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2 Stephen Allen Jamieson (SBN 115805)
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9 Attorneys for Plaintiff
10 SKYE-ANNE SMITH

ORIGINAL FILED
LOS ANGELES

DEC 14 2007

SUPERIOR COURT
By: VICTOR E. SINO-CRUZ
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

11	SKYE-ANNE SMITH, an individual)	Case No. BC 382327
12)	
13	Plaintiff,)	STATEMENT OF DAMAGES
14)	
15	vs.)	
16)	
17	LONNIE TODD MOORE, an individual)	
18	MICHAEL ROBERT CARRIE (aka)	
19	MICHAEL MALIN), an individual)	
20	SYLVAIN BITTON, an individual)	
21	RICHARD SELBY, an individual, MOORE)	
22	& MALIN ENTERPRISES, a California)	
23	Limited Liability Corporation, THE DOLCE))	
24	GROUP, a California Limited Liability)	
25	Corporation, and DOES 1 through 100,)	
26	Inclusive)	
27	Defendants.)	
28)	

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23
24 Plaintiff SKYE-ANNE SMITH hereby states damages against Defendants, and each of
25 them, as follows:

26 1. General and special damages consisting of economic and non-economic
27 damages described in the Complaint on file herein of not less than \$10,000,000.00; and,
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2. Plaintiff also alleges malice, oppression and fraud as defined in Civil Code Section 3294 so that Punitive and Exemplary Damages should be awarded as against each Defendant in the sum of not less than \$10,000,000.00; and,

3. Treble Damages on the Unruh Civil Rights Act cause of action; and,

4. Statutory Civil Penalties of \$25,000 for each offense against each Defendant for each violation of the Ralph Civil Rights Act; and,

5. Attorneys Fees on the Unruh Civil Rights and Ralph Civil Rights causes of action according to proof; and,

6. All other remedies and damages as appropriate; and

7. Costs of Suit.

DATED: December 14, 2007

SOLOMON, SALSTMAN & JAMIESON

By 
STEPHEN WARREN SOLOMON

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Attorneys for Plaintiff
SKYE-ANNE SMITH

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 13 2007

John A. Clarke, Executive Officer/Clerk
M. Garcia
BY MARY GARCIA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BC382327

SKYE-ANNE SMITH, an individual,

Plaintiff,

vs.

LONNIE TODD MOORE, an individual,
MICHAEL ROBERT CARRI (aka
MICHAEL MALIN), an individual,
SYLVAIN BITTON, an individual,
RICHARD SELBY, an individual, MOORE
& MALIN ENTERPRISES, a California
Limited Liability Corporation, THE DOLCE
GROUP, a California Limited Liability
Corporation, and DOES 1 through 100,
Inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

(1) Negligence
(2) Assault
(3) Battery
(4) Sexual Battery (Civ. Code 1708.5)
(5) Violation of Unruh Civil Rights Act, Civil
Code Section 51
(6) Violation of Ralph Civil Rights Act, Civil
Code Section 51.7
(7) Breach of Duty of Care: Sale of Alcoholic
Beverages to Obviously Intoxicated Minors
(Cal. Bus. & Prof. Code § 25602.1)
(8) Negligence Per Se (Evidence Code 669)
(9) Conspiracy

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1 6. Plaintiff is informed, believes and thereon alleges that Defendant MOORE &
2 MALIN ENTERPRISES, LLC is or purports to be a limited liability corporation registered
3 with the State of California with business addresses in the County of Los Angeles, State of
4 California, including, but not limited to, 7929 Santa Monica Blvd, West Hollywood,
5 California 90046, 6633 Hollywood Blvd, Hollywood, California 90028, and 1033 Sixth
6 Street, #303, Santa Monica, California 90403, as well as at 1638 Las Palmas, Los Angeles,
7 California, that holds a Type-47 alcoholic beverages license (License No. 437212) issued by
8 the State of California, Department of Alcoholic Beverage Control. Defendants are doing
9 business as "Les Deux," which is the premises located at 1638 Las Palmas Ave, Los Angeles,
10 California, the premises for which Department of Alcoholic Beverages License No. 437212
11 was issued.
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14 7. At all times mentioned herein, Defendants LONNIE TODD MOORE, CARRI
15 aka MALIN, BITTON, and SELBY were members and managers of Defendant MOORE &
16 MALIN ENTERPRISES, LLC whose name appears on Department of Alcoholic Beverage
17 Control License No. 437212.
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19 8. Plaintiff is informed, believes and thereon alleges that Defendant THE DOLCE
20 GROUP, LLC is or purports to be, a limited liability corporation registered with the State of
21 California with its primary business address at 6633 Hollywood Blvd, Hollywood, California
22 90028.
23

24 9. At all times mentioned herein, Defendants LONNIE TODD MOORE, CARRI
25 aka MALIN, BITTON, and SELBY were members and managers of Defendant THE
26 DOLCE GROUP, LLC.
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28 ///

