

ATTORNEY OR PARTY WITHOUT ATTORNEY

STATE BAR NO: 283521

FOR COURT USE ONLY

NAME: MATTHEW J. KUMAR, ESQ.
FIRM NAME: LAW OFFICE OF RORY W. CLARK, APLC
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ATTORNEY FOR (Name): PLAINTIFF

STATE: CA ZIP CODE: 91403
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REC BY FAX

FILED
Superior Court Of California
County Of Los Angeles

MAY - 9 2017

MAY 09 2017

Sherri R. Carter, Executive Officer/Clerk
By Sandra Brown, Deputy

L.A.S.C. - Northwest

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS: 6230 SYLMAR AVE
MAILING ADDRESS: 6230 SYLMAR AVE
CITY AND ZIP CODE: VAN NUYS 91401
BRANCH NAME: NORTHWEST

Plaintiff/Petitioner: LAW OFFICE OF RORY W. CLARK
Defendant/Respondent: DOUGLAS EMMETT 2008, etc. et. al.

REQUEST FOR DISMISSAL

CASE NUMBER:
LC105129

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

- 1. TO THE CLERK: Please dismiss this action as follows:
a. (1) [ ] With prejudice (2) [X] Without prejudice
b. (1) [X] Complaint (2) [ ] Petition
(3) [ ] Cross-complaint filed by (name): on (date):
(4) [ ] Cross-complaint filed by (name): on (date):
(5) [X] Entire action of all parties and all causes of action
(6) [ ] Other (specify):\*

2. (Complete in all cases except family law cases.)
The court [ ] did [X] did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: May 9, 2017
MATTHEW J. KUMAR, ESQ.

(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

[Signature]

(SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

[Signature]

(SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross Complainant

(To be completed by clerk)

- 4. [X] Dismissal entered as requested on (date): MAY - 9 2017
5. [ ] Dismissal entered on (date): as to only (name):
6. [ ] Dismissal not entered as requested for the following reasons (specify):
7. a. [ ] Attorney or party without attorney notified on (date):
b. [ ] Attorney or party without attorney not notified. Filing party failed to provide [ ] a copy to be conformed [ ] means to return conformed copy

Date: MAY - 9 2017

Clerk, by Sandra Brown Deputy

Plaintiff/Petitioner: LAW OFFICE OF RORY W. CLARK Defendant/Respondent: DOUGLAS EMMETT 2008, etc. et. al.	CASE NUMBER: LC105129
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**COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS**

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

**Declaration Concerning Waived Court Fees**

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
  - a.  not recovering anything of value by this action.
  - b.  recovering less than \$10,000 in value by this action.
  - c.  recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3.  All court fees and court costs that were waived in this action have been paid to the court *(check one)*:      Yes      No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

▶ \_\_\_\_\_

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

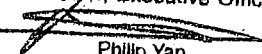
(SIGNATURE)

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6 Sherman Oaks, California 91403  
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8 Attorneys for Plaintiff,  
9 LAW OFFICE OF RORY W. CLARK

**FILED**  
Superior Court of California  
County of Los Angeles

**JAN 20 2017**

Sherri R. Carter, Executive Officer/Clerk  
By  Deputy  
Philip Yap

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN THE COUNTY OF LOS ANGELES, VAN NUYS – UNLIMITED CIVIL**

11 LAW OFFICE OF RORY W. CLARK,  
12 Plaintiff,  
13 vs.  
14 DOUGLAS EMMETT 2008, LLC;  
15 DOUGLAS EMMETT MANAGEMENT, INC.;  
16 DOUGLAS EMMETT, INC.;  
17 DOROTHY HATHAWAY;  
18 and DOES 1 through 25, inclusive,  
19 Defendants.

Case No.: **LC105129**  
**VERIFIED COMPLAINT FOR MONEY DAMAGES EXCEEDING \$25,000:**  
(1) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;  
(2) TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS; and  
(3) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE.

