

**MAR 09 2005**

John A. Clarke, Executive Officer/Clerk

By \_\_\_\_\_, Deputy

**SUE GABB**

1 Benjamin Schonbrun, SBN 118323  
2 K. Arianne Jordan, SBN 221881  
3 SCHONBRUN DESIMONE SEPLOW  
4 HARRIS & HOFFMAN LLP  
5 723 Ocean Front Walk  
6 Venice, California 90291  
7 Telephone: (310) 396-0731  
8 Fax: (310) 399-7040

9 Attorneys for Plaintiff

10  
11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 Yael Oestreich

15 Plaintiff,

16 vs.

17 MADONNA CICCONE, GUY OSEARY,  
18 MILTON KIM, MARK MORGAN,  
19 MAVERICK FILMS, LLC, MAVERICK  
20 FILMED ENTERTAINMENT, LLC,  
21 MAVERICK ENTERTAINMENT,  
22 MADGUY FILMS, MADGUY  
23 ENTERTAINMENT, INC., AND DOES 1  
24 THROUGH 25

25 Defendants.

) CASE NO. **BC330003**

) **COMPLAINT FOR DAMAGES**

- ) 1. **SEXUAL HARASSMENT**
- ) 2. **GENDER DISCRIMINATION**
- ) 3. **RETALIATION**
- ) 4. **WRONGFUL TERMINATION**
- ) 5. **BREACH OF CONTRACT**
- ) 6. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
- ) 7. **PROMISSORY ESTOPPEL**
- ) 8. **NEGLIGENT MISREPRESENTATION**
- ) 9. **NEGLIGENCE**
- ) 10. **NEGLIGENT HIRING**
- ) 11. **NEGLIGENT SUPERVISION**
- ) 12. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
- ) 13. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

) **DEMAND FOR JURY TRIAL**

26 Plaintiff Yael Oestreich, on information and belief, makes the following allegations to  
27 support this Complaint:

28 **JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants because they are residents of and/or corporations residing in the State of California.



1 Executive Officer of Defendant Companies and was Plaintiff's direct supervisor.

2  
3 8. Plaintiff is informed and believes that Defendant Maverick Films is, and at all relevant  
4 times herein mentioned was, a corporation or other business entity with offices located in and  
5 doing business in the State of California, County of Los Angeles, and is, and was, at all times  
6 herein mentioned, an "employer" within the meaning of California Government Code Sections  
7 12926(d), 12940(a), and 12940(j)(4)(a).

8  
9 9. Plaintiff is informed and believes that Defendant Maverick Filmed Entertainment is, and  
10 at all relevant times herein mentioned was, a corporation or other business entity with offices  
11 located in and doing business in the State of California, County of Los Angeles, and is, and was,  
12 at all times herein mentioned, an "employer" within the meaning of California Government Code  
13 Sections 12926(d), 12940(a), and 12940(j)(4)(a).

14  
15 10. Plaintiff is informed and believes that Defendant Maverick Entertainment is, and at all  
16 relevant times herein mentioned was, a corporation or other business entity with offices located  
17 in and doing business in the State of California, County of Los Angeles, and is, and was, at all  
18 times herein mentioned, an "employer" within the meaning of California Government Code  
19 Sections 12926(d), 12940(a), and 12940(j)(4)(a).

20  
21 11. Plaintiff is informed and believes that Defendant Madguy Films is, and at all relevant  
22 times herein mentioned was, a corporation or other business entity with offices located in and  
23 doing business in the State of California, County of Los Angeles, and is, and was, at all times  
24 herein mentioned, an "employer" within the meaning of California Government Code Sections  
25 12926(d), 12940(a), and 12940(j)(4)(a).

26  
27 12. Plaintiff is informed and believes that Defendant Madguy Entertainment is, and at all  
28 relevant times herein mentioned was, a corporation or other business entity with offices located

1 in and doing business in the State of California, County of Los Angeles, and is, and was, at all  
2 times herein mentioned, an “employer” within the meaning of California Government Code  
3 Sections 12926(d), 12940(a), and 12940(j)(4)(a).

4  
5 13. Plaintiff is informed and believes that each of the foregoing corporate Defendants are a  
6 single “employer” within the meaning of California Government Code Sections 12926(d),  
7 12940(a), and 12940(j)(4)(a) in that there is an interrelation of operations, common management,  
8 centralized control of labor relations, and/or common ownership or financial control. Plaintiff is  
9 further informed and believes that each corporate Defendant acted as an agent for the others and  
10 that each corporate Defendant perpetrated and/or aided and abetted the unlawful acts alleged  
11 herein.

12  
13 14. The true names and capacities, whether a corporation, agent, individual, or otherwise, of  
14 Defendants Does 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues said  
15 Defendants by such fictitious names. Each of the Defendants designated herein as Doe is  
16 negligently or otherwise legally responsible in some manner for the events and happenings herein  
17 referred to and caused injuries and damages proximately thereby to Plaintiff, as herein alleged.  
18 Plaintiff will ask leave of Court to amend this Complaint to show their names and capacities  
19 when the same have been ascertained.

20  
21 15. At all times herein mentioned each Defendant was the agent, representative, employee,  
22 successor, and/or assignee of the other Defendants and at all pertinent times hereto were acting  
23 within the course and scope of their authority as such agents, representatives, employees,  
24 successors, and/or assignees.