1 10. Plaintiff is informed, believes and thereon alleges that Defendants THE
2 DOLCE GROUP, LLC, MOORE & MALIN ENTERPRISES, LLC, MOORE, CARRI aka
3 MALIN, BITTON, and SELBY were merely instrumentalities or conduits of each other with
4 reference to the business ownership and operations of Les Deux nightclub and restaurant to
5 the extent that these Defendants operate Les Deux, and the others, together as a single
6 enterprise entity. Each of these Defendants participated together in conspiracy to commit the
7 illegal acts at Les Deux as complained of herein. Together these Defendants own and operate
8 at least five nightclubs or restaurants in the State of California, including but not limited to
9 "Les Deux," "Dolce Enoteca E Ristorante," "Bella Cucina Italiana," "Geisha House," and
10 "Ketchup." Each of these Defendants share a business address, namely: 6633 Hollywood
11 Blvd, Hollywood, California 90028, as well as the Las Palmas address where Les Deux
12 nightclub and restaurant is physically located, share corporate managers and/or members,
13 employees, agents, promoters, and legal counsel. There is such a unity of interests that the
14 separateness of the various LLCs and individuals does not exist, and it would perpetrate an
15 injustice to respect any separateness between the various LLCs and these individuals. Each of
16 these Defendants makes or causes to be made, representations, separately and together,
17 through various media, including, electronic media, and video that "Les Deux" nightclub and
18 restaurant is owned and operated by each of them individually and/or in partnership with
19 each other individually and/or through the various corporate entities and structures. As only
20 one example, on its official website, www.dolcegroup.com defendant THE DOLCE GROUP,
21 LLC represents it, at all pertinent times herein, owns and operates "Les Deux" nightclub and
22 restaurant, but never mentions Defendant MOORE & MALIN ENTERPRISES, LLC. In
23 contrast, Defendant MOORE & MALIN ENTERPRISES, LLC does not, other than on its
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1 ABC License, indicate in any way or method or manner that it (rather than THE DOLCE
2 GROUP, LLC) owns or operates “Les Deux.” Further, Defendant SYLVAIN BITTON, a
3 manager and/or member of THE DOLCE GROUP, LLC, as well as each of the other
4 individual Defendants, have on several occasions openly and publicly represented
5 himself/themselves to be an “owner” of “Les Deux,” and/or in partnership with the other
6 individual Defendants relative to ownership and operation of “Les Deux.”
7

8 11. Each of the Defendants exercise dominion and control over the operation of
9 “Les Deux” as a business enterprise. Defendant MOORE & MALIN ENTERPRISES, LLC
10 is merely a corporate shell designed to illegally and without factual basis shield Defendant
11 THE DOLCE GROUP, LLC, and the individual Defendants, from liability, including that
12 which arises from or through the ownership and/or operation of “Les Deux.”
13

14 12. Each and all of the Defendants benefit jointly from the ownership and
15 operation of “Les Deux.”
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17 13. Each and all of the Defendants, at all pertinent times, commingles corporate
18 and individual assets and use corporate funds or property for individual purposes.
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20 14. Each and all of the Defendants uses the purported corporate entity Defendant
21 MOORE & MALIN ENTERPRISES, LLC to procure labor, services or merchandise for the
22 benefit of shareholders or another entity, such as Defendant THE DOLCE GROUP, LLC,
23 and the individual Defendants; and MOORE & MALIN ENTERPRISES, LLC fails to
24 maintain minimum or adequate corporate records, and creates confusion in and around
25 membership, shareholder and/or corporate records. Each of the Defendants disregards legal
26 formalities and fails to maintain arms’ length relationships among related business entities
27 and individuals particularly with regard to “Les Deux”.
28

1 15. Each of the Defendants share employees, including, but not limited to, those
2 affiliated with "Les Deux," as well as other enterprises purportedly owned and operated by
3 Defendant THE DOLCE GROUP, LLC and the individual Defendants.

4 16. Each of the Defendants misrepresent the identity of the members, shareholders
5 and others having financial interests in each of the other Defendants' assets.

6 17. Plaintiff is unaware of the true names and capacities, whether individual,
7 corporate, associate or otherwise, of Defendants DOES 1 through 100 (hereinafter "DOES"
8 and/or "Defendants"), inclusive, and therefore sues said DOES by such fictitious names.
9 Plaintiff will seek leave of Court if necessary to amend this Complaint to show the true
10 names and capacities of such DOES when the same has been ascertained. Plaintiff is
11 informed, believes, and thereupon alleges that each of the fictitiously named Defendants are
12 responsible to Plaintiff for the injuries and damages suffered and alleged herein, or are
13 subject to the jurisdiction of the Court as a necessary party for the relief herein requested.
14 Furthermore, all reference to "Defendants" or any named Defendant is also considered
15 throughout this pleading to be a reference to DOES 1-100 as well.

