and that the punching
28 pushed a screw in his wrist, cut tendons, and resulted in 4 additional surgeries., hands, lungs were

1 destroyed. He states that his shoulders and back were destroyed. He states that he was a musician
2 and can no longer play. After the assault, he was taken to the hospital by ambulance. In addition to
3 the physical problems, he has memory loss, dizziness, ringing in his ears, and has bouts of
4 pneumonia. He walks with a cane now but not before the incident. He suffers from fear and cannot
5 be in public. He is under the full-time care of his nephew Justin and his girlfriend.

6 Neither party offered any medical expert to testify about injuries sustained in the accident or
7 about Legorreta's physical condition or damages. The only medical evidence offered is a page from
8 a medical chart which reflects Legorreta's self-report of symptoms about a month prior to the
9 injuries. In that report it is clearly shown that Mr. Legorreta was already in pain when he "moves,"
10 and he had clear evidence of knee, back, and wrist injuries before the battery.

11 There is no evidence that the injuries sustained by Mr. Legorreta were long term. Most of
12 the injuries claimed are obviously unrelated either because they preexisted (left wrist, right knee,
13 back, pain, pain medication) or that common sense tells us that they could not be related to the
14 battery (lung issues, pneumonia.) Without medical proof the court cannot determine that any of the
15 other complaints which could easily be the result of advanced age are related to the beating
16 (memory loss, aggravation of wrist condition.) There was no expert evidence of disfigurement, a
17 diagnosis of PTSD, x-ray or CT evidence, or other diagnosis or any prognosis or any causation. The
18 vast majority of his conditions appear to be age related such as his need for a caretaker.

19 Ample evidence does indicate that Mr. Legarreta for a period of time suffered from the
20 normal consequences of head and face trauma due to the battery including pain in head and nose,
21 dizziness, emotional distress, other pain and suffering. He was transported by ambulance for
22 medical care and was admitted to the ER at El Monte Hospital. It is reasonable to find that he is
23 somewhat withdrawn from the public due to the events of 9/16/2020. The injuries were intentionally
24 inflicted and warrant a damage award.

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

IT IS SO ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Plaintiff is awarded the sum of \$57,500 for past and future general damages.

No damages are awarded for medical expenses or loss of earnings or earning capacity ~~since~~
~~no evidence was permitted.~~ ØÙ

No punitive damages are awarded since there was no evidence of Cobham’s financial
condition.

Dated: March F€, 2025



Frederick C. Shaller

Hon. Frederick C. Shaller
Frederick C. Shaller / Judge

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the action; my business address is DRE Law, A.P.C., 222 North Canon Drive, Suite 201, Beverly Hills, CA 90210.

Marc Gessford, Esq.
Meghan Lawrence, Esq.
SIMS, LAWRENCE & BROGHAMMER
2261 Lava Ridge Court
Roseville, CA 95661
Telephone: (916) 797-8881
Facsimile: (916) 253-1544
Email: marc@sims-law.net
meghan@sims-law.net
tracy@sims-law.net
sclopton@sims-law.net
Slb-eservice@sims-law.net
Attorneys for Defendant/Cross-Complainant, WALMART, INC.

X **BY ELECTRONIC MAIL:** I caused all of the pages of the above-entitled document(s) to be sent to the recipients noted above via electronic mail ("E-Mail") at the respective e-mail addresses indicated above.

Executed on **3/7/2025**

/s/Kaeleen Kosmo
