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17 Sean Stout and James Pettigrew

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 IN AND FOR THE COUNTY OF SAN MATEO

20 SEAN STOUT, an individual;
21 JAMES PETTIGREW, an individual,
22 Plaintiffs,

23 vs.

24 THE SWINGIN' DOOR; WARAC
25 CORPORATION; WARREN CHAPMAN,
26 and DOES 1 through 25, inclusive,
27 Defendant

28 17-CIV-01123
CMP
Complaint
417822



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FILED
SAN MATEO COUNTY

MAR 16 2017

Clerk of the Superior Court

Case No.: 17CIV01123

COMPLAINT FOR DAMAGES

1. GENERAL NEGLIGENCE
2. NEGLIGENCE *PER SE*
3. BREACH OF IMPLIED WARRANTY FOR HUMAN CONSUMPTION
4. STRICT LIABILITY
5. GROSS NEGLIGENCE
6. PREMISES LIABILITY
7. NEGLIGENT HIRING, RETENTION AND CONTROL OF EMPLOYEES
8. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
9. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
10. LOSS OF CONSORTIUM

PRAYER FOR PUNITIVE DAMAGES

JURY DEMAND

1 COMES NOW plaintiff SEAN STOUT, an individual, and plaintiff JAMES
2 PETTIGREW, an individual, for Causes of Action against the Defendant(s), including DOES 1-
3 25 and each of them inclusive, complains and alleges as follows:
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5
6 **I. THE PARTIES**

7 1. Plaintiff SEAN STOUT is an individual who at all pertinent times was a resident
8 of the County of San Francisco, State of California.

9 2. Plaintiff JAMES PETTIGREW is an individual who at all pertinent times was a
10 resident of the County of San Francisco, State of California.

11 3. Plaintiffs SEAN STOUT and JAMES PETTIGREW are a lawfully married
12 couple.
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14 4. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
15 basis allege that defendant THE SWINGIN' DOOR is a bar and restaurant business doing
16 business at 106 E 25th Ave., San Mateo, CA, County of San Mateo.

17 5. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
18 basis allege that defendant WARAC CORPORATION, is a duly licensed corporation or other
19 form of limited liability company organized in the State of California, with a principal office of
20 business located at 318 Portola Dr., San Mateo, CA, County of San Mateo. On information and
21 belief, WARAC CORPORATION is the sole and/or principal owner of defendant THE
22 SWINGIN' DOOR.
23

24 6. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
25 basis allege that defendant WARREN CHAPMAN (hereinafter CHAPMAN) is an individual,
26 who at all pertinent times was a resident of the County of San Mateo, State of California. SEAN
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1 STOUT and JAMES PETTIGREW are informed and believe and on that CHAPMAN is the sole
2 and/or principal owner of defendant WARAC CORPORATION and defendant THE SWINGIN'
3 DOOR.

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5 7. At all times herein mentioned, Defendants THE SWINGIN' DOOR and/or
6 WARAC CORPORATION and/or CHAPMAN were the agent(s) and employee(s) of each other,
7 and in doing the acts herein described and referred to, were acting in the course and within the
8 scope of their authority as agent and employee, and in the transaction of the business of the
9 employment or agency. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
10 and/or DOES 1-25 are therefore liable for the acts of each other as heretofore alleged.

11
12 8. DOE 1 is the bartender/server who interacted with SEAN STOUT and JAMES
13 PETTIGREW as described herein.

14
15 9. DOE 2 is the chef/prepare of food who prepared the items at issue with respect to
16 SEAN STOUT and JAMES PETTIGREW as described herein.

17
18 10. DOES 3-10, are individuals, managers, agents, staff members, cooks, servers,
19 bartenders, food preparers, shoppers, orders, duty cooks, head chefs, and any/all individual
20 persons (hereinafter "THE SWINGIN' DOOR STAFF") who worked at THE SWINGIN'
21 DOOR, on or before March 21, 2015, or for defendants THE SWINGIN' DOOR, WARAC
22 CORPORATION, or CHAPMAN, who have in any way influenced, designed, prepared, or
23 participated in creating the ghost pepper burger or "Wall of Flame" described herein. "THE
24 SWINGIN' DOOR STAFF" are all individuals who are believed to be residents of the State of
25 California, and reside in San Mateo County.

26
27 11. DOES 11-25, are persons not yet identifiable to SEAN STOUT and JAMES
28 PETTIGREW who are responsible in some way for the injuries described herein.

1 12. The true names and capacities, whether individual, corporate, associate or
2 otherwise of Defendant(s) named herein as DOES 1-25, inclusive, are unknown to SEAN
3 STOUT and JAMES PETTIGREW, who are informed and believe and thereon allege, that each
4 of the fictitiously named Defendant(s) is in some way liable to SEAN STOUT and JAMES
5 PETTIGREW, and SEAN STOUT and JAMES PETTIGREW therefore sue said defendant(s) by
6 such fictitious names. SEAN STOUT and JAMES PETTIGREW will amend this Complaint to
7 show the true and correct names and capacities of said fictitiously named Defendant(s) when
8 same have been ascertained.
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11 13. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
12 basis allege that at all times relevant herein, each of the defendant(s) herein, including any
13 predecessor, successor, parent, subsidiary, and/or closely related business partner thereof,
14 including the DOE Defendant(s) herein, were acting as an agent and/or employee for each of the
15 other defendant(s), and in doing the things alleged herein, were acting within the scope of such
16 agency or employment in furtherance of common business interests.
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19 **II. CORPORATE ALTER EGO ALLEGATION**