16 18. Plaintiff is informed and believes that at all times herein mentioned,
17 Defendants, and each of them, were the agents (ostensible and actual), employees, and/or co-
18 conspirators of the other named Defendants (or others yet unnamed), and in doing the things
19 herein alleged, were acting within the course and scope of such agency and employment and
20 with the conspiracy, permission, consent, authorization and ratification of each of the other
21 Co-Defendants (and/or other unnamed persons). Additionally, each of the Defendants
22 (and/or as yet unnamed persons) who made representations or took actions or omitted to take
23 such actions as alleged herein was making those representations or otherwise acting or failing
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1 to act in, or while and in furtherance of, the course and scope of their employment and
2 agency with and on behalf of each of the other Defendants, and in conspiracy therewith.
3 Venue is proper in this Court as the events complained of herein substantially occurred
4 within Los Angeles County, California.
5

6 **FACTUAL ALLEGATIONS**

7 19. On or about August 9, 2007, at the nightclub commonly known as "Les Deux,"
8 as well as previously that night at a different ABC licensed premises owned and operated by
9 the Defendant owners and operators of "Les Deux," the Defendants herein sold, furnished, or
10 gave alcoholic beverages or caused alcoholic beverages to be sold, furnished, or given to
11 Plaintiff, Skye-Anne Smith, a person then under the age of 21, until she was obviously
12 intoxicated. Defendants continued to sell, furnish, or give alcoholic beverages and/or caused
13 alcoholic beverages to be sold, furnished, or given to Ms. Smith after she had become
14 obviously intoxicated. Defendants observed Ms. Smith demonstrate common and obvious
15 signs of intoxication and being fully aware that she was under 21 years of age continued to
16 provide Ms. Smith with alcoholic beverages until she was unable to think, reason, care for
17 herself, or to otherwise give consent to anyone to touch or otherwise assault or batter her. At
18 that point Defendant MOORE then sexually assaulted Ms. Smith on the "Les Deux" premises.
19

20 20. On August 9, 2007 Defendants first sold, furnished, or gave alcoholic
21 beverages or caused alcoholic beverages to be sold, furnished, or given to Ms. Smith at
22 "Dolce Enoteca e Ristorante," another premises owned and operated by Defendants. She was
23 sold, furnished or given a shot of vodka at "Dolce Enoteca e Ristorante" at approximately
24 9:00 p.m. and she left shortly thereafter. No one at "Dole Enoteca e Ristorante" asked for
25 Ms. Smith's identification at any time that evening.
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1 21. Ms. Smith then arrived at "Les Deux" at approximately 10:30 p.m. She
2 entered the premises with a friend who is employed by, or otherwise acts on behalf of,
3 Defendants as a "promoter." She had visited "Les Deux" with him on prior occasions. Ms.
4 Smith entered the club without being asked to present any form of identification. In fact,
5 Defendants did not request to be shown, nor were they shown, any form of bona fide evidence
6 of age or identity by Ms. Smith at any time while Ms. Smith was at "Les Deux" that night.

8 22. Ms. Smith's friend, the "promoter," brought Ms. Smith to "the owner's table,"
9 which is located in a corner of the "courtyard" area of the nightclub. Defendants MOORE
10 and BITTON were both present at "the owner's table" when Ms. Smith and her friend joined
11 the group of people congregated there.

13 23. Defendants boast of a vast celebrity clientele that makes "Les Deux" a popular
14 and highly sought after nightclub experience in the Hollywood area. The club was crowded
15 and the music loud, even in the "courtyard." There was a large group of people sitting at "the
16 owner's table" with Defendants MOORE and BITTON.

18 24. Defendant MOORE started off the debauchery by himself handing to Ms.
19 Smith her first alcoholic drink at the table—a glass of champagne. Over approximately the
20 next hour, Ms. Smith was sold, furnished, or given, or caused to be sold, furnished, or given,
21 approximately six (6) to eight (8) additional alcoholic drinks.

23 25. The individual Defendants personally witnessed Ms. Smith consuming the
24 alcoholic beverages they sold, furnished, or gave, or caused to be so sold, given, or furnished,
25 to her at the "owner's table" while she was slurring her words, stumbling, and experiencing
26 difficulty standing. At one point in the evening, Ms. Smith fell from her seat and spilled her
27 drink on another patron. Her eyes were glassy and blood shot and her breath smelled of
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1 alcohol, yet Defendants continued to ply Ms. Smith with additional alcoholic beverages even
2 after she was clearly and obviously intoxicated.

