

<input checked="" type="checkbox"/> MEDIATOR <input type="checkbox"/> SETTLEMENT OFFICER (Name, Address, Telephone, Fax, and E-Mail): JACK P. JAYE 1647 MICHAEL LN. PAC. PAC, LA 90272 T-310-459-4247 F-310-459-2790 E-JACK.JAYE@ VERIZON.NET		Reserved for Clerk's File Stamp
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
COURT ADDRESS: SANTA MONICA		
PLAINTIFF: ROCKY LEONARD WORTH		
DEFENDANT: VIPER ROOM, INC., ET AL		
STIPULATION RE SETTLEMENT		CASE NUMBER: SC 073752

This case having come on this date for a mediation settlement conference before the assigned Neutral,

JACK P. JAYE, and the parties having conferred, IT IS HEREBY STIPULATED THAT
(NAME OF NEUTRAL)

this matter is deemed settled pursuant to the following terms and conditions:

1. payment by D of \$13,500 to TI and
WURZL
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NOV 21 2003
SUPERIOR COURT
WEST DISTRICT
SANTA MONICA

MEDIATOR (Name and Address): JACK P. JAYE 1647 MICHIGAN IN., PACIFIC PAL., CA 90272 TELEPHONE NO.: 310-459-4247 FAX NO. (Optional): 310-459-2790 E-MAIL ADDRESS (Optional): JACK.JAYE@VERIZON.NET	FILED LOS ANGELES SUPERIOR COURT NOV 21 2003 JOHN A. CLARKE, CLERK A. Webb DEPUTY CASE NUMBER: SC 073752
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 1725 MAIN STREET MAILING ADDRESS: SANTA MONICA, CA 90401 CITY AND ZIP CODE: BRANCH NAME: SANTA MONICA CASE NAME: ROCKY GEORGE VS VIPER ROOM, INC., ET AL	
STATEMENT OF AGREEMENT OR NONAGREEMENT <input checked="" type="checkbox"/> First <input type="checkbox"/> Supplemental	

NOTE: This form must be used by mediators in the Civil Action Mediation Program (Code Civ. Proc., § 1775 et seq.) and in the Early Mediation Pilot Program (Code Civ. Proc., § 1730 et seq.).

1. This case was filed on (date if known): **SEPTEMBER 3, 2002**
2. I was selected as the mediator in this matter on (date): **SEPTEMBER 19, 2002**
3. Mediation (check one):
 - a. did not take place.
 - (1) A party who was ordered to appear at the mediation did not appear.
 - (2) Other reason (please specify without disclosing any confidential information):
 - b. took place on (date or dates): **NOVEMBER 21, 2003**
and lasted a total of _____ hours.
4. The mediation has not ended. I submit this form to comply with the court's requirement to do so by a specified date.
5. The mediation ended (check one):
 - a. in full agreement by all parties on (date): **NOVEMBER 21, 2003**
 - b. in partial agreement
 - (1) in full agreement as to the following parties:
on (date):
 - (2) in full agreement as to limited issues on (date):
 - c. in nonagreement.

Date: **NOVEMBER 21, 2003**

JACK P. JAYE

(TYPE OR PRINT NAME)



(SIGNATURE OF MEDIATOR)

NOTE: Within 10 days of the conclusion of the mediation or, when applicable, by the deadline set by the court, the mediator must serve a copy of this statement on all parties and file the original, with proof of service, with the court clerk. The proof of service on the back of this form may be used.

CERTIFIED
MAILING

CASE NAME:

ROCKY HORROR VS VIPER ROOM, INC.

CASE NUMBER:

SC 073752

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My residence or business address is (specify):

1647 MICHAEL LANE
PACIFIC PALISADES, CA 90272

3. I mailed or personally delivered a copy of the *Statement of Agreement or Nonagreement* as follows (complete either a or b):

a. Mail. I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope and

(a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(b) placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served:

(b) Address on envelope:

(c) Date of mailing:

(d) Place of mailing (city and state):

b. Personal delivery. I personally delivered a copy as follows:

(1) Name of person served:

ROBERT SHIRI, ESQ.