20 14. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
21 basis allege that the natural defendant(s) named herein, (including the later named natural DOE
22 defendant(s)), were at all times relevant hereto, and are, the principal members, owners,
23 managers, directors, and/or officers of the limited liability company defendant(s) named, or to be
24 named herein. These natural defendant(s) completely controlled and dominated said limited
25 liability company defendant(s) which merely exist as their alter ego, there being a unity of
26 interest in ownership between said natural and limited liability company defendant(s) such that
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1 any separateness as recognized in law has ceased to exist. Said natural defendant(s) have utilized
2 said limited liability company's names and assets as their own, and without regard to the limited
3 liability company entities and the formalities required thereof, in order to evade responsibility on
4 obligations and contracts. Adherence to the fiction of a separate existence for said limited
5 liability company defendant(s) would permit an abuse of limited liability company/corporate
6 privilege and sanction a fraud. By reason of the above, said natural Defendant(s) should be, and
7 in all respects are, personally liable for any damages and awards of which said limited liability
8 company defendant(s) are found liable.
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11 15. SEAN STOUT and JAMES PETTIGREW are informed and believe and on that
12 basis allege that the natural Defendant(s) named herein, (including the later named natural DOE
13 defendant(s)), primarily owned and managed and formed corporate and/or limited liability
14 companies to evade responsibility for debts and obligations while pilfering valuable assets
15 thereof, including the contracts with SEAN STOUT and JAMES PETTIGREW. As a result,
16 there is no distinction and separateness between the defendant entities and their numerous
17 fictitious entities in that they all share business locations, business information and have
18 coordinated their activities as described herein pursuant to a unified scheme to cheat and defraud
19 SEAN STOUT and JAMES PETTIGREW as parties herein.
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22 16. Throughout this Complaint, all named and DOE defendants may be referred to
23 herein as "Defendants/defendants" unless otherwise specified.
24

25 **III. JURISDICTION & VENUE**

26 17. This Court has proper jurisdiction and venue over this matter because the tortious
27 acts complained of herein exceed the jurisdictional threshold and occurred in the County of San
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1 Mateo, as well as because Defendant(s)' principal place of business is located in the County of
2 San Mateo, and/or it is believed that one or more Defendant(s) reside in the jurisdiction.
3

4 **IV. GENERAL FACTUAL ALLEGATIONS**

5 18. THE SWINGIN' DOOR is a bar and restaurant located at 106 E 25th Ave., San
6 Mateo, CA, County of San Mateo, open for meals to the public from lunch until midnight. The
7 venue advertises itself as a home for world class entertainment, karaoke, trivia night, dueling
8 pianos and local bands. The venue also has a food menu for patrons, which presently boasts of
9 many spicy foods including its "world famous" Habanero Burger XXX, described on its
10 webpage as: "It is the hottest burger in the nation, with extremely hot flavor that makes
11 connoisseurs forehead and cheeks turn red."
12

13
14 19. On video preserved on defendants' website, to illustrate the risk of harm to those
15 who come into contact with such spicy peppers, employees are shown wearing protective gloves
16 and gas masks to prevent harm from peppers in the Habanero Burger XXX. On video preserved
17 on defendants' website, defendant CHAPMAN is shown laughingly describing how patrons
18 painstakingly struggle to consume the burger; it is approximated that only 10% of patrons can
19 finish their meal, according to defendant CHAPMAN.
20

21 20. On March 21, 2015, at approximately 2:30 p.m. plaintiffs SEAN STOUT and
22 JAMES PETTIGREW left a business function, the San Francisco Home & Garden Show, at the
23 San Mateo County Fairgrounds and went to THE SWINGIN' DOOR restaurant located at 106 E
24 25th Ave., San Mateo, CA, County of San Mateo for purposes of having lunch at this publicly
25 open restaurant. They were greeted by the bartender/server and were provided a menu from
26 which to order their food and beverage. SEAN STOUT and JAMES PETTIGREW learned of an
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1 entrée identified as the ghost pepper burger: a hamburger topped with a high volume of spicy
2 puree made from what was identified as “ghost peppers.”

3 21. A ghost pepper, or “bhut jolokia”, grown in the northeast region of India, is one of
4 the hottest chili peppers in the world. It is a hybrid of Capsicum Chinese and Capsicum
5 frutescens and is closely related to the Naga Morich of Bangladesh. Ghostpeppers have a
6 measured “heat” of > 1,000,000 Scoville heat units (SHU) (the measuring units for peppers),
7 *more than twice the strength of a habanero pepper*. For comparison, Tabasco red pepper sauce
8 rates at 5000–10,000 SHU. In 2007, Guinness World Records certified that the ghost pepper was
9 the world's hottest chili pepper, 400 times hotter than Tabasco sauce. A single seed from the
10 ghost pepper can result in severe burning sensation of the mouth for up to 30 minutes post
11 ingestion. In 2009, scientists at India's Defense Research and Development Organization
12 announced plans to use the peppers in hand grenades, as a nonlethal way to flush out terrorists
13 from their hideouts and to control rioters. It will also be developed into pepper spray as a self-
14 defense and anti-rape product.

15 22. On information and belief, the ghost pepper burger is not the same as the
16 (currently provided) aforementioned Habanero Burger XXX, but rather an entrée available for a
17 limited time in 2015 which was designed to drastically exceed the spiciness of the Habanero
18 Burger XXX. On information and belief, the ghost pepper burger is no longer sold at THE
19 SWINGIN’ DOOR restaurant.