19 Plaintiff LAW OFFICE OF RORY W. CLARK (“Plaintiff”) alleges against all named and  
20 unnamed defendants (collectively “Defendants”) as follows:

21 INTRODUCTION

22 1. This action arises primarily out of interference with a commercial property sub-  
23 lease (the “Sub-Lease”) executed by Plaintiff and AEROBICS & FITNESS ASSOCIATION OF  
24 AMERICA (“AFAA”) on or about June 10, 2016. The Sub-Lease memorialized AFAA’s  
25 agreement to sub-let to Plaintiff certain office premises (the “Leased Office Suites”), which it  
26 was contractually obligated to lease from Defendant DOUGLAS EMMETT 2008, LLC, for a  
27 three-year term.

28 //

Jan 20 2017

1 PARTIES

2 2. Plaintiff LAW OFFICE OF RORY W. CLARK is a California corporation with a  
3 principal place of business in the city of Sherman Oaks, in Los Angeles County, California.

4 3. Defendant DOUGLAS EMMETT 2008, LLC is a Delaware Limited Liability  
5 Company authorized to do and presently doing business in California, with a principal place of  
6 business in Santa Monica, California. Defendant DOUGLAS EMMETT 2008, LLC is identified  
7 as the "Landlord" on all relevant lease and sub-lease agreements related to this action.

8 4. Defendant DOUGLAS EMMETT MANAGEMENT, INC. is a Delaware  
9 corporation authorized to do and presently doing business in California, with a principal place of  
10 business in Santa Monica, California. It is the Manager and signatory of Defendant DOUGLAS  
11 EMMETT 2008, LLC.

12 5. Defendant DOUGLAS EMMETT, INC. is a Maryland corporation authorized to  
13 do business in California with a principal place of business in Santa Monica, California.  
14 Defendants DOUGLAS EMMETT 2008, LLC; DOUGLAS EMMETT MANAGEMENT, INC.;  
15 and DOUGLAS EMMETT, INC. are collectively referred to as the "Douglas Emmett  
16 Defendants." On information and belief, Defendant DOUGLAS EMMETT, INC. is the parent  
17 company of the other Douglas Emmett defendants.

18 6. Defendant DOROTHY HATHAWAY is a natural person and currently employed  
19 as a Property Manager for Defendant DOUGLAS EMMETT 2008, LLC.

20 7. Plaintiff is ignorant of the true names and capacities, whether corporate,  
21 partnership, associate, individual, or otherwise, of the defendants sued herein as DOES 1 through  
22 25, and therefore, pursuant to the provisions of CCP §474, designates them by such fictitious  
23 names. Plaintiff is informed and believes, and on that basis alleges, that Defendants DOES 1  
24 through 25 are in some manner responsible for the acts, occurrences, and transactions set forth  
25 herein and thus are legally liable to Plaintiff. Plaintiff will seek leave of Court to amend this  
26 Complaint to allege the true names and capacities once known.

27 8. At all relevant times herein, each defendant, whether actually or fictitiously  
28 named, was the principal, agent, or employee of each other defendant, and in acting as such

1 principal, or within the course and scope of such employment or agency, took some part in the  
2 acts and omissions hereinafter set forth, by reason of which each and every defendant is liable to  
3 Plaintiff for the relief prayed for herein.

4 9. At all relevant times, each defendant knew or realized that the other defendants  
5 were engaging in, or planned to engage in, the violations of law alleged in this complaint.  
6 Knowing or realizing that other defendants were engaging in such unlawful conduct, each  
7 defendant nevertheless facilitated the commission of those unlawful acts. Each defendant  
8 intended to, and did, encourage, facilitate, or assist in the commission of the unlawful acts, and  
9 thereby aided and abetted the other defendants in the unlawful conduct. Further, each defendant  
10 ratified the wrongful conduct of each other, its agents and/or employees, accepted the benefits of  
11 their wrongful conduct, and failed to repudiate the misconduct.

#### 12 JURISDICTION AND VENUE

13 10. This action arises primarily under California law and jurisdiction is proper under  
14 California Code of Civil Procedure §§ 410.10 and 410.50.

15 11. This matter is properly filed within the Unlimited Jurisdiction of the Court in that  
16 the amount in controversy exceeds \$25,000.00.

