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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADIL K HIRAMANNEK and RODA K  
HIRAMANNEK,

Case No. 13-00228

Plaintiffs,

**ORDER DENYING DEFENDANT  
BETH MILLER'S MOTION TO  
DISMISS**

v.

L. MICHAEL CLARK, et al.,

Defendants.

[Re Docket No. 133]

Defendant Beth Miller moves to dismiss plaintiffs' complaint or in the alternative for a more definite statement. Dkt. No. 133. For the reasons explained below, the court denies the motion to dismiss.<sup>1</sup>

**I. Background**

The only claim pending against Ms. Miller is a claim for "denial of access to the restroom based upon race" in Ms. Miller's individual capacity. Dkt. No. 98 at 9. The legal basis for the claim

<sup>1</sup> Plaintiffs also filed a "Request for Judicial Notice." Dkt. No. 148 The Request asks the court to take judicial notice "of established precedence case law in support of opposition to defendant Miller's motion." *Id.* The court did not consider the Request for Judicial Notice, which was improperly filed after briefing on the motion to dismiss was complete and did not contain materials appropriate for judicial notice, but only additional argument and citations to case law from 1995 in support of plaintiffs' opposition. *See* Civil Local Rule 7-3(d).

1 is a violation of the 14th Amendment right to equal protection through a § 1983 cause of action.<sup>2</sup>  
2 The factual basis for the claim is alleged in plaintiff’s operative Revised Second Amended  
3 Complaint (RSAC) as claim 35, captioned “Violation of Federal and Civil Rights, Racial  
4 Discrimination.” Dkt. No. 94-1 at 172. The facts relevant to this claim, as alleged in the RSAC, are  
5 that “around mid 2012” plaintiffs requested access to a locked bathroom at the Appellate Court by  
6 “requesting a designated key.” *Id.* at ¶ 795. Ms. Miller “discriminately stated that PLAINTIFFS  
7 cannot avail of the APPELLATE COURT restroom facilities due to their racial and ethnic  
8 background.” *Id.* at ¶ 796. The restroom facility was offered to every white public member. *Id.* at ¶  
9 799.

10 At the hearing on the motion to dismiss, plaintiffs confirmed that their allegation is that Ms.  
11 Miller actually used discriminatory language when denying them access to the restroom.

## 12 II. Analysis

### 13 A. Legal standard

14 A complaint must contain a “short and plain statement of the claim showing that the pleader  
15 is entitled to relief.” Fed. R. Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a claim is  
16 appropriate only when the complaint does not give the defendant fair notice of a legally cognizable  
17 claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007);  
18 *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). However, “[w]hile a complaint attacked by a Rule  
19 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to  
20 provide the grounds of his entitlement to relief requires more than labels and conclusions, and a  
21 formulaic recitation of the elements of a cause of action will not do.” *Twombly* at 1964-65 (internal  
22 quotation marks and citations omitted). Rather, the complaint must contain sufficient factual  
23 allegations “to raise a right to relief above the speculative level.” *Id.* at 1965.

24 “To state a claim under [Section 1983] for a violation of the Equal Protection Clause of the  
25 Fourteenth Amendment[,], a plaintiff must show that the defendants acted with an intent or purpose  
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27  
28 <sup>2</sup> Although the caption of the claim includes other statutory bases, the only properly pled claim is a  
§ 1983 claim. For example, plaintiffs argue that they alleged an ADA claim, but the RSAC states  
that they were denied access to the restroom “solely on racial and ethnic grounds.” RSAC at ¶ 796.

1 to discriminate against the plaintiff based upon membership in a protected class.” *Furnace v.*  
2 *Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013).

3 **B. The complaint contains sufficient factual support for a § 1983 equal protection**  
4 **claim**

5 Ms. Miller moves to dismiss because plaintiffs did not allege that they are members of a  
6 protected class, it is not clear that plaintiff Adil was actually denied access to the restroom, and the  
7 claim lacks sufficient factual bases. Dkt. No. 133 (Motion to Dismiss).

8 First, plaintiffs’ opposition states that plaintiffs are of Asian Indian origin. Dkt. No. 138 at  
9 8. Although the plaintiffs would normally be required to allege this in the complaint, the complaint  
10 itself alleges that plaintiffs belong to a racial minority. RSAC at ¶ 1023.

11 Second, the complaint alleges that both Adil and Roda asked for the restroom key. RSAC  
12 at ¶ 796.

13 Finally, the RSAC does contain sufficient factual allegations to assert at § 1983 equal  
14 protection claim. The RSAC alleges that Ms. Miller denied plaintiffs access to the bathroom, and  
15 that the basis for that denial was plaintiffs’ racial and ethnic background. RSAC at ¶ 796. Although  
16 the complaint could be read as Ms. Miller “stated that plaintiffs cannot avail of the appellate court  
17 restroom” and plaintiffs then unilaterally concluded that the basis for the denial was their race, at the  
18 hearing plaintiffs confirmed that they allege Ms. Miller actually said that the basis for the denial of  
19 access was racial discrimination. This is a fair reading of ¶ 796 of the RSAC.

20 The court also notes that at the hearing plaintiffs confirmed that they were only seeking  
21 damages, and possibly attorney’s fees (should they secure an attorney), for the § 1983 claim.

22 Because plaintiffs have pled a § 1983 equal protection claim against Ms. Miller, the court  
23 denies the motion to dismiss the claim and the alternative motion for a more definite statement.  
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**III. Order**

For the reasons explained above, the court denies the motion to dismiss and the alternative motion for a more definite statement. The only claim pending against Ms. Miller is a § 1983 claim for violation of equal protection, and plaintiffs only seek damages and attorney's fees.

Dated: September 26, 2014

  
Ronald M. Whyte  
United States District Judge