20 23. While reviewing the menu, so as to influence their decision to, or not to, order the
21 entrée, SEAN STOUT and JAMES PETTIGREW requested information from THE SWINGIN’
22 DOOR bartender/server, DOE 1, about the ghost pepper burger, and were told it was a
23 hamburger topped with a spiced sauce.

1 24. Otherwise unfamiliar with the ghost pepper ingredient, bhut jolokia, SEAN
2 STOUT and JAMES PETTIGREW were advised by bartender/server, DOE 1, that if they
3 consumed a burger it would be a successful completion of a challenge issued by the restaurant,
4 and so their photo would be taken and placed on the wall in an honorary fashion at a location
5 referred to, and/or identified within the restaurant, as “The Wall of Flame.” They were also
6 advised that they would also be rewarded in other ways if they ordered and consumed the burger
7 (i.e. by being provided a commemorative bumper sticker). THE SWINGIN’ DOOR
8 bartender/server, DOE 1, was standoffish and provided no other material information about the
9 entrée.
10

11
12 25. Upon his learning of the order, the chef/preparer, DOE 2, of the ghost pepper
13 burger at THE SWINGIN’ DOOR came out, made eye contact with plaintiffs to acknowledge
14 their order. SEAN STOUT and JAMES PETTIGREW were not spoken to by the chef/preparer,
15 DOE 2, of the ghost pepper burger in any other meaningful way. The bartender/server, DOE 1,
16 AND chef/preparer, DOE 2, were the only visible staff members of THE SWINGIN’ DOOR
17 while SEAN STOUT and JAMES PETTIGREW were present.
18

19 26. Unable to watch chef/preparer, DOE 2 prepare the meal, neither SEAN STOUT
20 nor JAMES PETTIGREW knew of the other ingredients, if any, to the puree – or if it was even
21 prepared according to the recipe/plan, or otherwise spoiled.
22

23 27. After preparation by chef/preparer, DOE 2, and delivery of the ghost pepper
24 burger (with fries), by bartender/server, DOE 1, SEAN STOUT consumed the burger with the
25 bhut jolokia puree topping, and upon completion had his photo taken for “The Wall of Flame”
26 and his commemorative bumper sticker was delivered. The puree was orange and reddish in
27 color, and approximately a quarter cup of the puree was poured over the entrée.
28

1 28. With the meal, SEAN STOUT was provided a pitcher of water, from which to
2 drink; which he did. No milk, ice cream, yogurt, sour cream or other dairy product was provided
3 or offered to SEAN STOUT by DOES 1 or 2 to quell the anticipated burning, even though (on
4 information and belief) same is customarily provided to other customers at the establishment.
5 Dairy products are well known as an extinguisher of the heat from spicy foods: spicy foods
6 contain a substance from chilies called capsaicin. Capsaicin stings taste buds, and milk binds
7 with the hot capsaicin oils to disperse them. Cold water is not effective to mitigate spiciness
8 because water-based liquids spread capsaicin and likely *increase* the burning sensation.
9

10
11 29. At no time during the meal did bartender/server, DOE 1 or chef/preparer, DOE 2
12 check in with SEAN STOUT nor JAMES PETTIGREW about the quality of their food or
13 service or to inquire how SEAN STOUT was handling the entrée.

14 30. After eating the bhut jolokia, SEAN STOUT complained to JAMES
15 PETTIGREW that he was having trouble breathing, was having tunnel vision, and feeling pain in
16 his mouth and sides from the poisoning caused by consumption of the meal served to him. He
17 further stated that he was feeling nauseous and needed to leave the establishment to get fresh air
18 outside. Upon seeing SEAN STOUT hurry from the premise, the bartender/server, DOE 1,
19 dismissively retorted to JAMES PETTIGREW that “it’s only a burger...”.
20

21
22 31. SEAN STOUT went outside and proceeded to twice vomit while on the curb of E
23 25th Ave: he subsequently began to feel chest and epigastric abdominal pain. He summoned for
24 emergency assistance, and after being cared for San Mateo Police and Fire Department officials,
25 SEAN STOUT was transported by ambulance to the hospital. Plaintiffs left behind the
26 commemorative reward for their accomplishment: the bumper sticker.
27
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1 32. SEAN STOUT was transported to San Mateo Medical Center for emergency
2 treatment and care. A computed tomography scan of the abdomen and pelvis showed
3 pneumomediastinum with air around the distal esophagus, suggestive of a spontaneous
4 *esophageal perforation* (i.e. a burnt esophagus) and a left-sided pneumothorax (collapsed lung).
5 The patient was intubated and taken immediately to the operating room, where he was noted to
6 have a 2.5-cm tear in the distal esophagus, with a mediastinal fluid collection including food
7 debris, as well as a left-sided pneumothorax.
8

9 33. In response to the consumption of the poisoned food provided to him by THE
10 SWINGIN' DOOR, SEAN STOUT underwent numerous emergency surgeries, was a patient in
11 the intensive care unit for over three weeks, and was in a *coma* for two weeks.
12

13 34. In the operating room, a full left thoracotomy was performed, and on entering the
14 mediastinum, a mediastinal fluid collection was identified, containing "hamburger, onions, and
15 other green vomitus material," as well as a 2.5-cm tear in the distal esophagus.
16

17 35. Since the actions complained of on March 21, 2015, at THE SWINGIN' DOOR,
18 SEAN STOUT has been hospitalized repeatedly for consequential injuries directly related to the
19 consumption of the poisoned food provided to him by THE SWINGIN' DOOR, specifically bhut
20 jolokia topped entree.
21