25  
26 //  
27 //  
28 //

1 **FACTS COMMON TO ALL COUNTS**

2 16. Beginning in or about September 2003 and continuing through July 2004, Defendant  
3 Mark Morgan and others, while acting in the course and scope of their employment with  
4 Defendant Maverick Films, Maverick Filmed Entertainment, Maverick Entertainment, Madguy  
5 Films, and Madguy Entertainment (“Defendant Companies”), sexually harassed and  
6 discriminated against Plaintiff by engaging in a continuous, pervasive, and ongoing hostile,  
7 offensive, and unwelcome course of sexual conduct including, but not limited to, the acts alleged  
8 herein. Indeed, Defendant Companies and the founders and principals of Defendant Companies,  
9 Madonna Ciccone, Guy Oseary, and Milton Kim failed to conduct a reasonable investigation into  
10 Defendant Morgan’s background before hiring him and knew or should have known of his  
11 propensity for sexual harassment and discrimination. As a result of their negligent conduct,  
12 Plaintiff was exposed to a sexually hostile work environment which included, without limitation,  
13 verbal and visual sexual harassment and discrimination. In addition to this harassment and  
14 discrimination, Defendant Companies and Defendants Ciccone, Oseary, and Kim, failed to take  
15 all reasonable steps to prevent the harassment from occurring, failed to adequately investigate the  
16 charges when brought to their attention, and failed to take immediate, appropriate, corrective  
17 action, ratified the conduct, and retaliated against Plaintiff for asserting her rights to a workplace  
18 free from sexual harassment and discrimination. Defendants’ sexual harassment, discrimination,  
19 and retaliation culminated in Plaintiff’s wrongful termination in violation of her employment  
20 contract on or about July 8, 2004.

21  
22 17. In or about August 2003, Yael Oestreich entered into an employment contract with  
23 the Companies. Ms. Oestreich presented Mark Morgan, the CEO of the Companies, with  
24 proposed terms for her employment. Mr. Morgan approved Ms. Oestreich’s terms and offered  
25 her a position. The essential terms of the contract were as follows:

- 26 A. Ms. Oestreich would work part-time 2-3 days a week as a Development Executive.  
27 B. Upon the Companies’ securing additional financing, Ms. Oestreich would be made a  
28 full-time Executive, be put on payroll, and be paid retroactively for her part-time

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

work.

- C. An annual salary of \$65,000.00.
- D. Credits for projects, production bonuses on green-light projects, an expense account, and an assistant as needed.
- E. Standard benefits, including medical benefits, to take effect immediately.
- F. Continued employment so long as Plaintiff's work performance was satisfactory.

18. On or about September 10, 2003, Ms. Oestreich began working part-time for the Companies as the Director of Development. Her primary job duties included bringing in film projects, shepherding the Companies' existing slate of films, managing in-house producers, and coordinating interns.

19. In or about October 2003, Ms. Oestreich was brought on as a full-time employee. However, due to Companies' purported lack of funds, Ms. Oestreich was not put on salary, nor did she receive the benefits that had been promised to her. However, given the Companies' renewed assurances that she would soon be put on salary and paid retroactively for her work, Ms. Oestreich accepted the increased commitment and began working full-time.

20. On or about November 11, 2003, CEO, Mark Morgan announced that "everyone" was going to have drinks after work and Ms. Oestreich should come. Once at the bar, Mr. Morgan focused the topic of conversation on personal sexual matters asking, among other things, whether the female employees at the table would rather have sex with President and COO, John Schwartz, or Producer, Jay Polstein. He also requested that two female employees kiss one another. In response to Ms. Oestreich's withdrawn demeanor, Mr. Morgan criticized her for being too uptight. Later that night, Mr. Morgan reached over and pinched a female employee's nipple. Ms. Oestreich was shocked by Mr. Morgan's behavior and did not respond to his attempts to draw her into such activities. Mr. Morgan seized on Ms. Oestreich's refusal to participate and attempted to ridicule and embarrass Ms. Oestreich by accusing her of having slept

1 with three agents at United Talent Agency (“UTA”), her former employer. Mr. Schwartz, who  
2 had just joined the gathering, began dialing the numbers of his industry contacts in order to taunt  
3 Ms. Oestreich, threatening to ask them whether she slept with anyone at UTA. Although Ms.  
4 Oestreich insisted that their accusations were false, Mr. Morgan threatened to fire her if she did  
5 not confess to sleeping with the UTA agents. Ms. Oestreich was deeply offended by this assault  
6 on her reputation and the scurrilous comments about her personal life, as well as the threat of  
7 termination by Mr. Morgan. She ran outside the bar in tears. Ms. Oestreich confided to a fellow  
8 employee her discomfort with Morgan’s offensive behavior. Unfortunately, the evening became  
9 even more uncomfortable for Ms. Oestreich because Mr. Morgan decided to re-locate the  
10 gathering to a strip club across the street from the bar. Shortly thereafter, Ms. Oestreich went  
11 home.

12  
13 21. The next morning, Ms. Oestreich complained to Senior Vice President, Brent Emery,  
14 about Mr. Morgan’s conduct. That same day, Mr. Morgan called Ms. Oestreich into his office  
15 and warned her that if she wanted to continue working for the Companies, she was not to express  
16 her dissatisfaction with his actions to anyone and that she would have to accept the fact that he  
17 “liked to party.” Mr. Morgan then accused her of being “insecure” for having felt uncomfortable  
18 the night before. Thereafter, Mr. Emery did not address the subject with Ms. Oestreich again  
19 and, to her knowledge, he took no action in response to her complaint.