17 12. The County of Los Angeles is the proper venue for the matter pursuant to Civil  
18 Code §395(a), because the Douglas Emmett Defendants have a principal place of business in Los  
19 Angeles County.

#### 20 FACTUAL HISTORY

21 13. In May 2016, Plaintiff retained a broker to identify available commercial  
22 properties for lease or sub-lease in the San Fernando Valley. Around the same time, AFAA was  
23 marketing its office space in Sherman Oaks (which it was leasing from the Douglas Emmett  
24 Defendants) to potential sub-lessors, because it was no longer using the space. After some  
25 negotiations, Plaintiff and AFAA reached an agreement whereby AFAA would sublet to Plaintiff  
26 two semi-adjacent office suites—the Leased Office Suites—for the remainder of AFAA's lease  
27 with the Douglas Emmett Defendants. Plaintiff and AFAA signed the Sub-Lease on June 10,  
28 2016. Thereafter, the Sub-Lease was delivered to the Douglas Emmett Defendants for the written

1 consent of the Landlord as required by the Sub-Lease and by AFAA's underlying lease  
2 agreements. Said written consent was provided on or about July 15, 2016, by way of a Consent  
3 to Sublease Agreement executed by Plaintiff, AFAA, and Defendant DOUGLAS EMMETT  
4 2008, LLC.

5 14. During the negotiations with AFAA and the Douglas Emmett Defendants,  
6 Plaintiff provided a significant amount of information, documentation, and disclosure regarding  
7 its business practices and its anticipated use of the Leased Office Suites. This information  
8 included the nature of Plaintiff's client base and the unique security needs that would be  
9 necessary in the Leased Office Suites. Specifically, it would be necessary to make slight  
10 alterations to the Leased Office Suites, including the installation of security cameras and fobs or  
11 panels near the doors for restricted access via security badges. Throughout the negotiations,  
12 AFAA and the Douglas Emmett Defendants indicated to Plaintiff that the Leased Office Suites  
13 would be able to accommodate Plaintiff's needs.

14 15. Plaintiff took possession of the Leased Office Suites on or about July 15, 2016.  
15 Beginning in October 2016, Plaintiff initiated efforts to conform the Leased Office Suites to the  
16 necessary specifications that would satisfy its business needs and its clients' security  
17 expectations. However, Defendants rebuffed Plaintiff's efforts and imposed increasingly  
18 insurmountable barriers to Plaintiff's requests. For example, Defendants refused to allow  
19 Plaintiff to bring in an electrician to install a dedicated outlet for Plaintiff's high-volume copier.  
20 Defendants insisted that the electrical work could only be completed by Defendants' designated  
21 electrician, at a cost over three times the market price for comparable work.

22 16. As a more egregious example, Defendant DOROTHY HATHAWAY, on behalf  
23 of the Douglas Emmett Defendants, responded to Plaintiff's reasonable requests for minor  
24 security alterations—such as access badge readers—as if such modifications were outlandish,  
25 atypical, and extraordinarily burdensome. On the contrary, the security features Plaintiff sought  
26 to install are common in office buildings, and the Douglas Emmett Defendants are the largest  
27 commercial landowners in the greater Los Angeles area. She also repeatedly informed Plaintiff  
28 that fobs or plates for security badges and similar access control devices were required to be in

1 conformity with a specific design scheme and color palette implemented by the Douglas Emmett  
2 Defendants. The service provider retained by Plaintiff was unable to comply with such a strict  
3 requirement, nor could Plaintiff commit to the customization and pre-approval process she  
4 described. Yet, Plaintiff subsequently discovered that this alleged aesthetic requirement does not  
5 appear in any contracts, procedures, manuals, or materials published by or for the Douglas  
6 Emmett Defendants. Further, other individuals in privity with the Douglas Emmett Defendants  
7 have confirmed to Plaintiff that no such condition has been imposed upon them. On such  
8 information and belief, Plaintiff alleges that no such constraint legally exists.

9 17. Based on its experience over the past several months, Plaintiff believes that  
10 Defendant DOROTHY HATHAWAY, in her capacity as Property Manager, has a pattern and  
11 practice of creating fictitious rules and unwritten policies that exhibit entrenched corporate  
12 attitudes of discrimination against minorities and people of a certain age, who are often  
13 categorically dismissed as unworthy of time, attention, or respect.