3 26. While Ms. Smith was being fed excessive amounts of alcohol, and she was
4 exhibiting the obvious effects of the alcohol, Defendant MOORE made comments about Ms.
5 Smith's appearance and attire. He openly ogled her, made comments to others at the table,
6 and even commented to her that he thought she "looked amazing in those pants."
7

8 27. After Ms. Smith had been sold, furnished, or given many alcoholic beverages
9 by Defendants and she had consumed those beverages, and after she was obviously
10 intoxicated, Defendants served, sold, furnished and/or gave Plaintiff additional alcoholic
11 beverages. Defendant MOORE asked Ms. Smith her age. Ms. Smith answered truthfully
12 that she was only 19 years of age.
13

14 28. Defendant BITTON, who was present during the dialog concerning Ms.
15 Smith's age, overheard her response, told Defendant MOORE that Ms. Smith should not be
16 in the nightclub intimating because of her age. Defendant MOORE ignored the import of the
17 comment by Defendant BITTON, and instead responded: "I don't care. She's hot." Ms.
18 Smith continued to consume alcoholic beverages furnished, sold or given or caused to be
19 furnished, sold or given, by Defendants even after this interaction.
20

21 29. While Plaintiff was still manifesting the effects of alcohol intoxication,
22 Defendant MOORE came up to Ms. Smith as she was standing in the vicinity of the "owner's
23 table" and demanded "Let's go somewhere." Defendant MOORE forcibly grabbed Ms.
24 Smith by her wrist and proceeded to cross the courtyard with her in tow. They entered the
25 building adjacent to the club's courtyard and proceeded to a hallway leading to the second
26 floor of the club. While continuing to hold on to her wrist, Defendant MOORE guided Ms.
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1 Smith up the stairs and past the security guard positioned at the bottom of the stairwell. The
2 second floor of "Les Deux" included a bathroom, office, the manager's lounge, and the
3 Club's "VIP" room where special guests were allowed to congregate for a fee. The
4 manager's lounge contained, among other items, a couch, audio-visual equipment, office
5 supplies, and a large bed that appears to be customized furniture specially built for this room,
6 and the activities expected to go on in that room at this nightclub.
7

8 30. Ms. Smith thought Defendant MOORE was taking her to the "VIP" room
9 where she anticipated other "special" people would be present. In her alcohol induced stupor
10 she instead found herself being led beyond the entrance of the VIP room to an unknown door.
11 Suddenly, she was in a strange room—the manager's lounge. After her eyes adjusted to the
12 low lighting, she observed one other person in the room, but in a matter of seconds he was
13 gone. Ms. Smith was alone with Defendant MOORE was intimidated by the owner and felt
14 trapped with no way out, and in a place that no one could hear her.
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16 31. Unable to think clearly, her thoughts blurred by the alcoholic beverages
17 Defendants sold, furnished or gave or caused to be sold, furnished, or given to her and now in
18 a strange place, and most importantly unable to protest or give her consent, Ms. Smith
19 suddenly was forcibly pinned against the wall by Defendant MOORE. Pressing against her
20 shoulders, Defendant MOORE began kissing Ms. Smith. She did not kiss him back.
21 Defendant MOORE then pushed Ms. Smith onto the bed. Defendant MOORE moved Ms.
22 Smith's clothing to allow himself access, and then he forcibly penetrated Plaintiff both anally
23 and vaginally, and forced Plaintiff to conduct oral copulation on him. Ms. Smith did not agree
24 or in any way consent to this vile and vicious act. She verbally expressed her pain and said
25 "no."
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1 August 9, 2007 and August 10, 2007.

2 38. Defendants knew that Defendant MOORE had previously and regularly
3 engaged in sexual relationships with females on the "Les Deux" premises, including, but not
4 limited to, in the room known as the manager's lounge and on the bed found there.
5 Defendants allowed, authorized, and ratified such activity by MOORE by building and
6 maintaining the manager's lounge and the bedding found there. Defendants were, as of the
7 time of the occurrence with Ms. Smith, of previous complaints about Defendant MOORE
8 forcibly engaging in sex acts with females without obtaining their consent to do so, and for
9 serving or causing said females to be served alcoholic beverages until long past the point at
10 which they were obviously intoxicated.
11

12 39. Defendants actively and openly encourage the presence of female patrons, and
13 their excessive drinking of alcohol, at "Les Deux" irrespective of and without regard for
14 whether said female patrons are over or under 21 years of age.
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16 40. Defendants are routinely physically present at "Les Deux" during its hours of
17 operation, work there, use the premises for personal parties and general social activities, and
18 maintain a table in the "courtyard" area commonly known as "the owner's table" for their
19 sole and exclusive use during the nightclub's hours of operation.
20

21 41. Defendants created and operate "Les Deux" in order to cater to underage
22 patrons, including young Hollywood celebrities, and know that underage persons regularly
23 frequent the premises and drink alcohol while there to the point where they are obviously
24 intoxicated. Defendants actively, regularly, and openly sell, furnish, and give alcoholic
25 beverages to underage persons or cause alcoholic beverages to be sold, furnished, or given to
26 underage persons. By openly encouraging the presence of underage persons at "Les Deux,"
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1 and their excessive alcohol consumption, Defendants know that underage persons are
2 consuming alcoholic beverages sold, furnished, or given to them on the premises.