20  
21 22. In the following months, Mr. Morgan’s unwelcome, sexually harassing and offensive  
22 behavior continued and escalated. Mr. Morgan commonly used offensive and derogatory  
23 language in front of Ms. Oestreich in reference to women. For example, he referred to the female  
24 President of Universal as a “slut.” He also made offensive comments in front of other employees  
25 including, but not limited to, referring to a female producer as a “f\_cking cunt” and stating that  
26 he had not “f\_cked [the producer] yet” but would in order to get what he wanted, and referring to  
27 women in general as “cunts” and “whores” who made your life miserable. Mr. Morgan made  
28 unwelcome and repeated inappropriate sexual inquiries to Ms. Oestreich including asking her

1 whether she thought she was “hot”, whether she masturbated, whether she was going to “f\_ck”  
2 someone, whether she was going to “get laid”, and whether she had sex with or wanted to have  
3 sex with particular individuals. Mr. Morgan made other sexually offensive remarks such as  
4 telling Ms. Oestreich that she had “nice breasts”, calling Ms. Oestreich’s female charity group  
5 “bra burners”, and referring to Ms. Oestreich as the “in-house feminist.” Further, Mr. Morgan  
6 made unwelcome comments about his own sex life, including the fact that he had used a sanding  
7 machine to give his wife an orgasm and that he thought “the condom broke” on an occasion  
8 when he suspected his wife was pregnant. In addition, Mr. Morgan sent Ms. Oestreich offensive  
9 and pornographic e-mails.

10  
11 23. Ms. Oestreich is further informed and believes that during her employment, Mr. Morgan  
12 regularly engaged in the use of illicit drugs in the workplace, during and after business hours.  
13 Mr. Morgan’s assistant coined the term “closed door meetings” to denote occasions when Mr.  
14 Morgan was purchasing drugs from a female assistant. On one occasion, Mr. Morgan  
15 commented to Ms. Oestreich that another female employee “should do coke” because she was  
16 walking slowly.

17  
18 24. Despite the hostile nature of the environment, Ms. Oestreich valued the opportunity to  
19 gain experience at the well known entertainment Companies and endeavored to do her best work.  
20 On or about December 19, 2003, Mr. Morgan informed Ms. Oestreich that he wished to reward  
21 her outstanding work performance by placing her on salary. Although Ms. Oestreich was  
22 subsequently issued a check in the amount of \$2,500 in January of 2004, she did not receive the  
23 salary that they had agreed upon. Shortly thereafter, Mr. Morgan assured Ms. Oestreich that she  
24 would soon receive medical benefits.

25  
26 25. On February 24, 2004, Ms. Oestreich was promoted to Vice President of Development.  
27 Despite this promotion, she was informed that she would not receive the salary that had been  
28 agreed upon, nor would she receive a raise. Ms. Oestreich is informed and believes that she was  
treated in a disparate manner to her male counterparts with respect to her salary, benefits, and

1 working conditions. Indeed, Ms. Oestreich was never paid her promised salary, was never  
2 provided benefits, was not given an office, and was reprimanded for enlisting the aid of an  
3 assistant when male executives were permitted to use assistants for any purpose, including  
4 picking up their lunches.

5  
6 26. On or about May 20, 2004, Ms. Oestreich was diagnosed with Mononucleosis and was  
7 required by her doctor to stay home for at least three weeks to recover. Upon being informed of  
8 her illness, Mr. Morgan suggested that Ms. Oestreich contracted “the kissing disease” by having  
9 “a threesome” with two other employees. During the first week she was at home recovering, and  
10 despite providing notice of her illness, she was asked by other employees to complete work from  
11 home. Against the advice of her physician, she returned to work on June 1, 2004, believing that  
12 if she did not, she would be terminated. As a result, her illness was aggravated causing her to  
13 feel extremely weak and her energy level to drop significantly.

14  
15 27. On or about June 15, 2004, Ms. Oestreich once again spoke to Mr. Morgan about her  
16 salary. Although Mr. Morgan had promised to place Ms. Oestreich on salary and offered medical  
17 benefits many months before, Ms. Oestreich was still not being paid as had been agreed upon.  
18 Mr. Morgan told Ms. Oestreich at this time that he did not feel she was as enthusiastic about her  
19 job as she had been previously and that he wanted to reduce her promised salary to \$50,000.00  
20 per year. Ms. Oestreich again explained to Mr. Morgan that she was indeed passionate about her  
21 job, but that she was suffering from an ongoing illness. It was during this conversation that Ms.  
22 Oestreich reiterated her requests that Mr. Morgan honor the agreement to pay her full salary and  
23 immediately provide her with medical insurance to cover her mounting medical costs. Mr.  
24 Morgan mockingly laughed at Ms. Oestreich and told her that she should not be so fixated on a  
25 paycheck and insurance if she wanted to be successful in the entertainment industry. His  
26 comments drove Ms. Oestreich to tears and it was only after he saw how upset she was, that Mr.  
27 Morgan agreed to look at her medical bills to see what could be done to assist her. However, Ms.  
28 Oestreich was never provided with medical insurance.

1 28. On or about July 8, 2004, Mr. Morgan informed Ms. Oestreich that she was terminated.  
2 A few days later, Mr. Morgan contacted Ms. Oestreich to request that she perform work for free.  
3 Ms. Oestreich declined the offer.

4  
5 29. Plaintiff is informed and believes that each and every executive officer including Senior  
6 Vice President - Brent Emery, President and COO - John Schwartz, CFO - Mark Vermut, and  
7 Office Manager/Producer - Eric Thompson, were present on occasions when Mr. Morgan  
8 engaged in sexually harassing and offensive conduct. However, not one of these individuals took  
9 action to reprimand Mr. Morgan or stop his unlawful behavior. Plaintiff is further informed and  
10 believes that the founders/operators/principals of the Companies, Madonna Ciccone, Guy  
11 Oseary, and Milton Kim knew or should have known at the time of Mr. Morgan's hire that he  
12 had a propensity for unlawful workplace behaviors including, but not limited to, inappropriate  
13 sexual conduct, sexual harassment, gender discrimination, and drug use, but failed to conduct a  
14 reasonable investigation of his background and failed to properly supervise his activities in the  
15 workplace.

16  
17 30. Plaintiff is informed and believes that at the time of the incidents described herein, the  
18 Companies did not have a policy against sexual harassment. Plaintiff is further informed and  
19 believes that the failure to maintain such a policy and the Companies' hostile response to her  
20 complaints are demonstrative of a pattern and practice on the part of the Companies in which  
21 they tacitly condone sexual harassment and fail to take reasonable action to prevent it.