(2) Address where delivered:

501 SANTA MONICA BL.
SANTA MONICA, CA 90401

DAVID WHISBERG
1801 CENTURY PLAZA EAST
L.A., CA 90067

(3) Date delivered: NOVEMBER 21, 2003

(4) Time delivered:

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

Date: NOVEMBER 21, 2003

JACK P. JAYE

(TYPE OR PRINT NAME)

JACK P. JAYE

(SIGNATURE OF DECLARANT)

CASE NAME:

ROCKY UDRICH VS VIPER ROOM, INC, ET AL

CASE NUMBER:

SC 073752

2. The Plaintiff agrees to accept said sum as payment in full of all (his/her/their) claims, known or unknown, arising from the events described in the complaint with the knowledge that (he/she/they) will be barred from proceeding against the Defendants(s) in the future regardless of what might happen.
3. Each party will bear its own court costs.
4. Parties shall execute mutual releases of all claims.
5. This settlement may be enforced pursuant to California Code of Civil Procedure Section 664.6 in the Superior Court of Los Angeles County. (If parties to pending litigation stipulate, in writing, for settlement of the case, or part thereof, the Court, upon motion, may enter judgment pursuant to the terms of the settlement.).

Additional pages attached (number) ____.

Date: NOVEMBER 21, 2003

.....Rocky Siman.....

(TYPE OR PRINT NAME)

► Robert Mlin

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

.....David Weisberg.....

(TYPE OR PRINT NAME)

► David Weisberg

(SIGNATURE OF ATTORNEY FOR DEFENDANT)

.....Rocky Leonard George, Jr.....

(TYPE OR PRINT NAME)

► Robert Mlin for

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

.....Mark F. Goeks.....

(TYPE OR PRINT NAME)

► M.F. Goeks

(SIGNATURE OF ATTORNEY FOR DEFENDANT)

.....

(TYPE OR PRINT NAME)

► _____

(SIGNATURE OF ATTORNEY FOR _____)

ACCEPTED:

Date: NOVEMBER 21, 2003

.....JACK P. TAYE.....

(TYPE OR PRINT NAME)

► Jack P. Tye

(SIGNATURE OF NEUTRAL)

11/11/03

1 Robert R. Shiri (SBN 150892)
2 SHIRI & DARDASHTI, LLP
3 501 Santa Monica Blvd., Suite 610
Santa Monica, CA 90401-2432
(310)829-9943 (310)899-9844 Fax

4 Attorney for Plaintiff,
5 ROCKY LEONARD GEORGE, JR.

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FILED
LOS ANGELES SUPERIOR COURT

NOV 07 2003

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JOHN A. CLARKE, CLERK
R. Estrada
MEYA ESTRADA, DEPUTY

NOV 07 2003
SUPERIOR COURT
WEST DISTRICT
SANTA MONICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

11 ROCKY LEONARD GEORGE, JR.,

12 Plaintiff,

13 vs.

14 VIPER ROOM INC.; JOHNNY
DEPP; and DOES 1-50, inclusive,

15 Defendants.

CASE NO.: SC073752

(Assigned for all purposes to the
Hon. Richard Neidorf - Dept. "O")

PLAINTIFF'S OPPOSITION TO
DEFENDANT SAFE IN HEAVEN
DEAD, INC. dba THE VIPER
ROOM MOTION TO STRIKE
PUNITIVE DAMAGES FROM
PLAINTIFF'S FIRST AMENDED
COMPLAINT

Date: November 17, 2003
Time: 9:00 a.m.
Dept.: "O"

Date Complaint Filed: 9/3/02
Trial date: 12/31/03

23 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

24 Plaintiff ROCKY LEONARD GEORGE, JR. ("Plaintiff") files this opposition
25 to Defendant SAFE IN HEAVEN DEAD, INC.'s dba THE VIPER ROOM
26 ("Defendant") Motion to Strike Punitive Damages from Plaintiff's First Amended
27 Complaint.