22 36. SEAN STOUT now suffers from permanent injuries, regularly must take pain
23 medication, and frequently consult with his medical team. As a further direct and consequential
24 result of the injuries sustained and emergency surgeries performed, SEAN STOUT has unsightly
25 permanent scarring upon his body.
26

27 37. SEAN STOUT and JAMES PETTIGREW allege that defendants took no
28 reasonable steps or precautions to research or investigate the impact bhut jolokia has on a human

1 being's body from oral consumption; they took no reasonable steps or precautions to research or
2 investigate what dose of bhut jolokia was reasonable or dangerous to provide to a patron before
3 likely causing personal injuries; they took no steps to consult with agents of the San Mateo
4 County Health Department on proper steps in handling or serving bhut jolokia; and took no
5 reasonable steps or precautions to research or investigate what steps should be followed to care
6 for a patron who was unable to consume the bhut jolokia served and went into distress. Had THE
7 SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES 1-25 taken
8 reasonable steps to learn of such dangers, they knew or should have known that providing the
9 bhut jolokia in the quantity and dose to SEAN STOUT and JAMES PETTIGREW as described
10 herein, was likely to lead to grave harm, personal injury and/or death. Moreover, their failure to
11 mitigate the dangers caused by consumption of bhut jolokia with delivery of water, exacerbated a
12 situation that they specifically knew or should have known was being made worse by their
13 response.
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17 38. On information and belief, SEAN STOUT and JAMES PETTIGREW allege that
18 defendants took no reasonable steps to screen, investigate, hire, and control "THE SWINGIN'
19 DOOR STAFF" and DOES 1-10, who planned, developed, identified, prepared, and served the
20 ghost pepper burger and/or "The Wall of Flame." Had THE SWINGIN' DOOR, WARAC
21 CORPORATION, CHAPMAN, and/or DOES 1-25 taken reasonable steps to screen, investigate,
22 hire, and control the "THE SWINGIN' DOOR STAFF" and DOES 1-10 who thought of,
23 devised, invented, developed, prepared, served, and in any other way participated in the ghost
24 pepper burger and/or "The Wall of Flame" then they knew or should have known that such
25 persons were likely to cause harm, personal jury and/or death to patrons of the publicly held
26 open restaurant, THE SWINGIN' DOOR.
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1 39. Plaintiffs allege that as a direct result of the aforementioned conduct of
2 defendants, SEAN STOUT and JAMES PETTIGREW have suffered general damages, personal
3 injuries and severe emotional distress. From these events, SEAN STOUT and JAMES
4 PETTIGREW incurred past medical bills and will continue to incur medical costs in the future
5 which are a direct consequence of the actions of defendants. From these events, SEAN STOUT
6 and JAMES PETTIGREW incurred out of pocket losses and will continue to incur further out of
7 pocket losses which are a direct consequence of the actions of defendants. From these events,
8 SEAN STOUT and JAMES PETTIGREW have incurred income loss and will continue to incur
9 further income losses which are a direct consequence of the actions of defendants.
10
11

12 40. Plaintiffs allege that as SEAN STOUT's lawful husband, JAMES PETTIGREW
13 has suffered equally personally watching the horror of his husband getting injured, transported to
14 emergency services, being put under for emergency lifesaving surgery, falling into a coma, and
15 personally watching him attempt to recover from the harms described herein. By and through
16 witnessing these events, JAMES PETTIGREW has suffered a loss of companionship and
17 affection, loss of conjugal society, loss of consortium, comfort, affection, moral support and
18 sexual rights, and has suffered from pain, suffering, inconvenience, mental suffering, and severe
19 emotional distress.
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21

22
23 **V. FIRST CAUSE OF ACTION: GENERAL NEGLIGENCE AGAINST**
24 **DEFENDANTS THE SWINGIN' DOOR, WARAC CORPORATION,**
25 **WARREN CHAPMAN AND DOES 1-25**
26 **(BROUGHT BY PLAINTIFFS SEAN STOUT AND JAMES PETTIGREW)**

27 41. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
28 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

1 42. Ordinary negligence—an unintentional tort—consists of a failure to exercise the
2 degree of care in a given situation that a reasonable person under similar circumstances would
3 employ to protect others from harm.
4

5 43. SEAN STOUT and JAMES PETTIGREW were public patrons who came to the
6 premise and establishment at 106 E 25th Ave., San Mateo, CA owned and operated by
7 defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES 1-
8 25.
9

10 44. As a restaurant open to the public, licensed by the State of California and County
11 of San Mateo, defendants owed plaintiffs a duty of care to take reasonable precaution in their
12 food preparation so as not to poison and to prevent harm to patrons, like SEAN STOUT and
13 JAMES PETTIGREW, of THE SWINGIN' DOOR caused by the consumption of food served to
14 publicly paying customers. Defendants had a duty to comply with all statutory and regulatory
15 provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of
16 food products, including, but not limited to, California's Sherman Food, Drug and Cosmetic
17 Laws and the California Health and Safety Code, which bans the manufacture, sale and
18 distribution of any "adulterated" food. Moreover, defendants' owed a duty of reasonable
19 behavior to all patrons who came upon their establishment and not to harm such patrons.
20
21

22 45. By serving SEAN STOUT and JAMES PETTIGREW the aforementioned poison
23 bhut jolokia (aka the ghost pepper burger), such conduct was unreasonable with the high
24 likelihood to cause injury to a reasonable person who came upon the premise seeking a lunch
25 entrée.
26