3 42. Defendants and each of them negligently hired, employed, retained, and
4 otherwise allowed, authorized, and ratified Defendant MOORE's presence, actions and
5 omissions, at "Les Deux," all of which put MOORE in a position to cause the type of harm
6 which befell Ms. Smith on the night of August 9, 2007, when Defendant MOORE sexually
7 assaulted Plaintiff at the premises on the bed in the manager's lounge hereinbefore described;
8 and after, and as a result of, Defendants selling, furnishing, or giving alcoholic beverages or
9 causing alcoholic beverages to be sold, furnished, or given to Plaintiff until and after she was
10 obviously intoxicated. Defendants had a duty to provide a safe place for this patron, Ms. Smith,
11 to come and enjoy the evening, but instead the Defendants' actions and/or omissions caused or
12 contributed to cause Ms. Smith's injuries and damages.
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15 43. As a legal and proximate legal result of Defendants' negligent actions and/or
16 omissions, Plaintiff has and will suffer economic and non-economic compensatory damages in
17 an amount to be awarded according to proof.
18

19 SECOND CAUSE OF ACTION

20 Assault

21 (Plaintiff SYKE-ANNE SMITH Against All Defendants)

22 44. Plaintiff re-alleges and incorporates by reference herein each and every
23 allegation of the preceding paragraphs 1 through 43 of this Complaint.

24 45. Defendant MOORE physically and sexually and emotionally assaulted Plaintiff.

25 46. Defendant MOORE acted, intending to cause harmful contact.

26 47. Defendant MOORE acted with a willful disregard of Plaintiff's rights.

27 48. Plaintiff reasonably believed that she was about to be touched in a harmful
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1 manner.

2 49. Defendant MOORE threatened to touch Plaintiff in a harmful manner.

3 50. It reasonably appeared to Plaintiff that Defendant MOORE was about to carry
4 out the threat.

5 51. Plaintiff did not consent to Defendant MOORE's conduct by words or acts
6 that would be reasonably understood by another person as consent.

7 52. Plaintiff did not consent to Defendant MOORE's conduct by silence or inaction
8 that a reasonable person would understand indicated consent.

9 53. Plaintiff could not consent as a result of incapacity due to the alcoholic
10 beverages Defendants sold, furnished, or gave or caused to be sold, furnished, or given to
11 Plaintiff, and she did not consent to Defendant MOORE'S actions.

12 54. Even assuming arguendo Plaintiff acted in manner that could be construed by
13 another person as consent to some touching by Defendant MOORE, Defendant MOORE's
14 conduct exceeded the scope of such a limited consent.

15 55. Plaintiff was harmed.

16 56. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

17 57. As a result of Defendant MOORE's conduct, and the responsibility of the other
18 Defendants for his actions, as well as their own actions or omissions in allowing, authorizing
19 and/or ratifying the acts perpetrated, and the injuries inflicted upon Ms. Smith, Plaintiff has and
20 will suffer economic and non-economic compensatory damages in an amount to be awarded
21 according to proof.

22 58. Defendant MOORE'S actions were oppressive, done with malicious intent, and
23 otherwise in conscious and reckless disregard of the safety and rights of Ms. Smith. These
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1 actions were committed by, as well as authorized and ratified by officers, directors, and/or
2 managing agents of the corporate defendants named herein. Each of the individual
3 Defendants are officers, directors, and/or managing agents of the Defendants that are
4 corporate entities. As a result of such actions or omissions Plaintiff is entitled to punitive and
5 exemplary damages in an amount according to proof.
6

7 **THIRD CAUSE OF ACTION**

8 **Battery**

9 **(Plaintiff SYKE-ANNE SMITH Against all Defendants)**

10 59. Plaintiff re-alleges and incorporates by reference herein each and every
11 allegation of the preceding paragraphs 1 through 58 of this Complaint.

12 60. Defendants committed a battery against Plaintiff when Defendant MOORE
13 touched Plaintiff with the intent to do so and without her consent.

14 61. Defendants acted with a willful disregard of Plaintiff's rights.

15 62. Plaintiff did not consent to Defendant MOORE's conduct by words or acts
16 that would be reasonably understood by another person as consent.
17

18 63. Plaintiff did not consent to Defendant MOORE's conduct by silence or inaction
19 that a reasonable person would understand indicated consent.

20 64. Plaintiff could not consent as a result of incapacity due to the alcoholic
21 beverages Defendants sold, furnished, or gave or caused to be sold, furnished, or given to
22 Plaintiff, and she did not consent to Defendant MOORE'S actions.
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24 65. Even assuming arguendo Plaintiff acted in manner that could be construed by
25 another person as consent to some touching by Defendant MOORE, Defendant MOORE's
26 conduct exceeded the scope of such a limited consent.