22  
23 31. Prior to the filing of this action, Plaintiff filed timely complaints with the Department of  
24 Fair Employment and Housing alleging that the acts of Defendants, and each of them, established  
25 a violation of the Fair Employment and Housing Act, Government Code § 12900 et seq.

26 //  
27 //  
28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**

**SEXUAL HARASSMENT**

**IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT  
AGAINST DEFENDANT COMPANIES, MORGAN, AND DOES 1 THROUGH 25**

(Government Code § 12940 et seq.)

32. The allegations set forth in paragraphs 1 through 31 are incorporated herein by reference.

33. Beginning in or about September 2003, and lasting through the date of Plaintiff's termination in July 2004, Defendant Companies, Mark Morgan, and Does 1 through 25, sexually harassed Plaintiff as alleged herein. The harassment was sufficiently pervasive and severe as to alter the conditions of Plaintiff's employment and to create a hostile, intimidating and/or abusive work environment. Defendants' acts of sexual harassment included without limitation, the following:

- A. Creating and allowing a sexually hostile environment to exist for Plaintiff, including unwelcome, unreciprocated sexual comments, jokes, looks, and innuendos.
- B. Defendant Morgan's sexually offensive conduct including, but not limited to, touching female employees' breasts and requesting that female employees kiss one another.
- C. Defendant Morgan's sexually offensive language including, but not limited to, referring to a female producer as a "f\_cking cunt" and stating that he had not "f\_cked [the producer] yet" but would in order to get what he wanted, referring to the female President of Universal as a "slut", and referring to women in general as "cunts" and "whores" who made your life miserable in the workplace.
- D. Defendant Morgan's sexually explicit, harassing, and offensive e-mails to Plaintiff which were at all times unwelcome, uninvited, and non-consensual in nature.
- E. Defendant Morgan's inappropriate comments to Plaintiff about her body including, but not limited to, the comment that Plaintiff had "nice breasts."

- 1 F. Defendant Morgan's inappropriate comments to Plaintiff regarding his sex life  
2 including, but not limited to, informing Plaintiff that he used a sanding machine to  
3 give his wife an orgasm and making comments that "the condom broke" on an  
4 occasion when he suspected his wife was pregnant.
- 5 G. Defendant Morgan's inappropriate sexual inquiries to Plaintiff including, but not  
6 limited to, asking Plaintiff whether she thought she was "hot", whether she  
7 masturbated, whether she was going to "f\_ck" someone, whether she was going to  
8 "get laid", and whether she had sex with or wanted to have sex with particular  
9 individuals.
- 10 H. Defendants' ratification of Defendant Morgan and others' sexually harassing and  
11 discriminatory conduct in the workplace.
- 12 I. Defendants' failure to take immediate, appropriate, corrective action in response to  
13 Plaintiff's complaint of sexual harassment.
- 14 J. Defendants' failure to adequately investigate the charges, failure to take  
15 appropriate steps to prevent future harassment, and failure to take steps to ensure  
16 that there would be no retaliation.

17  
18 34. Plaintiff was continually subjected to a sexually hostile and intimidating work  
19 environment so severe that it unreasonably interfered with performance of her job functions and  
20 caused her severe emotional distress.

21  
22 35. The acts and conduct of Defendants, and each of them, as aforesaid, was in violation of  
23 California Government Code § 12940 et seq. Said statutes impose certain duties upon  
24 Defendants, and each of them, concerning discrimination and harassment against persons, such as  
25 Plaintiff, on the basis of sex. Said statutes were intended to prevent the type of injury and  
26 damages set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of  
27 persons intended to be protected by said statutes. At all times herein mentioned, Plaintiff was a  
28 person of the female sex and therefore entitled to the protection of California Government Code §  
12940 et seq.

1 36. Prior to the filing of this action, Plaintiff filed timely complaints with the Department of  
2 Fair Employment and Housing alleging that the acts of Defendants, and each of them, established  
3 a violation of the Fair Employment and Housing Act, Government Code § 12900 et seq.

4  
5 37. By the aforesaid acts and conduct of Defendants, and each of them, Plaintiff has been  
6 directly and legally caused to suffer actual damages pursuant to California Civil Code § 3333  
7 including, but not limited to, loss of earnings and future earning capacity, attorneys' fees, and  
8 other pecuniary losses not presently ascertained, for which Plaintiff will seek leave of Court to  
9 amend when ascertained.

10  
11 38. As a further direct and legal result of the acts and omissions of the Defendants, and each  
12 of them, Plaintiff has been caused to suffer and continues to suffer severe emotional and mental  
13 distress, physical sickness and injury, and has incurred medical bills for the treatment of these  
14 injuries.

15  
16 39. Plaintiff has been generally damaged in the amount within the jurisdictional limits of  
17 this Court.

18  
19 40. The aforementioned acts of Defendants, and each of them, were wilful, malicious,  
20 intentional, oppressive, and despicable and were done in wilful and conscious disregard of the  
21 rights and welfare of Plaintiff, thereby justifying the awarding of punitive and exemplary damages  
22 in an amount to be determined at the time of trial.

23  
24 41. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled to  
25 reasonable attorneys' fees and costs of said suit as provided by California Government Code §  
26 12965(b).

27  
28



1 E. Defendants' failure to take immediate, appropriate, corrective action in response to  
2 Plaintiff's charges of gender discrimination.

3 F. Defendants' failure to adequately investigate the charges, failure to take  
4 appropriate steps to prevent future discrimination, and failure to take steps to  
5 ensure that there would be no retaliation.

6  
7 44. Plaintiff was continually subjected to a sexually hostile and intimidating work  
8 environment so severe that it unreasonably interfered with the performance of her job functions  
9 and caused her severe emotional distress.