27 46. At all material times prior to March 21, 2015, it was subjectively and objectively
28 foreseeable to defendants that the plaintiffs were at risk for serious illness and/or death as the

1 result of consuming excessive amounts of bhut jolokia. Defendants had specific knowledge of
2 multiple persons having suffered injuries and violent vomiting from attempting to consume
3 excessive amounts of bhut jolokia at THE SWINGIN' DOOR and notifying the defendants of
4 same through, at a minimum, Facebook posts. Defendants knew or should have known that
5 vomiting in response to eating peppers far less potent than bhut jolokia is the body's mechanism
6 of attempting to prevent further serious harm.
7

8 47. Defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
9 and/or DOES 1-25 failed to take reasonable steps to mitigate the harm which would be caused to
10 SEAN STOUT and JAMES PETTIGREW from consuming bhut jolokia, in the manner
11 described herein. Such conduct is below and a breach of the standard of reasonable care that
12 defendants owed to SEAN STOUT and JAMES PETTIGREW as public patrons.
13

14 48. As a result of the aforementioned conduct described in all preceding paragraphs
15 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
16 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
17 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
18 past medical costs, future medical costs, past lost income, future income loss, out of pocket
19 special damages, as well as general damages for personal injuries, extreme emotional distress,
20 and loss of consortium damages.
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23 49. Additionally, as a result of the aforementioned malicious, oppressive, and/or
24 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
25 California Code of Civil Procedure § 3294.
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1 **VI. SECOND CAUSE OF ACTION: NEGLIGENCE PER SE VIOLATION OF**
2 **CALIFORNIA'S SHERMAN FOOD, DRUG, AND COSMETIC LAWS,**
3 **CALIFORNIA HEALTH AND SAFETY CODE § 109875, et seq.**
4 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
5 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
6 **(BROUGHT BY PLAINTIFF SEAN STOUT)**

7 50. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
8 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

9 51. Defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
10 and/or DOES 1-25 were negligent in manufacturing, distributing and selling food products that
11 were not reasonably safe because adequate warnings or instructions were not provided, including
12 but not limited to, the warning that the food product may contain unsafe amounts of bhut jolokia
13 and thus, should not be given to, or eaten by, people.

14 52. The defendants each additionally owed a duty to comply with statutory and
15 regulatory provisions that pertained or applied to either the import, manufacture, distribution,
16 storage, or sale of their product or product-ingredients, including, but not limited to, California's
17 Sherman Food, Drug, and Cosmetic Act, CA Health & Safety Code §110545, which bans the
18 manufacture, sale and distribution of any "adulterated" food. The Federal Food, Drug, and
19 Cosmetics Act, §402(a), as codified at 21 U.S.C. §342(a) also provides the standard for the
20 manufacture, sale and distribution of any "adulterated" food. Under applicable state law, food is
21 adulterated if it contains a "poisonous or deleterious substance, which may render it injurious to
22 health." The bhut jolokia in the dose and amount at issue here is such an adulterated substance.
23 Thus, by either manufacture, distribution, preparation and delivery, or sale of the subject product,
24 defendants breached their statutory and regulatory duties, and SEAN STOUT was injured as a
25 direct and proximate result of such breaches.
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1 53. The defendants' negligent acts and omissions included, but were not limited to:
2 (a) Failure to prevent the delivery of a dangerous and harmful amount and dose of bhut jolokia,
3 including the failure to implement or non-negligently perform inspection and monitoring of the
4 product such that its adulterated condition would be discovered prior to its sale or distribution to
5 the public for human consumption. (b) Failure to properly supervise, train, and monitor their
6 employees, or the employees of their agents or subcontractors, on how to ensure the
7 manufacture, distribution or sale of food product free of adulteration by potentially lethal
8 substances.
9

10
11 54. The state food safety regulations applicable here, and as set forth above, establish
12 a positive and definite standard of care in the import, manufacture, distribution or sale of food,
13 and the violation of these regulations constitutes negligence per se. SEAN STOUT was in the
14 class of persons intended to be protected by these statutes and regulations, and was injured as the
15 direct and proximate result of the defendants' violation of applicable state and local food safety
16 regulations. The defendants breached the aforementioned duties as alleged above, which breach
17 constituted the proximate cause of injury to SEAN STOUT.
18

19 55. As a result of the aforementioned conduct described in all preceding paragraph
20 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
21 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
22 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
23 past medical costs, future medical costs, past lost income, future income loss, out of pocket
24 special damages, as well as general damages for personal injuries, extreme emotional distress,
25 and loss of consortium damages.
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1 56. Additionally, as a result of the aforementioned malicious, oppressive, and/or
2 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
3 California Code of Civil Procedure § 3294.
4

5 **VII. THIRD CAUSE OF ACTION: BREACH OF IMPLIED WARRANTY OF**
6 **FITNESS FOR HUMAN CONSUMPTION [COM. CODE § 2314]**
7 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
8 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
9 **(BROUGHT BY PLAINTIFF SEAN STOUT)**

10 57. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
11 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

12 58. Unless excluded or modified, a warranty that the goods shall be merchantable is
13 implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.
14 Under Californai Com. Code § 2314 the serving for value of food or drink to be consumed either
15 on the premises or elsewhere is a sale.