28 //

1 **I. PRELIMINARY STATEMENT**

2 On or about September 12, 2001, Plaintiff ROCKY LEONARD GEORGE, JR.,
3 visited the Defendant SAFE IN HEAVEN DEAD, INC. dba VIPER ROOM nightclub
4 establishment in West Hollywood, California, as a lawful invitee/patron. Defendant's
5 premises were supervised by several security guards/bouncers employed by
6 Defendant, including "Big Ed" Shaw, Tim Wayne, Bob Brister, and Teddy
7 McClendon, who were responsible for admitting and controlling the
8 customers/patrons in or on Defendant's premises.

9 At approximately 2:00 a.m., Plaintiff was peacefully exiting the nightclub when,
10 suddenly and without warning, he was physically attacked by Defendant's security
11 personnel, including "Big Ed" Shaw and others. Plaintiff subsequently reported the
12 subject incident to the Los Angeles Sheriff's Department at the West Hollywood Station,
13 file number 101-06453-0978-144. Defendant's The Viper Room nightclub and its
14 security personnel, including "Big Ed" Shaw, are known to have a history of violence
15 against patrons. In fact, prior to the subject incident Defendant had received
16 complaints of injuries inflicted by its security personnel from not less than nine (9)
17 previous patrons. Plaintiff therefore contends that Defendant knew of the violent
18 behavior of its security personnel, including "Big Ed" Shaw and others, and ratified such
19 conduct.

20 Plaintiff filed suit against Defendant for Negligence, Assault and Battery and
21 Premises Liability. On August 25, 2003, Plaintiff filed a First Amended Complaint (a
22 true and correct copy of which is attached hereto as Exhibit "A") against Defendant,
23 alleging Negligence and Negligent Hiring and Retention. Plaintiff seeks punitive
24 damages based on Defendant's Negligent Hiring and Retention, as Defendant knew of
25 the violent propensities of its security personnel, including "Big Ed" Shaw and others,
26 and ratified and encouraged said conduct, thereby meeting the requirements for
27 "malice" under California Civil Code Section 3294.

28 ///

1 **II. GENERAL PRINCIPALS OF LAW**

2 Punitive damages are the most effective remedy for consumer protection against
3 violent behavior. California Civil Code Section 3294 (a) states:

4 In an action for the breach of an obligation not arising from
5 contract, where it is proven by clear and convincing evidence
6 that the defendant has been guilty of oppression, fraud, or
7 malice, the plaintiff, in addition to the actual damages, may
8 recover damages for the sake of example and by way of
9 punishing the defendant. Civ. Code § 3294 (a) (emphasis added).

10 Similarly, an employer is liable for punitive damages based on its employees'
11 acts where said employer,

12 had advance knowledge of the unfitness of the employee
13 and employed him... with a conscious disregard of the rights
14 or safety of others or authorized or ratified the wrongful
15 conduct for which the damages are awarded or was personally
16 guilty of oppression, fraud or malice. Civ. Code § 3294 (b).

17 The landmark California case Grimshaw v. Ford Motor Company (1981) 119 Cal.
18 App. 3d 757, 174 Cal. Rptr. 348, held that the term "malice" as used in California Civil
19 Code Section 3294 is not limited to only allegations of a malicious intention to injure the
20 specific person harmed. In fact, a complaint may meet the malice requirement by also
21 alleging conduct that evinces a conscious disregard of the probability that the actor's
22 conduct will result in injury to others. Id. See also Civ. Code § 3294 (c) (1).

23 Court are increasingly liberal as to what constitutes sufficient "fact-pleading" on
24 Plaintiff's claim for punitive damages. The complaint will be read as a whole so that
25 even conclusory allegations may suffice when read in context with facts alleged as the
26 Defendant's wrongful conduct. Perkins v. Superior Court (General Tel. Directory Co.)
27 (1981) 117 Cal. App. 3d 1, 6-7, 172 Cal. Rptr. 427, 430; Monge v. Superior Court
28 (Crown Gibraltar) (186) 176 Cal. App. 503, 510, 222 Cal. Rptr. 64, 67.