27 66. Defendants' conduct harmed Plaintiff.
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B. Acted with the intent to cause a harmful or offensive contact with Plaintiff by use of his intimate part, and a sexually offensive contact with Plaintiff directly and indirectly resulted therefrom; and,

C. Acted to cause an imminent apprehension of the conduct described in sub-paragraphs A and B above, and a sexually offensive contact with Plaintiff directly and indirectly resulted therefrom.

72. The "offensive contact" committed by MOORE, referenced above and factually set forth in this Complaint, offended a reasonable sense of personal dignity.

73. The "intimate part" referenced in this cause of action includes, but is not limited to, those areas of the body as referenced in Civil Code section 1708.5.

74. Plaintiff did not consent to Defendant MOORE's conduct by words or acts that would be reasonably understood by another person as consent.

75. Plaintiff did not consent to Defendant MOORE's conduct by silence or inaction that a reasonable person would understand indicated consent.

76. Plaintiff could not consent as a result of incapacity due to the alcoholic beverages Defendants sold, furnished, or given or caused to be sold, furnished, or given to Plaintiff, and she did not consent to Defendant MOORE'S actions.

77. Even assuming arguendo Plaintiff acted in manner that could be construed by another person as consent to some touching by Defendant MOORE, Defendant MOORE's conduct exceeded the scope of such a limited consent.

78. Defendant MOORE's conduct harmed Plaintiff.

79. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

1 85. Plaintiff did not to consent to Defendants' conduct by words or acts that would
2 be reasonably understood by another person as consent.

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4 86. Plaintiff did not consent to Defendants conduct by silence or inaction that a
5 reasonable person would understand indicated consent.

6 87. Plaintiff could not consent as a result of incapacity due to the alcoholic
7 beverages Defendants sold, furnished, or gave or caused to be sold, furnished, or given to
8 Plaintiff, and she did not consent to Defendants' actions.

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10 88. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

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12 89. As a result of Defendants' conduct, actions or omissions in performing,
13 allowing, authorizing and/or ratifying the acts perpetrated, and the injuries inflicted upon Ms.
14 Smith, Plaintiff has and will suffer economic and non-economic compensatory damages in an
15 amount to be awarded according to proof.

16
17 90. Defendants' actions were oppressive, done with malicious intent, and otherwise
18 in conscious and reckless disregard of the safety and rights of Ms. Smith. These actions were
19 committed by, as well as authorized and ratified by officers, directors, and/or managing agents
20 of the corporate defendants named herein. Each of the individual Defendants are officers,
21 directors, and/or managing agents of the Defendants that are corporate entities. As a result of
22 such actions or omissions Plaintiff is entitled to punitive and exemplary damages in an amount
23 according to proof.

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25 91. Defendants denied, aided in the denial or incited the denial, and made
26 discrimination or distinction contrary to Civil Code Section 51, and thus per Civil Code Section
27 52: each Defendant is liable for each and every offense for the actual damages, and any amount
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1 that may be determined by a jury, or a court sitting without a jury, up to a maximum of three (3)
2 times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and
3 any attorney's fees that may be determined by the court in addition thereto, suffered by Plaintiff
4 denied the rights provided in Civil Code Section 51.
5

6 **SIXTH CAUSE OF ACTION**

7 **Violation of Ralph Civil Rights Act, Civil Code Section 51.7**

8 **(Plaintiff SYKE-ANNE SMITH Against all Defendants)**

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10 92. Plaintiff realleges and incorporates by reference herein each and every allegation
11 of the preceding paragraphs 1 through 91 of this Complaint.

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13 93. All persons within the jurisdiction of this state have the right to be free from any
14 violence, or intimidation by threat of violence, committed against their persons or property
15 because of, or on account of any characteristic listed or defined in subdivision (b) or (e) of Civil
16 Code Section 51. The identification in this subdivision of particular bases of discrimination is
17 illustrative rather than restrictive, and includes the sex of the injured party, in this case the sex
18 of Plaintiff Smith.
19

20 94. The actions and omissions described herein violated and denied Plaintiff Smith
21 the benefits and rights of the Ralph Civil Rights Act, Civil Code Section 51.7. Defendants are
22 subject to the Ralph Civil Rights Act.
23

24 95. Plaintiff did not consent to Defendants' conduct by words or acts that would
25 be reasonably understood by another person as consent.