16 59. By selling food and drink items to patrons from their publicly held open
17 restaurant on March 21, 2015, defendants held themselves out as a merchant for sale of food and
18 drink and impliedly warranted to their patrons, including SEAN STOUT and JAMES
19 PETTIGREW, that such materials were safe for human consumption.
20

21 60. Defendants sold the aforementioned bhut jolokia within the ghost pepper burger
22 to SEAN STOUT. From such commercial transaction, SEAN STOUT was poisoned, made
23 violently ill and necessitated multiple lifesaving surgeries. He was hospitalized and put into a
24 coma. He incurred permanent injuries and will forever be damaged to his body. These
25 consequences are the direct result of defendants serving to him poisoned foods unfit for human
26 consumption.
27
28

1 61. The bhut jolokia within the ghost pepper burger was/were not clean, wholesome,
2 and free from harmful or injurious foreign substances but, instead, was/were spoiled,
3 contaminated, unwholesome, deleterious, and poisoned and in such a condition as to be
4 dangerous to life and health, and was/were in other respects unfit for human consumption.
5 STOUT could not determine the condition of the bhut jolokia within the ghost pepper burger by
6 reasonable inspection and did not know the true condition of the food when served to him/her by
7 defendant(s) and consumed by plaintiff.

8
9 62. As a result of the aforementioned conduct described in all preceding paragraphs
10 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
11 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
12 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
13 past medical costs, future medical costs, past lost income, future income loss, out of pocket
14 special damages, as well as general damages for personal injuries, extreme emotional distress,
15 and loss of consortium damages.
16

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18 63. Additionally, as a result of the aforementioned malicious, oppressive, and/or
19 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
20 California Code of Civil Procedure § 3294.
21

22
23 **VIII. FOURTH CAUSE OF ACTION: STRICT LIABILITY VIOLATION OF**
24 **CALIFORNIA'S SHERMAN FOOD, DRUG, AND COSMETIC LAWS,**
25 **CALIFORNIA HEALTH AND SAFETY CODE § 109875, et seq.**
26 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
27 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
28 **(BROUGHT BY PLAINTIFF SEAN STOUT)**

29 64. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

1 65. Defendants SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
2 DOES 1-25 are in the business of manufacturing and selling food and drink products, including
3 the food product that is at issue herein.
4

5 66. SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES 1-25
6 manufactured and sold food that was defective at the time it left defendants' control in that it was
7 adulterated with an unsafe level of bhut jolokia, which rendered it adulterated, unwholesome and
8 injurious to health and unfit for human consumption. This defective condition created an
9 unreasonable risk to patrons such as SEAN STOUT and JAMES PETTIGREW.
10

11 67. Defendants sold the food products used by STOUT knowing the products would
12 be used by plaintiff without inspection for defects.

13 68. It was reasonably foreseeable to defendants that the adulterated food, when put to
14 its reasonably foreseeable use, would expose people such as SEAN STOUT and JAMES
15 PETTIGREW to harm. Defendants had actual notice that the adulterated food had caused harm
16 to prior patrons.
17

18 69. Defendants prepared, distributed and sold food that was rendered adulterated,
19 unwholesome and injurious to health, in violation of California's Sherman Food, Drug and
20 Cosmetic Laws, California Health and Safety Code sections 109875, et seq. and particularly
21 section 110620, and similar federal health and safety standards and regulations.
22

23 70. SEAN STOUT utilized the contaminated food product as anticipated by
24 defendants when he consumed it. SEAN STOUT was injured by his consumption of
25 contaminated food, which was adulterated, contaminated, unwholesome, injurious to his health
26 and unfit for human consumption. As a proximate cause of SEAN STOUT's use of the products
27
28

1 in a fashion anticipated by the defendants, SEAN STOUT and JAMES PETTIGREW suffered
2 injury and damages as described herein.

3 71. As a result of the aforementioned conduct described in all preceding paragraphs
4 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
5 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
6 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
7 past medical costs, future medical costs, past lost income, future income loss, out of pocket
8 special damages, as well as general damages for personal injuries, extreme emotional distress,
9 and loss of consortium damages.
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11

12 72. Additionally, as a result of the aforementioned malicious, oppressive, and/or
13 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
14 California Code of Civil Procedure § 3294.
15
16

17 **IX. FIFTH CAUSE OF ACTION: GROSS NEGLIGENCE**
18 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
19 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
20 **(BROUGHT BY PLAINTIFFS SEAN STOUT AND JAMES PETTIGREW)**

21 73. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
22 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

23 74. Gross negligence is the lack of any care or an extreme departure from what a
24 reasonably careful person would do in the same situation to prevent harm to oneself or to others.
25 A person can be grossly negligent by acting or by failing to act.

26 75. Defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
27 and/or DOES 1-25 operate a restaurant, which is the kind of business generally thought suitable
28 for public regulation.