1 In the present case, Plaintiff has sufficiently pleaded facts to meet the
2 requirements of **malice** under Civil Code Section 3294 and as further established by
3 Grimshaw v. Ford Motor Company, and is therefore entitled to pursue a request for
4 punitive damages. In particular, Plaintiff's First Amended Complaint alleges the
5 following specific facts pertinent to Plaintiff's prayer for punitive damages:

6 11. ... Defendant SAFE IN HEAVEN DEAD, INC. dba THE
7 VIPER ROOM was made aware through other complaints
8 from patrons of bouncer "Big Ed" violent and uncontrollable
9 nature and continued to employ him, despite the fact that
10 police had been called to question him for numerous prior
11 instances of violence against other patrons.

12 First Amended Complaint, P. 4, ¶ 11, L. 11-15.

13 16. Plaintiff is informed and believes and thereon alleges that
14 all named defendant SAFE IN HEAVEN DEAD, INC. dba
15 THE VIPER ROOM knew that at Defendant's premises
16 the security personnel and bouncers like "Big Ed" were not
17 properly checked out for criminal and violent background
18 checks. In fact, despite knowing of "Big Ed" violent criminal
19 history, SAFE IN HEAVEN DEAD, INC. dba THE VIPER
20 ROOM employed him as a bouncer and continued to
21 employ him in that capacity, in conscious disregard for the
22 safety and security of patrons like Plaintiff. Thereby
23 SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM
24 knowingly placing patrons like Plaintiff in harm's way.

25 First Amended Complaint, P. 5, ¶ 16, L. 6-14.

26 18. Plaintiff is further informed and believes and thereon
27 alleges that Defendant SAFE IN HEAVEN DEAD, INC.
28 dba THE VIPER ROOM knew from prior similar violent

1 criminal acts, caused by bouncers at the Viper Room,
2 including, violent criminal acts of bouncer "Big Ed". In
3 fact, the West Hollywood Sheriff's Department has
4 notified and cited management of the SAFE IN HEAVEN
5 DEAD, INC. dba THE VIPER ROOM of the violent
6 criminal acts of bouncers including "Big Ed" and rather
7 then terminated bouncers including "Big Ed" for such
8 violent and criminal conduct, SAFE IN HEAVEN DEAD,
9 INC. dba THE VIPER ROOM has ratified and
10 encouraged the violent and criminal acts of their employees
11 including that of bouncer "Big Ed".

12 First Amended Complaint, P. 5, ¶ 18, L. 19-27.

13 As stated above, Plaintiff's First Amended Complaint sufficiently alleges specific
14 facts that Defendant knew of prior similar criminal violence and behavior committed by
15 its security personnel, including "Big Ed" Shaw and others, against Defendant's patrons
16 and customers, yet did nothing to stop such violence and behavior. In fact, Defendant
17 ratified said conduct, thereby meeting the requirements at the pleading stages for
18 Plaintiff's claim for punitive damages.

19 **III. DEFENDANT FURTHER RATIFIED ITS SECURITY**
20 **PERSONNEL'S VIOLENT ATTACK AGAINST PLAINTIFF**

21 Defendant further ratified its security personnel's violent attack against Plaintiff
22 by failing to terminate said employees, including "Big Ed" Shaw and others, after
23 learning of, or having an opportunity to learn of, the subject incident. Instead,
24 Defendant continued to employ said security personnel.