26 96. Plaintiff did not consent to Defendants conduct by silence or inaction that a
27 reasonable person would understand indicated consent.
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1 97. Plaintiff could not consent as a result of incapacity due to the alcoholic
2 beverages Defendants sold, furnished, or gave or caused to be sold, furnished, or given to
3 Plaintiff, and she did not consent to Defendants' actions.
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5 98. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

6 99. As a result of Defendants' conduct, actions or omissions in performing,
7 allowing, authorizing and/or ratifying the acts perpetrated, and the injuries inflicted upon Ms.
8 Smith, Plaintiff has and will suffer economic and non-economic compensatory damages in an
9 amount to be awarded according to proof.
10

11 100. Defendants' actions were oppressive, done with malicious intent, and otherwise
12 in conscious and reckless disregard of the safety and rights of Ms. Smith. These actions were
13 committed by, as well as authorized and ratified by officers, directors, and/or managing agents
14 of the corporate defendants named herein. Each of the individual Defendants are officers,
15 directors, and/or managing agents of the Defendants that are corporate entities. As a result of
16 such actions or omissions Plaintiff is entitled to punitive and exemplary damages in an amount
17 according to proof.
18

19 101. Defendants denied, aided in the denial, incited the denial, and conspired in the
20 denial of the rights provided by Civil Code Section 51.7, and thus per Civil Code Section 52:
21 each Defendant is liable for each and every offense for the actual damages suffered by the
22 Plaintiff as she is denied those rights, in any amount that may be determined by a jury, or a
23 court sitting without a jury, as well as a civil penalty against each such Defendant and in favor
24 of Plaintiff in the amount of twenty-five thousand dollars (\$25,000) for each such offense, and
25 any attorney's fees that may be determined by the court in addition thereto, suffered by Plaintiff
26 denied the rights provided in Civil Code Section 51.7.
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1 beverages to be sold, furnished or given to Plaintiff, Plaintiff displayed symptoms that would
2 lead a reasonable person to conclude that she was obviously intoxicated.

3 107. Plaintiff was less than 21 years old at the time.

4 108. After having been rendered intoxicated to an obvious degree, from alcohol
5 provided by Defendants, and as a result thereof, Plaintiff suffered harm in the manner described
6 herein.
7

8 109. Defendants, and each of them, by selling, furnishing or giving alcoholic
9 beverages or causing alcoholic beverages to be sold, furnished, or given to Plaintiff, an obviously
10 intoxicated minor, were a substantial factor in causing Plaintiff's harm.
11

12 110. As a result of Defendant MOORE's conduct, and the responsibility of the other
13 Defendants for his actions, as well as their own actions or omissions in allowing, authorizing
14 and/or ratifying the acts perpetrated, and the injuries inflicted upon Ms. Smith, Plaintiff has and
15 will suffer economic and non-economic compensatory damages in an amount to be awarded
16 according to proof.
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18 111. Defendant MOORE'S actions were oppressive, done with malicious intent, and
19 otherwise in conscious and reckless disregard of the safety and rights of Ms. Smith. These
20 actions were committed, as well as authorized and ratified by officers, directors, and/or
21 managing agents of the corporate defendants named herein. Each of the individual
22 Defendants are officers, directors, and/or managing agents of the Defendants that are
23 corporate entities. As a result of such actions or omissions Plaintiff is entitled to punitive and
24 exemplary damages in an amount according to proof.
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2 **EIGHTH CAUSE OF ACTION**
3 **Negligence Per Se per Evidence Code 669**
4 **(Plaintiff SYKE-ANNE SMITH Against all Defendants)**

5 112. Plaintiff re-alleges and incorporates by reference herein each and every
6 allegation of the preceding paragraphs 1 through 111 of this Complaint.

7 113. Defendants through the actions of Defendant MOORE, and the actions and
8 omissions of each of the Defendants, violated a statute, i.e. Civil Code Section 1708.5,
9 Business & Professions Code section 25602.1, as well as Penal Code sections 286, 288a, and
10 others.

11 114. Defendants' violation of said statute(s) proximately and legally caused
12 injuries and damages to Plaintiff.

13 115. The injuries and damages to Plaintiff resulted from an occurrence of the
14 nature which the statute(s) were designed to prevent.

15 116. Plaintiff who suffered the injuries and damages to her person was one of the
16 class of persons for whose protection the statute(s) were adopted.

17 117. Defendants who violated the statute(s) did not do what might reasonably be
18 expected of a person of ordinary prudence, acting under similar circumstances, who desired
19 to comply with the law, and none of the Defendants was a child.
20

21 118. Defendants are responsible to Plaintiff as they are Negligent Per Se and there is
22 no exception, exemption or defense to such Negligence in this instance.
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24 119. As a legal and proximate legal result of Defendants' actions and/or omissions
25 as described herein, Plaintiff has and will suffer economic and non-economic compensatory
26 damages in an amount to be awarded according to proof.
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NINTH CAUSE OF ACTION
Conspiracy to Commit Assault, Battery, Sexual Battery, Violation of Civil Rights (Civil Code Section 51, 51.7) and to Sell or Furnish Alcoholic Beverages to Obviously Intoxicated Minors
(Plaintiff SYKE-ANNE SMITH Against all Defendants)

120. Plaintiff re-alleges and incorporates by reference herein each and every allegation of the preceding paragraphs 1 through 119 of this Complaint.