10  
11 45. The acts and conduct of Defendants, and each of them, as aforesaid, was in violation of  
12 California Government Code § 12940 et seq. Said statutes impose certain duties upon  
13 Defendants, and each of them, concerning discrimination and harassment against persons, such as  
14 Plaintiff, on the basis of sex. Said statutes were intended to prevent the type of injury and  
15 damages set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of  
16 persons intended to be protected by said statutes. At all times herein mentioned, Plaintiff was a  
17 person of the female sex and therefore entitled to the protection of California Government Code §  
18 12940 et seq.

19  
20 46. Prior to the filing of this action, Plaintiff filed timely complaints with the Department of  
21 Fair Employment and Housing alleging that the acts of Defendants, and each of them, established  
22 a violation of the Fair Employment and Housing Act, Government Code § 12900 et seq.

23  
24 47. As a result of the aforementioned acts and omissions by Defendant Companies, Morgan,  
25 and Does 1 through 25, Plaintiff has been directly and legally caused to suffer damages as alleged  
26 herein paragraphs 37 through 40.

27  
28 48. As a result of Defendants' harassing and discriminatory acts as alleged herein, Plaintiff is  
entitled to reasonable attorneys' fees and costs of suit as provided in § 12965(b) of the California

1 Government Code.

2  
3 **THIRD CAUSE OF ACTION**  
4 **RETALIATION FOR ENGAGING IN ACTIVITY PROTECTED**  
5 **BY THE FAIR EMPLOYMENT & HOUSING ACT**  
6 **AGAINST DEFENDANT COMPANIES, MORGAN, AND DOES 1 THROUGH 25**  
7 (Government Code § 12940(h))  
8

9 49. The allegations set forth in paragraphs 1 through 48 are incorporated herein by reference.

10  
11 50. As alleged herein and in violation of California Government Code § 12940(h),  
12 Defendant Companies, Morgan, and Does 1 through 25, and each of them, retaliated against  
13 Plaintiff for opposing the sexual harassment and discrimination to which she was subjected.  
14 Defendants acts of retaliation include, without limitation:

- 15  
16 A. Defendant Morgan's threat to Plaintiff that if she wanted to continue working at  
17 the Companies, she was not to express her dissatisfaction with his actions to other  
18 employees and that she would have to accept the fact that he "liked to party."  
19 B. Defendants' ratification of Defendant Morgan's sexually harassing and  
20 discriminatory conduct by its failure to adequately investigate the charges, failure  
21 to take appropriate steps to prevent future harassment, and failure to take steps to  
22 ensure that there would be no retaliation.  
23 C. Defendants' wrongful termination of Plaintiff.  
24

25 51. The acts and conduct of Defendants, and each of them, as aforesaid, was in violation of  
26 California Government Code § 12940 et seq. Said statutes impose certain duties upon  
27 Defendants, and each of them, concerning discrimination and harassment against persons, such as  
28 Plaintiff, on the basis of sex. Said statutes were intended to prevent the type of injury and  
damages set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of

1 persons intended to be protected by said statutes. At all times herein mentioned, Plaintiff was a  
2 person of the female sex and therefore entitled to the protection of California Government Code §  
3 12940 et seq.

4  
5 52. Prior to the filing of this action, Plaintiff filed timely complaints with the Department of  
6 Fair Employment and Housing alleging that the acts of Defendants, and each of them, established  
7 a violation of the Fair Employment and Housing Act, Government Code § 12900 et seq.

8  
9 53. As a result of the aforementioned acts and omissions by Defendant Companies, Morgan,  
10 and Does 1 through 25, Plaintiff has been directly and legally caused to suffer damages as alleged  
11 herein paragraphs 37 through 40.

12  
13 54. As a result of Defendants' harassing and discriminatory acts as alleged herein, Plaintiff is  
14 entitled to reasonable attorneys' fees and costs of suit as provided in § 12965(b) of the California  
15 Government Code.

16  
17 **FOURTH CAUSE OF ACTION**

18 **WRONGFUL TERMINATION**

19 **IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT**  
20 **AGAINST DEFENDANT COMPANIES AND DOES 1 THROUGH 25**

21 (Government Code § 12940 et seq.)

22  
23 55. The allegations set forth in paragraphs 1 through 54 are incorporated herein by reference.

24  
25 56. As alleged herein and in violation of California Government Code § 12940(a),  
26 Defendant Companies and Does 1 through 25 wrongfully terminated Plaintiff for opposing the  
27 sexual harassment and discrimination to which she was subjected.

28 57. The acts and conduct of Defendants, and each of them, as aforesaid, was in violation of

1 California Government Code § 12940 et seq. Said statutes impose certain duties upon  
2 Defendants, and each of them, concerning discrimination and harassment against persons, such as  
3 Plaintiff, on the basis of sex. Said statutes were intended to prevent the type of injury and  
4 damages set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of  
5 persons intended to be protected by said statutes. At all times herein mentioned, Plaintiff was a  
6 person of the female sex and therefore entitled to the protection of California Government Code §  
7 12940 et seq.

8  
9 58. Prior to the filing of this action, Plaintiff filed timely complaints with the Department of  
10 Fair Employment and Housing alleging that the acts of Defendants, and each of them, established  
11 a violation of the Fair Employment and Housing Act, Government Code § 12900 et seq.

12  
13 59. As a result of the aforementioned acts and omissions by Defendant Companies and Does  
14 1 through 25, Plaintiff has been directly and legally caused to suffer damages as alleged herein  
15 paragraphs 37 through 40.

16  
17 60. As a result of Defendants' harassing and discriminatory acts as alleged herein, Plaintiff is  
18 entitled to reasonable attorneys' fees and costs of suit as provided in § 12965(b) of the California  
19 Government Code.