25 Plaintiff's First Amended Complaint states, in part, "Plaintiff report[ed] the
26 incident to the West Hollywood Sheriff Department." First Amended Complaint, P. 3, ¶
27 8, L. 19-20. Plaintiff was informed and believes that the Sheriff's Department
28

1 investigated the subject incident, thereby notifying Defendant, or providing Defendant
2 the opportunity to learn, of the violent nature of its employees' attack on Plaintiff.
3

4 The court considered the issue of ratification as it applies to punitive damages
5 under California Civil Code Section 3294 in Greenfield v. Spectrum Investment Corp.
6 (1985) 174 Cal.App.3d 111, 219 Cal.Rptr. 805, wherein a Budget Rent-A-Car office
7 continued employing an irascible, volatile employee, even after said employee violently
8 assaulted a customer who was exiting the office. According the court, “[f]ailure to
9 discharge [said] employee under such circumstances is evidence in and of itself to
10 show ratification.” Greenfield v. Spectrum Investment Corp. (1985) 174 Cal.App.3d
11 111, 121, 219 Cal.Rptr. 805, 811 (overruled on other grounds); see also Coats v.
12 Construction and General Laborers Local No. 185 (1971) 15 Cal.App.3d 908, 914, 93
13 Cal.Rptr. 639, 642 (“If the employer after knowledge or opportunity to learn of the
14 [employee’s] misconduct retains the wrongdoer in service, the employer may make
15 himself liable in punitive damages.” (citing Shoopman v. Pacific Greyhound Lines
16 (1959) 169 Cal.App.2d 848, 856)).

17 Similar to Budget Rent-A-Car in Greenfield, the Defendant in the present case
18 further ratified its employees' violent attack on Plaintiff by continuing to employ the
19 security personnel, including “Big Ed” Shaw and others, after learning of, or having the
20 opportunity to learn of, the subject incident through the Sheriff Department's
21 investigation and/or through Defendant's own internal investigation.

22 To this date, Defendant has made no claim that any of said security personnel
23 who violently attacked Plaintiff in the subject incident have been terminated.

24 Plaintiff seeks punitive damages at the pleading stage with regard to the
25 second cause of action so pleaded: Negligent Hiring and Retention. Plaintiff has
26 sufficiently alleged punitive damages pursuant to Civil Code Section 3294. Plaintiff has
27 made an adequate showing of “malice” at this stage of the proceedings, and has
28 properly requested punitive damages pursuant to Civil Code Section 3294.

1

2 **V. CONCLUSION**

3

4 Based on the foregoing, Defendant's motion to strike the punitive damages
5 portions of Plaintiff's Complaint should be denied and Defendant be ordered to answer
6 the Complaint within 20 days.

7 In the alternative, if the Court determines that Defendant's Motion to Strike
8 Punitive Damages from Plaintiff's First Amended Complaint, Plaintiff respectfully
9 requests that the Court grant Plaintiff leave to amend.

10 Respectfully Submitted

11 DATED: November 3, 2003

12 SHIRI & DARDASHTI, LLP

13 By: Robert Shir
14 ROBERT R. SHIRI
15 Attorney for Plaintiff,
16 ROCKY LEONARD GEORGE, Jr.

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Exhibit "A"

1 SHIRI & DARDASHTI, LLP
2 Robert R. Shiri, Esq. State Bar #150892
3 501 Santa Monica Boulevard, Suite 610
Santa Monica, California 90401
3 TEL: (310) 829-9943 FAX: (310) 899-9844

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 25 2003

John A. Clarke, Executive Officer/Clerk

By N. Estrada, Deputy

5 Attorneys for Plaintiff
6 ROCKY LEONARD GEORGE, JR.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES, WEST DISTRICT