121. Defendants are responsible for Plaintiff's damages and injuries because Defendants, and each of them, were part of a conspiracy to engage in the intentional actions and/or omissions as described hereinabove in the intentional causes of action referenced about: Assault, Battery, Sexual Battery, and the actions which violated Civil Code Section 51, 51.7 and Bus. & Prof. Code 25602.1. Defendants entered into an agreement to conspire and to intend to commit the wrongful acts, namely commit assault, commit battery, commit sexual battery, violate Civil Rights, and to serve alcoholic beverages to obviously intoxicated minors. Defendant MOORE committed the wrongful acts complained of hereinabove in the furtherance of the conspiracy causing Plaintiff to sustain injury, damage, loss and harm.

122. Each Defendant here, as a member of a conspiracy, as well as because of their partnership or other business relationships with each other, is liable for each act and bound by each declaration of every other member of the conspiracy because the act or the declaration is in furtherance of the object of the conspiracy.

123. The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators.

124. As a member of a conspiracy each Defendant is not only liable for the particular wrongful act that to his knowledge his confederates agreed to and did commit, but each such Defendant is also liable for the natural and probable consequences of each wrongful act of a co-

1 conspirator Defendant to further the object of the conspiracy, even if that act was not intended as
2 a part of the agreed upon objective and even though he was not present at the time of the
3 commission of that act.

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5 125 As a result of Defendant MOORE's conduct, and the responsibility of the other
6 Defendants for his actions, as well as their own actions or omissions in allowing, authorizing
7 and/or ratifying the acts perpetrated, and the injuries inflicted upon Ms. Smith, Plaintiff has and
8 will suffer economic and non-economic compensatory damages in an amount to be awarded
9 according to proof.

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11 126 Defendants' actions were oppressive, done with malicious intent, and
12 otherwise in conscious and reckless disregard of the safety and rights of Ms. Smith. These
13 actions were committed, as well as authorized and ratified by officers, directors, and/or
14 managing agents of the corporate defendants named herein. Each of the individual
15 Defendants are officers, directors, and/or managing agents of the Defendants that are
16 corporate entities. As a result of such actions or omissions Plaintiff is entitled to punitive and
17 exemplary damages in an amount according to proof.
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20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs prays for judgment against Defendants and each of them as
22 follows:

23
24 **ON ALL CAUSES OF ACTION:**

25 1. Compensatory, economic and non-economic; general and special damages;
26 direct, incidental, and consequential damages, in an amount according to proof, but not less
27 than \$5,000,000; and
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- 2. For prejudgment and post-judgment interest; and,
- 3. For Costs of Suit; and,
- 4. For such other relief as this court deems just and proper; and

ON THE SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH AND NINTH CAUSES OF ACTION:

1. For punitive and exemplary damages in an amount appropriate to punish or set an example of Defendants, and each of them, in an amount according to proof, but not less than \$5,000,000; and

ON THE FIFTH CAUSE OF ACTION:

1. Defendants denied, aided in the denial or incited the denial, and made discrimination or distinction contrary to Civil Code Section 51, and thus per Civil Code Section 52: each Defendant is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three (3) times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney’s fees that may be determined by the court in addition thereto, suffered by Plaintiff denied the rights provided in Civil Code Section 51; and

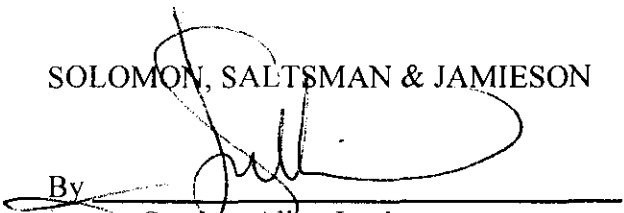
ON THE SIXTH CAUSE OF ACTION:

1. Defendants denied, aided in the denial, incited the denial, and conspired in the denial of the rights provided by Civil Code Section 51.7, and thus per Civil Code Section 52: each Defendant is liable for each and every offense for the actual damages suffered by the Plaintiff as she is denied those rights, in any amount that may be determined by a jury, or a court sitting without a jury, as well as a civil penalty against each such Defendant and in

1 favor of Plaintiff in the amount of twenty-five thousand dollars (\$25,000) for each such
2 offense, and any attorney's fees that may be determined by the court in addition thereto,
3 suffered by Plaintiff denied the rights provided in Civil Code Section 51.7.
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6 Respectfully submitted,

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8 Dated: December 13, 2007

SOLOMON, SALTSMAN & JAMIESON

By _____
Stephen Allen Jamieson
Julia H. Sullivan

Attorneys for Plaintiff SKYE-ANNE SMITH

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