1 76. Defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
2 and/or DOES 1-25 owed a duty of reasonable care not to prepare and serve foods that poison
3 patrons, like SEAN STOUT and JAMES PETTIGREW, who came to their publicly open
4 premise to order food for consumption. This duty required them to take reasonable steps of due
5 care to select, care for, and properly prepare food stuffs for consumption by patrons in such a
6 way to prevent a standard patron, with no prior knowledge of history of THE SWINGIN' DOOR
7 or the ghost pepper burger or bhut jolokia from being subject to excessive risk of harm, personal
8 injury or death. This duty required them to take reasonable steps to select, hire, and employ
9 reasonable persons who could competently identify poisonous foods which were not safe for
10 human consumption. This duty required them to prepare or warn patrons to their establishment
11 of harms which they knew of or should have known of and communicate same in such a manner
12 such that a reasonable person would appreciate the gravity of the circumstances about which
13 warning was being provided. This duty required them to reasonably respond to complaints from
14 consumers that their food products were causing physical harm to persons.
15
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18 77. The bhut jolokia is a food product identified as one of the hottest chili peppers in
19 the world, with a measured "heat" of > 1,000,000 Scoville heat units - more than twice the
20 strength of a habanero pepper, and a product used as a chemical weapon in both war and in
21 defense of rape victims. Defendants failed to take precautions by consulting with health officials
22 or emergency service personnel regarding the risks associated with serving the bhut jolokia
23 topped entrée. Had defendants taken steps to consult with health officials of San Mateo County
24 or the State of California on the safety of serving bhut jolokia then STOUT would not have been
25 injured in the manner described herein. Had defendants taken minimally reasonable steps to
26 select, hire, and control employees at THE SWINGIN' DOOR on food safety and comparable
27
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1 measures designed to protect public patrons, like STOUT and PETTIGREW, plaintiffs would not
2 be harmed by the actions described herein. Had defendants adequately warned plaintiffs that
3 consumption of their food products was reasonably likely to lead to hospitalization, need for
4 emergency services, surgery, coma or death, STOUT would not be harmed by the actions
5 described herein. Had defendants taken scant steps of reasonable conduct to prevent members of
6 the public from being harmed by bhut jolokia, STOUT would not be harmed by the actions
7 described herein.
8

9
10 78. At all material times prior to March 21, 2015, it was subjectively and objectively
11 foreseeable to defendants that the plaintiffs were at risk for serious illness and/or death as the
12 result of consuming excessive amounts of bhut jolokia. Defendants had specific knowledge of
13 persons having suffered injuries and violent vomiting from attempting to consume excessive
14 amounts of bhut jolokia at THE SWINGIN' DOOR. Defendants knew or should have known
15 that vomiting in response to eating peppers far less potent than bhut jolokia is the body's
16 mechanism of attempting to prevent further serious harm. Defendants knew or should have
17 known that bhut jolokia is not a food product for consumption by humans in a public restaurant.
18

19 79. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
20 1-25 intentionally devised, planned, prepared, and delivered to SEAN STOUT and JAMES
21 PETTIGREW the ghost pepper burger with intent to cause discomfort in patrons, akin to the
22 discomfort of the "Habanero Burger XXX" described on the webpage of THE SWINGIN'
23 DOOR: "It is the hottest burger in the nation, with extremely hot flavor that makes connoisseurs
24 forehead and cheeks turn red." On video preserved on defendants' website, employees are shown
25 wearing protective gloves and gas masks to prevent harm from bhut jolokia. However, the bhut
26 jolokia is not a habanero pepper, and delivering same to patrons, in the kind and quantity and
27
28

1 dose describe herein, is extreme and reckless conduct. Defendants took no reasonable steps to
2 investigate, research, or in any way identify what amount, content, dose, and quantity of bhut
3 jolokia could reasonably be anticipated to poison a patron so as to cause personal injury and/or
4 death. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES 1-25
5 took no reasonable steps to adequately warn SEAN STOUT and JAMES PETTIGREW that
6 consumption of the volume, quantity, and kind of bhut jolokia provided to SEAN STOUT on
7 March 21, 2015, would develop more than simply a "red" forehead and cheeks; but may in fact
8 lead to emergency surgery. Defendants' extreme conduct breached a minimal standard of care.
9
10

11 80. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
12 1-25 who harmed SEAN STOUT and JAMES PETTIGREW on March 21, 2015 failed to take
13 any reasonable steps to protect patrons from the injuries they knew or should have known were
14 likely to occur from their conduct. Defendants failed to meaningfully notify and warn SEAN
15 STOUT and JAMES PETTIGREW that consumption of the dangerous food product could be
16 reasonably anticipated to necessitate emergency surgery to repair a "burnt" esophagus, multiple
17 weeks in a coma and intensive care, as well as lifetime of permanent bodily injuries. Because of
18 the acts complained of herein, defendants on March 21, 2015 failed to take even a scant of care
19 to protect SEAN STOUT and JAMES PETTIGREW on March 21, 2015, and their conduct, both
20 by act and omission, amount to an extreme departure from ordinary standards of conduct.
21
22

23 81. As a result of the aforementioned conduct described in all preceding paragraphs
24 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
25 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
26 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
27 past medical costs, future medical costs, past lost income, future income loss, out of pocket
28

1 special damages, as well as general damages for personal injuries, extreme emotional distress,
2 and loss of consortium damages.

3 82. Additionally, as a result of the aforementioned malicious, oppressive, and/or
4 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
5 California Code of Civil Procedure § 3294.
6

7
8 **X. SIXTH CAUSE OF ACTION: PREMISES LIABILITY**
9 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
10 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
11 **(BROUGHT BY PLAINTIFFS SEAN STOUT AND JAMES PETTIGREW)**

12 83. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
13 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

14 84. SEAN STOUT and JAMES PETTIGREW allege defendants breached the duty of
15 care owed to them as business invitees while upon defendants' premise.

16 85. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
17 1-25 operate and control the premise at 106 E 25th Ave., San Mateo, CA, County of San Mateo.
18 It is a publicly open restaurant which advertises to the public that they are open from lunch to
19 midnight.