10
11 ROCKY LEONARD GEORGE, JR.,) CASE NO.: SC073752
12 Plaintiff,) (Assigned for all purposes to the Hon.
13 vs.) Richard Neidorf - Dept. "O")
14 VIPER ROOM, INC.; JOHNNY DEPP; and) PLAINTIFF'S FIRST AMENDED
15 DOES 1 through 50, inclusive,) COMPLAINT
16 Defendants.) 1. NEGLIGENCE; and
17) 2. NEGLIGENT HIRING AND
18) RETENTION
19) Date Complaint Filed: 09-03-02
20) Trial Date: 12-31-03
21)
22 Plaintiff ROCKY LEONARD GEORGE, JR. ("Plaintiff") hereby files the following
23 First Amended Complaint.
24
THE PARTIES
25
26 1. Plaintiff ROCKY LEONARD GEORGE, JR. is, and all times mentioned
herein was, a resident of the County of Los Angeles, State of California.
27
28 2. The incident alleged herein that is the subject matter of this complaint and
lawsuit occurred on September 12, 2001, at the Viper Room, owned by SAFE IN
HEAVEN DEAD, INC. dba THE VIPER ROOM ("Viper Room") a nightclub located at

1 8852 Sunset Boulevard, West Hollywood, in the County of Los Angeles, State of
2 California.

3 3. Defendant JOHNNY DEPP is, and all times mentioned herein was, a
4 resident of the County of Los Angeles, State of California.

5 4. Plaintiff is informed and believes and thereon alleges that DOE
6 Defendants 1 through 25, inclusive, are, and at all relevant times were, the
7 owners, operators, managers, agents, officers, directors, shareholders, partners
8 and/or joint venturers of and in Defendant Viper Room, and so operated,
9 managed, and controlled Defendant Viper Room in such a manner, and as their
10 alter ego, that they did not observe any business, corporate or other formalities
11 and distinctions between themselves and Defendant Viper Room, such that the
12 corporate veil, if any, of Defendant Viper Room and defendant DOES 1 through
13 25, inclusive, should be pierced.

14 5. Plaintiff is unaware of the true names and capacities of defendants
15 sued herein as DOES 1 through 25, inclusive, whether individual, corporate,
16 associate or otherwise, and therefore sues these defendants by such fictitious
17 names. Plaintiff will seek leave of the Court to amend this Complaint to allege
18 their true names and capacities when ascertained. Plaintiff is informed and
19 believes and thereon alleges that each of the fictitiously named defendants is
20 responsible in some actionable manner for the events and occurrences herein
21 alleged and that Plaintiff's damages as herein alleged were proximately caused
22 by their conduct.

23 6. Plaintiff is informed and believes and thereon alleges that each DOE
24 defendant designated herein is responsible for the events and occurrences
25 alleged herein, which were the substantial cause of injury and damages to
26 plaintiff, as herein alleged.

27 7. Plaintiff is informed and believe and, based thereon, alleges that at all
28 times mentioned herein, Defendants, and each of them, were the agents, principals,

1 partners, associates, joint venturers, employees and/or co-conspirators of each of the
2 remaining co-Defendants; that the Defendants, and each of them, were at all times
3 acting within the course, purpose and scope of said agency, partnership, association,
4 joint venture employment and/or conspiracy and that Defendants, and each of them,
5 were acting with the full knowledge, agreement, authorization, ratification, either express
6 or implied, permission and/or consent of the remaining co-Defendants, and are,
7 therefore, liable, vicariously and/or otherwise, jointly and severally, for the damages and
8 injury they caused Plaintiff.

9

10 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 8. On September 12, 2001, at approximately 2:00 A.M., Plaintiff ROCKY
12 LEONARD GEORGE, JR. was a lawful invitee/patron visiting the Defendant VIPER
13 ROOM in West Hollywood, California. Defendants' premises were supervised by
14 several security guards/bouncers who were responsible for admitting and
15 controlling the customers/patrons in or on Defendants' premises. Plaintiff was
16 walking out of the night club when, suddenly and without warning, two security
17 guards/bouncers, one known as "Big Ed" and the other name unknown to Plaintiff,
18 physically attacked Plaintiff, punching him to the ground and then kicking him in the face,
19 causing facial bruising and broken teeth. Plaintiff report the incident to the West
20 Hollywood Sheriff Department.