14 18. Plaintiff has already undergone on-site inspections and/or security audits by two  
15 major clients, who have deemed the present state of Plaintiff's security controls to be inadequate.  
16 Plaintiff's client relationships are endangered by its inability to make the necessary adjustments  
17 to the Leased Office Suites. Unless Plaintiff can meet benchmark goals for remediation, it will  
18 face the loss of valuable clients. This is a certain, rather than hypothetical, eventuality, since  
19 Plaintiff is unable to create the secure, restricted-access workspace that it needs. Whether that  
20 can happen at all is largely outside of Plaintiff's control due to stonewalling from the  
21 Defendants.

22 19. Throughout this process, AFAA (as sub-lessor) has cooperated fully with Plaintiff  
23 and done everything in its power to enable Plaintiff to make the necessary additions and  
24 alterations to the Leased Office Suites. However, Defendants have similarly rebuffed the efforts  
25 of AFAA to obtain permission for Plaintiff's requests. Plaintiff has been required to repeatedly  
26 act or communicate exclusively through AFAA, which has strained the business relationship  
27 between them because of the burden that this drawn-out process is placing on AFAA. Presently,  
28 AFAA no longer desires to expend unreimbursed business hours serving as the messenger for the

1 dispute between Plaintiff and Defendants. This jeopardizes the relationship between Plaintiff and  
2 AFAA because, as sub-lessee, Plaintiff will undoubtedly require assistance and cooperation from  
3 AFAA in the future to secure all rights to which it is entitled under the Sub-Lease.

4 20. The foregoing acts, omissions, and misrepresentations of Defendants have created  
5 a strained and unproductive business environment for Plaintiff. The natural and inevitable result  
6 of this situation is that Plaintiff will be cornered into a position that could require it to breach its  
7 Sub-Lease with AFAA, despite having no desire to do so nor to move again so quickly, due to  
8 the impossibility of performance. Plaintiff's inability to create an acceptably secure office  
9 space—which inability is being caused directly and intentionally by Defendants—means that  
10 Plaintiff will simply not be able to maintain its present business in the Leased Office Suites.

11 FIRST CAUSE OF ACTION

12 For Breach of Implied Covenant of Good Faith and Fair Dealing (as to all defendants)

13 21. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 20.

14 22. Implied within the related lease, sub-lease, and consent agreements orchestrated  
15 between Plaintiff, AFAA, and Defendants, there is a covenant of good faith and fair dealing, in  
16 which each party agrees that it will not deprive the other parties of the benefits of the  
17 agreements.

18 23. Defendants' conduct as described herein acted to deprive Plaintiff of the benefits  
19 it obtained in the agreements because without compliant security protocols, the Leased Office  
20 Suites will not be adequate for the business that Plaintiff needs to conduct. As a result, Plaintiff  
21 will be trapped in an expensive lease that has been wholly frustrated of purpose.

22 24. Because of Defendants' conduct, which breached the implied covenant of good  
23 faith and fair dealing, Plaintiff has suffered and continues to suffer general and special damages  
24 in an amount to be proved at trial, including but not limited to lost time, productivity, and wages  
25 due to repeated unsuccessful attempts to obtain necessary permissions and approvals from  
26 Defendants, as well as complying with additional rounds of security audits, oversight reviews,  
27 and remediation reporting that would otherwise not be required by Plaintiff's clients.

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SECOND CAUSE OF ACTION

For Tortious Interference with Contractual Relations (as to all defendants)

25. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 24.

26. Plaintiff has a valid contract (the Sub-Lease) with AFAA. This contract was created with the full knowledge and explicit approval and consent of the Douglas Emmett Defendants.