20 86. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
21 1-25 have a duty to exercise reasonable care to those patrons, like SEAN STOUT and JAMES
22 PETTIGREW, who come on to their premise at 106 E 25th Ave., San Mateo, CA, County of San
23 Mateo to prevent known or reasonably identifiable harm to and/or to adequately warn such
24 persons so they can protect themselves from such harms.
25

26 87. SEAN STOUT and JAMES PETTIGREW were damaged from STOUT being
27 poisoned after coming upon 106 E 25th Ave., San Mateo, CA, County of San Mateo when
28

1 SEAN STOUT was provided the ghost pepper burger topped with bhut jolokia, the hottest chili
2 pepper in the world, and were not provided adequate notice of the dangers of such conditions at
3 106 E 25th Ave., San Mateo, CA, County of San Mateo.

4
5 88. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
6 1-25 acted unreasonably in failing to prevent reasonably identifiable harm and/or for failing to
7 reasonably warn SEAN STOUT and JAMES PETTIGREW of the dangers at 106 E 25th Ave.,
8 San Mateo, CA, County of San Mateo.

9
10 89. THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or DOES
11 1-25 knew or should have known that serving the ghost pepper burger topped with bhut jolokia
12 was likely to lead to serious injury or death. Defendants failed to adequately warn STOUT and
13 PETTIGREW of foreseeable danger.

14
15 90. As a result of the aforementioned conduct described in all preceding paragraph
16 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
17 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
18 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
19 past medical costs, future medical costs, past lost income, future income loss, out of pocket
20 special damages, as well as general damages for personal injuries, extreme emotional distress,
21 and loss of consortium damages.

22
23 91. Additionally, as a result of the aforementioned malicious, oppressive, and/or
24 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
25 California Code of Civil Procedure § 3294.
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1 **XI. SEVENTH CAUSE OF ACTION: NEGLIGENT HIRING, SUPERVISION**
2 **AND RETENTION OF CONTROL OF EMPLOYEES**
3 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
4 **CORPORATION, WARREN CHAPMAN AND DOES 1-25 (BROUGHT BY**
5 **PLAINTIFFS SEAN STOUT AND JAMES PETTIGREW)**

6 92. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
7 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

8 93. California case law recognizes that an employer can be liable to a third person for
9 negligently hiring, supervising, or retaining an unfit employee. Negligence liability will be
10 imposed on an employer if it knew or should have known that hiring the employee created a
11 particular risk or hazard and that particular harm materializes.

12 94. Defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN,
13 and/or DOES 1-25 hired "THE SWINGIN' DOOR STAFF", DOES 1-10, identified herein.

14 95. "THE SWINGIN' DOOR STAFF", DOES 1-10 were responsible for the
15 influence, design, preparation, or participating in creating the ghost pepper burger or "Wall of
16 Flame" described herein. "THE SWINGIN' DOOR STAFF", DOES 1-10 owed a duty to patrons
17 like SEAN STOUT and JAMES PETTIGREW to take reasonable steps to prevent them from
18 harm.

19 96. "THE SWINGIN' DOOR STAFF", DOES 1-10 were unfit and/or incompetent to
20 perform the work for which he/she was hired for employment on March 21, 2015 and
21 beforehand.

22 97. Defendants knew or should have known, "THE SWINGIN' DOOR STAFF",
23 DOES 1-10 was unfit or incompetent and that this unfitness or incompetence created a particular
24 risk to others, including patrons to THE SWINGIN' DOOR at 106 E 25th Ave., San Mateo, CA,
25 County of San Mateo, including SEAN STOUT and JAMES PETTIGREW. The unfitness or
26
27
28

1 incompetence of "THE SWINGIN' DOOR STAFF", DOES 1-10, described herein, harmed
2 SEAN STOUT and JAMES PETTIGREW.

3 98. The Defendants THE SWINGIN' DOOR, WARAC CORPORATION,
4 CHAPMAN, and/or DOES 1-25 negligence in hiring, supervising, and/or retaining "THE
5 SWINGIN' DOOR STAFF", DOES 1-10, injured SEAN STOUT and JAMES PETTIGREW.
6

7 99. As a result of the aforementioned conduct described in all preceding paragraphs
8 *supra*, defendants THE SWINGIN' DOOR, WARAC CORPORATION, CHAPMAN, and/or
9 DOES 1-25 were a substantial factor in the actual and proximate cause of damages of SEAN
10 STOUT and JAMES PETTIGREW. Such damages include economic damages in the form of
11 past medical costs, future medical costs, past lost income, future income loss, out of pocket
12 special damages, as well as general damages for personal injuries, extreme emotional distress,
13 and loss of consortium damages.
14

15 100. Additionally, as a result of the aforementioned malicious, oppressive, and/or
16 fraudulent conduct, plaintiffs hereby pray for an award of punitive damages pursuant to
17 California Code of Civil Procedure § 3294.
18

19 **XII. EIGHTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF**
20 **EMOTIONAL DISTRESS**
21 **AGAINST DEFENDANTS THE SWINGIN' DOOR, WARAC**
22 **CORPORATION, WARREN CHAPMAN AND DOES 1-25**
23 **(BROUGHT BY PLAINTIFFS SEAN STOUT AND JAMES PETTIGREW)**

24 101. SEAN STOUT and JAMES PETTIGREW re-allege and incorporate by reference
25 all preceding paragraphs *supra*, inclusive, as if set forth in full herein.

26 102. A cause of action for intentional infliction of emotional distress exists when there
27 is (1) extreme and outrageous conduct by the defendant with reckless disregard of the probability
28 of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress;