20  
21 **FIFTH CAUSE OF ACTION**  
22 **BREACH OF EMPLOYMENT CONTRACT**  
23 **AGAINST DEFENDANT COMPANIES AND DOES 1 THROUGH 25**

24  
25 61. The allegations set forth in paragraphs 1 through 60 are incorporated herein by reference.

26  
27 62. In or about August 2003, a contract of employment was entered into between Plaintiff  
28 and Defendants. The essential terms of the contract were:

- 1 A. Plaintiff would work part-time 2-3 days a week as a Development Executive.  
2 B. Upon Defendants securing additional financing, Plaintiff would be made a full-  
3 time Executive, be put on payroll, and be paid retroactively for her part-time work.  
4 C. An annual salary of \$65,000.00.  
5 D. Credits for projects, production bonuses on greenlit projects, an expense account,  
6 and an assistant as needed.  
7 E. Standard benefits, including medical benefits, to take effect immediately.  
8 F. Continued employment so long as Plaintiff's work performance was satisfactory.

9  
10 63. On or about July 8, 2004, Defendants breached the contract by wrongfully terminating  
11 Plaintiff's employment.

12  
13 64. At all times during her employment, Plaintiff's work performance was excellent.  
14 Plaintiff has performed all obligations to Defendants except those obligations that she was  
15 prevented or excused from performing.

16  
17 65. By the aforesaid acts and omissions of Defendants in breaching their contract with  
18 Plaintiff, Plaintiff has been directly and legally caused to suffer actual damages including, but not  
19 limited to, loss of earnings, reliance damages, costs of suit, and other pecuniary losses not  
20 presently ascertained, in amounts to be proven at trial.

21  
22 66. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
23 Court.

24  
25 **SIXTH CAUSE OF ACTION**

26 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
27 **AGAINST DEFENDANT COMPANIES AND DOES 1 THROUGH 25**

28  
67. The allegations set forth in paragraphs 1 through 66 are incorporated herein by reference.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

68. Into every contract, the laws of the State of California imply a covenant of good faith and fair dealing which requires that neither party shall do anything to injure the right of the other party to receive the benefits of the agreement. The covenant not only imposes upon each party the duty to refrain from doing anything which will render performance of the contract impossible by any act of his or her own, but also imposes the duty to do everything that the contract presupposes he or she will do to accomplish the purposes.

69. As alleged herein, Defendants, and each of them, breached said covenant by committing the following acts, among others: (a) making misrepresentations to Plaintiff that she would be paid retroactively for the services she advanced; (b) making misrepresentations to Plaintiff that she would receive standard benefits, including medical benefits, (c) making misrepresentations to Plaintiff that her employment was secure so long as her performance remained satisfactory; (d) inducing Plaintiff to accept employment and to cease all efforts to seek other employment based on the foregoing misrepresentations; (e) terminating Plaintiff's employment without good, just, or legitimate cause in contravention of the foregoing representations and despite the fact that her work performance was excellent; (f) preventing Plaintiff from carrying out her part of the employment agreement and impairing her right to receive the benefits to which she was entitled pursuant to such agreement; and (g) failing to ensure that the workplace was free from unlawful sexual harassment, discrimination, and retaliation.

70. By the aforesaid acts and omissions of Defendants, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings, reliance damages, costs of suit, and other pecuniary losses not presently ascertained, in amounts to be proven at trial.

71. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

1 **SEVENTH CAUSE OF ACTION**

2 **PROMISSORY ESTOPPEL**

3 **AGAINST DEFENDANT COMPANIES, MORGAN, AND DOES 1 THROUGH 25**

4  
5 72. The allegations set forth in paragraphs 1 through 71 are incorporated herein by reference.

6  
7 73. As alleged herein Defendant Companies, Morgan, and Does 1 through 25 made promises  
8 to Plaintiff including, but not limited to, the following: (a) that Plaintiff would be paid  
9 retroactively for the services she advanced; (b) that Plaintiff would be provided with standard  
10 benefits, including medical benefits; (c) that Plaintiff's job was secure so long as her performance  
11 remained satisfactory; (d) that Plaintiff's job performance would be evaluated in a fair and  
12 impartial manner and that Plaintiff would be given an adequate opportunity to perform her duties  
13 as a Development Executive; and (e) that the workplace would be maintained in accordance with  
14 all applicable laws, rules, and regulations.

15  
16 74. Plaintiff is informed and believes that these promises were false and that Defendants  
17 made these promises with the intention of inducing Plaintiff to act, by accepting employment with  
18 Defendants, working in anticipation of payment, and forbearing seeking other available  
19 employment opportunities.

20  
21 75. Plaintiff detrimentally relied on these promises by, among other things: (1) accepting  
22 employment with Defendants; (2) working in anticipation of retroactive payment; and (3) not  
23 seeking other available employment opportunities.

24  
25 76. As a consequences of the foregoing, Defendants should be estopped from denying the  
26 promises alleged.

27  
28 77. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been  
directly and legally caused to suffer actual damages including, but not limited to, loss of earnings,

1 reliance damages, costs of suit, and other pecuniary losses not presently ascertained, in amounts to  
2 be proven at trial.

3  
4 78. Plaintiff has been generally damaged in an amount within the jurisdictional limits of  
5 this Court.

6  
7 **EIGHTH CAUSE OF ACTION**  
8 **NEGLIGENT MISREPRESENTATION**  
9 **AGAINST DEFENDANT COMPANIES, MORGAN, AND DOES 1 THROUGH 25**

10  
11 79. The allegations set forth in paragraphs 1 through 78 are incorporated herein by reference.

12  
13 80. The foregoing representations, omissions, and/or promises were made by Defendant  
14 Companies, Morgan, and Does 1 through 25, without any reasonable basis for believing them to  
15 be true and/or with no reasonable belief or intention of performing.