27. Defendants intentionally interfered with the contractual business relationship between Plaintiff and AFAA when they restricted the channels of communication and would only communicate through AFAA (wholly refusing to communicate with Plaintiff or provide any explanation of the conditions and prerequisites of obtaining alteration permission). They further interfered when they refused to allow reasonable security installations in the Leased Office Suites, when they intentionally misrepresented to Plaintiff the prerequisites for approval of any such alterations or installations, and when they repeatedly ignored (despite confirmation of receipt) written notification from Plaintiff of the catastrophic damages certain to flow from Plaintiff's inability to make the simple security installations it sought. Defendants knew or should have known that these actions were substantially certain to disrupt and fracture the relationship between Plaintiff and AFAA.

28. As a direct and proximate result of the foregoing, Plaintiff has been substantially harmed and has suffered damages, in an amount to be proved at trial, including but not limited to the disruption and souring of its relationship with AFAA, the loss of goodwill that was vested in its relationship with AFAA at the time of entering into the Sub-Lease, and the increased difficulty of performance of the Sub-Lease, given the frustration of purpose.

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THIRD CAUSE OF ACTION

For Negligent Interference with Prospective Economic Advantage (as to all defendants)

29. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 28.

30. Plaintiff maintains economic relationships with several large clients that, by virtue of their ongoing nature, are reasonably certain to result in future economic benefit to Plaintiff. Defendants knew about these relationships from the extensive vetting that Plaintiff was required to undergo as a prerequisite for Defendants' consent to the Sub-Lease with AFAA.

1           31.    As a commercial landlord, Defendants had a duty of care to manage their business  
2 affairs so as to prevent economic loss to Plaintiff, and Defendants knew or should have known  
3 that Plaintiff's failure to create a secure, restricted-access workspace would result in the  
4 disruption of Plaintiff's relationships with its clients.

5           32.    By refusing to allow Plaintiff's reasonable alteration and installation requests, and  
6 generally refusing to cooperate with Plaintiff in its efforts to enhance security in the Leased  
7 Offices Suites, Defendants failed to act with reasonable care in managing their business affairs,  
8 and in fact acted in a manner that was arbitrary, capricious, indifferent, discriminatory, and  
9 served no legitimate business purpose.

10          33.    On information and belief, Defendants acted wrongfully when they intentionally  
11 misrepresented to Plaintiff that certain aesthetic standards were mandatory. On information and  
12 belief, this representation was false, and Defendants either knew it was false at the time it was  
13 made, or Defendants made the representation recklessly without regard for its truth.

14          34.    Plaintiff had no alternative but to believe and rely on the representation made by  
15 Defendants. As a result, Plaintiff was unable to implement the security protocols required by its  
16 clients prior to on-site visits by two of those clients. Plaintiff's forward flow relationships with  
17 those clients are now in jeopardy, and Defendants' conduct as described herein was the primary  
18 factor that caused such disruption.

19          35.    Plaintiff has been substantially harmed and has suffered damages in an amount to  
20 be proven at trial, including but not limited to the lost time, productivity, and wages arising from  
21 security audits, oversight reviews, and remediation reporting that would otherwise not be  
22 required by Plaintiff's clients. Plaintiff's damages also include the cost, burden, and lost work  
23 hours that resulted from implementing and maintaining a substandard, less-secure stop-gap  
24 system that used physical keys, of which only a limited number existed and copies could not be  
25 made, as well as lock boxes, safes, and secure filing cabinets.

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1 PRAYER

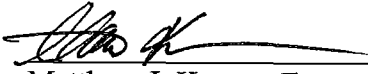
2 Plaintiff prays for judgment as follows:

- 3 1. For general and special damages on all Causes of Action, according to proof at Trial;
- 4 2. For reasonable attorneys' fees, costs of suit, and litigation expenses; and
- 5 3. For any such other and further relief as the Court deems just and proper under the
- 6 circumstances.

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8 Dated: JAN 19 2017

9 LAW OFFICE OF RORY W. CLARK,  
10 A PROFESSIONAL LAW CORPORATION

11   
12 \_\_\_\_\_  
13 Matthew J. Kumar, Esq.  
14 Attorney for Plaintiff

VERIFICATION

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I, Matthew J. Kumar, am the President of the Law Office of Rory W. Clark, the Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The allegations contained therein are true of my own personal knowledge, except those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on JAN 19 2017, in Sherman Oaks, California.



Matthew J. Kumar, Esq.  
President