16  
17 81. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been  
18 directly and legally caused to suffer actual damages including, but not limited to, loss of earnings,  
19 reliance damages, costs of suit, and other pecuniary losses not presently ascertained, in amounts  
20 to be proven at trial.

21  
22 82. As a result of the aforementioned acts and omissions by Defendants, Plaintiff has been  
23 directly and legally caused to suffer damages as alleged herein paragraphs 37 through 39.

24  
25 **NINTH CAUSE OF ACTION**  
26 **NEGLIGENCE**  
27 **AGAINST ALL DEFENDANTS**

28  
83. The allegations set forth in paragraphs 1 through 82 are incorporated herein by reference.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

84. Defendant Companies, Ciccone, Oseary, Kim, Morgan, and Does 1 through 25, and each of them, owed Plaintiff a duty of care to act in a reasonable or ordinary manner.

85. Defendants failed to use ordinary or reasonable care in order to avoid injury to Plaintiff.

86. Defendant Morgan failed to exercise his duty of care not to engage in sexually harassing, discriminatory, and retaliatory conduct against Plaintiff.

87. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25, and each of them, knew or should have known that Plaintiff was being sexually harassed, discriminated and retaliated against, and that by failing to exercise due care to prevent it, such conduct could and would cause Plaintiff to suffer harm.

88. Defendants' conduct constitutes negligence and is actionable under the laws of California. Defendants' negligence was the legal cause of injury, damage, loss or harm to Plaintiff as alleged herein paragraphs 37 through 39.

**TENTH CAUSE OF ACTION**  
**NEGLIGENT HIRING**  
**AGAINST DEFENDANT COMPANIES, MADONNA CICCONE,**  
**GUY OSEARY, MILTON KIM, AND DOES 1 THROUGH 25**

89. The allegations set forth in paragraphs 1 through 88 are incorporated herein by reference.

90. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25, and each of them, owed Plaintiff a duty of care to act in a reasonable or ordinary manner with respect to hiring decisions.

91. At the time of Defendant Morgan's hire, Defendant Companies, Ciccone, Oseary, Kim,

1 and Does 1 through 25 knew or reasonably should have known that Defendant Morgan had a  
2 propensity for unlawful workplace behaviors including, but not limited to, inappropriate sexual  
3 conduct, sexual harassment, gender discrimination, and drug use and that as a direct and  
4 proximate result of hiring Defendant Morgan as CEO and Executive Officer of Defendant  
5 Companies, Plaintiff and other female employees would suffer injuries as alleged herein.

6  
7 92. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 failed to exercise  
8 due care by failing to conduct a reasonable investigation of Defendant Morgan's background prior  
9 to hiring him as an Executive Officer of Defendant Companies. As a direct and proximate result  
10 of Defendants' negligent hiring of Defendant Morgan, Plaintiff has suffered and continues to  
11 suffer injuries entitling her to damages in the amount to be proven at trial.

12  
13 93. Notwithstanding Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25's  
14 actual or constructive notice of Defendant Morgan's propensity to harass and discriminate, and his  
15 actual harassment and discrimination against subordinate female employees, Defendant  
16 Companies, Ciccone, Oseary, Kim, and Does 1 through 25 did nothing to prevent the sexual  
17 harassment and discrimination from occurring and failed to take prompt and appropriate remedial  
18 steps to correct the ongoing unlawful workplace behavior.

19  
20 94. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has  
21 been directly and legally caused to suffer damages as alleged in paragraphs 37 through 39.

22  
23 **ELEVENTH CAUSE OF ACTION**

24 **NEGLIGENT SUPERVISION**

25 **AGAINST DEFENDANT COMPANIES, MADONNA CICCONE,**

26 **GUY OSEARY, MILTON KIM, AND DOES 1 THROUGH 25**

27  
28 95. The allegations set forth in paragraphs 1 through 94 are incorporated herein by reference.

1 96. When engaging in the wrongful conduct alleged herein, Defendant Morgan was  
2 acting as an agent of Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25.  
3 Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 exercised control over  
4 Defendant Morgan because he was their employee, subject to their rules and regulations.

5  
6 97. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 knew or reasonably  
7 should have known that Defendant Morgan was sexually harassing, discriminating, and retaliating  
8 against Plaintiff and that, as a direct and proximate result of those violations, Plaintiff would  
9 suffer injuries as alleged herein.

10  
11 98. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 knew or reasonably  
12 should have known that unless they intervened to protect Plaintiff and properly supervise,  
13 prohibit, control, and/or regulate the conduct described herein, Defendant Morgan would perceive  
14 his acts and omissions to be ratified and condoned.

15  
16 99. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 failed to exercise  
17 due care by failing to supervise, prohibit, control, or regulate Defendant Morgan. As a direct and  
18 proximate result of Defendants' negligent supervision, control, or regulation of Defendant  
19 Morgan, Plaintiff has suffered and continue to suffer injuries entitling her to damages in the  
20 amount to be proven at trial.

21  
22 100. At all times alleged herein, Plaintiff was an employee of Defendant Companies,  
23 Ciccone, Oseary, Kim, and Does 1 through 25 and was owed a duty of due care. Defendant  
24 Companies, Ciccone, Oseary, Kim, and Does 1 through 25 knew or reasonable should have  
25 known that Plaintiff was being subjected to sexual harassment, discrimination, and retaliation and  
26 as a direct and proximate result of those violations, Plaintiff would suffer injuries as alleged  
27 herein.

28  
101. Plaintiff is informed and believes and thereon alleges that Defendants' failure to

1 maintain and/or communicate a policy against sexual harassment and discrimination and  
2 Defendant Morgan's hostile response to Plaintiff's complaints are demonstrative of a pattern and  
3 practice on the part of Defendants in which they tacitly condone sexual harassment,  
4 discrimination, and retaliation and fail to take reasonable action to prevent it. As a direct and  
5 proximate result of Defendants' negligent supervision of the work relationship between Plaintiff  
6 and Defendant Morgan, Plaintiff has suffered and continues to suffer injuries entitling her to  
7 damages in an amount to be proven at trial.

8  
9 102. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been  
10 directly and legally caused to suffer damages as alleged in paragraphs 37 through 39.

11  
12 **TWELFTH CAUSE OF ACTION**  
13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
14 **AGAINST DEFENDANT COMPANIES AND MARK MORGAN**

15  
16 103. The allegations set forth in paragraphs 1 through 102 are incorporated herein by  
17 reference.

18  
19 104. Defendant Companies, Morgan, and Does 1 through 25, engaged in extreme and  
20 outrageous conduct by intentionally and/or recklessly subjecting Plaintiff or permitting Plaintiff to  
21 be subjected to unwanted, unwelcome, and non-consensual sexual harassment, discrimination,  
22 and retaliation for complaining about sexual harassment and discrimination. Defendants, and  
23 each of them, ratified such conduct by failing and refusing to take any and all corrective action  
24 following such conduct, and in the case of Defendant Morgan, by engaging in such conduct. As a  
25 direct and legal result, Plaintiff was harmed, and continues to suffer harm, in an amount to be  
26 proven at trial.

27  
28 105. As alleged herein Defendant Morgan repeatedly subjected Plaintiff to sexual  
harassment, discrimination, and retaliation. Moreover, Defendant Companies, Morgan, and Does

1 1 through 25, created and fostered a sexually hostile work environment. Defendants, and each of  
2 them, failed and refused to take all reasonable steps necessary to prevent harassment and other  
3 unlawful conduct from occurring and to take appropriate corrective action following said  
4 harassment and as a direct and legal result, Plaintiff was harmed, and continues to suffer harm, in  
5 an amount to be proven at trial.

6  
7 106. As a direct legal result of Defendants' wilful, wanton, intentional, outrageous, and  
8 malicious conduct, Plaintiff suffered severe and extreme mental and emotional distress. Plaintiff  
9 is not currently aware of the exact duration or permanence of said injuries, but is informed and  
10 believes, and thereon alleges, that some of the injuries are reasonably certain to be permanent in  
11 nature.

12  
13 107. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has  
14 been directly and legally caused to suffer damages as alleged in paragraphs 37 through 40.

15  
16 **THIRTEENTH CAUSE OF ACTION**  
17 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
18 **AGAINST ALL DEFENDANTS**  
19

20 108. The allegations set forth in paragraphs 1 through 107 are incorporated herein by  
21 reference.

22  
23 109. As an employee of Defendant Companies, Ciccone, Oseary, Kim, Morgan, and Does 1  
24 through 25, and their managing agents, Plaintiff was owed a duty of due care by Defendants, and  
25 each of them, to ensure that Plaintiff was not exposed to foreseeable harms.

26  
27 110. Defendant Companies, Ciccone, Oseary, Kim, Morgan, and Does 1 through 25, and  
28 each of them, knew or should have known that Plaintiff was being subjected to sexual harassment,  
discrimination, and retaliation and that by failing to exercise due care to prevent it, such conduct

1 could and would cause Plaintiff to suffer severe emotional distress.

2  
3 111. Defendant Companies, Ciccone, Oseary, Kim, and Does 1 through 25 and each of them,  
4 failed to exercise their duty of due care to prevent their employees, managers, supervisors, and/or  
5 officers from sexually harassing, discriminating against, and retaliating against Plaintiff.

6  
7 112. Defendant Morgan failed to exercise his duty of care not to engage in sexually  
8 harassing, discriminatory, and retaliatory conduct against Plaintiff.

9  
10 113. As a direct and proximate result of the acts and conduct of Defendant Companies,  
11 Ciccone, Oseary, Kim, Morgan, and Does 1 through 25, and each of them, Plaintiff has been  
12 caused to suffer and continues to suffer severe emotional and mental distress, anguish,  
13 humiliation, embarrassment, shock, discomfort, and anxiety. The exact nature and extent of said  
14 injuries are presently unknown to Plaintiff, who will seek leave of Court to assert the same when  
15 they are ascertained. Plaintiff is not currently aware of the exact duration or permanence of said  
16 injuries but is informed and believes, and thereon alleges, that some of the injuries are reasonably  
17 certain to be permanent in nature.

18  
19  
20 Wherefore, Plaintiff prays judgment against Defendants, and each of them, as follows:

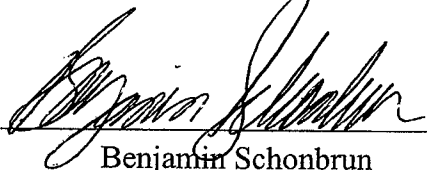
- 21  
22 1. For general damages in an amount within the jurisdiction limits of this Court  
23 according to proof;
- 24 2. For medical expenses and related items of expenses, according to proof;
- 25 3. For loss of earnings, according to proof;
- 26 4. For punitive and exemplary damages, according to proof;
- 27 5. For costs of suit;
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 6. For attorneys' fees pursuant to California Government Code § 12965.
- 7. For such other and further relief as the Court may deem just an proper.

Dated: March 9, 2005

SCHONBRUN DESIMONE SEPLAW  
HARRIS & HOFFMAN LLP

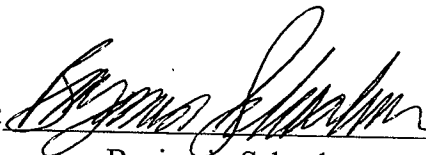
By:   
Benjamin Schonbrun  
K. Arianne Jordan  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all issues.

Dated: March 9, 2005

SCHONBRUN DESIMONE SEPLOW  
HARRIS & HOFFMAN LLP

By: 

Benjamin Schonbrun  
K. Arianne Jordan  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28