21 9. The above conduct was the substantial cause of severe damage and
22 injury to Plaintiff, as well as emotional distress, general and compensatory
23 damages, medical expenses, loss of earnings and loss of earning capacity, all as
24 hereinafter alleged. In fact, Plaintiff was beaten in the face, causing facial bruising and
25 broken teeth.

26 \\

27 \\

28 \\

1 FIRST CAUSE OF ACTION FOR NEGLIGENCE

2 (Negligence against Defendant SAFE IN HEAVEN DEAD, INC.

3 dba THE VIPER ROOM and DOES 1 through 25, inclusive)

4 10. Plaintiff repeats and realleges herein Paragraphs 1 through 9, inclusive, of
5 this complaint as though fully set forth at length herein.

6 11. Plaintiff is informed and believes and thereon alleges that
7 Defendants, knew or should have known that, if they did not exercise due care in
8 their conduct and behavior, plaintiff and other patrons or customers would be
9 substantially injured and damaged by their conduct and behavior. Defendant
10 SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM employed bouncer "Big Ed"
11 knowing his past criminal and violent conduct. In addition, Defendant SAFE IN HEAVEN
12 DEAD, INC. dba THE VIPER ROOM was made aware through other complaints from
13 patrons of bouncer "Big Ed" violent and uncontrollable nature and continued to employee
14 him, despite the fact that police had been call to question him for numerous prior
15 instances of violence against other patrons.

16 12. These defendants, and each of them, were therefore under a duty to
17 exercise due care over their employees including bouncers like "Big Ed".

18 13. Defendants, and each of them, failed and neglected to exercise due
19 care in their conduct and behavior of their employees including bouncer "Big Ed"
20 toward Plaintiff.

21 14. As a direct result of the failure and neglect of Defendants, and each of
22 them, to exercise due care in their conduct and behavior, their above referenced
23 conduct was the cause of severe damage and injury to Plaintiff, including
24 personal and bodily injury, emotional distress, general and compensatory
25 damages, medical expenses, loss of earnings and earnings capacity, in amounts
26 unknown at this time but beyond this Court's jurisdictional minimum. In fact,
27 Plaintiff was beaten in the face, causing facial bruising and broken teeth.

28 \\

1 SECOND CAUSE OF ACTION FOR NEGLIGENT HIRING AND RETENTION

2 (Against Defendant, SAFE IN HEAVEN DEAD, INC. dba

3 THE VIPER ROOM and DOES 1 through 25, inclusive)

4 15. Plaintiff repeats and realleges herein Paragraphs 1 through 14, inclusive, of
5 this complaint as though fully set forth at length herein.

6 16. Plaintiff is informed and believes and thereon alleges that all named
7 defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM knew that at
8 Defendant's premises the security personnel and bouncers like "Big Ed" were not
9 properly check out for criminal and violent background checks. In fact, despite knowing
10 of "Big Ed" violent criminal history, SAFE IN HEAVEN DEAD, INC. dba
11 THE VIPER ROOM employed him as a bouncers and continued to employee in that
12 capacity, in conscious disregard for the safety and security of patrons like Plaintiff.
13 Thereby SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM knowingly placing
14 patrons like Plaintiff in harms way.

15 17. Moreover, SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM failed to
16 properly train and supervision their security personnel\bouncers like "Big Ed" once again
17 knowingly placing patrons like Plaintiff in harms way, in conscious disregard for the
18 safety and security of patrons like Plaintiff.

19 18. Plaintiff is further informed and believes and thereon alleges that Defendant
20 SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM knew from prior similar violent
21 criminal acts, caused by bouncers at the Viper Room, including, violent criminal acts of
22 bouncer "Big Ed". In fact, the West Hollywood Sheriff's Department has notified and
23 cited management of the SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM of the
24 violent criminal acts of bouncers including "Big Ed" and rather then terminated bouncers
25 including "Big Ed" for such violent and criminal conduct, SAFE IN HEAVEN DEAD, INC.
26 dba THE VIPER ROOM has ratified and encouraged the violent and criminal acts of their
27 employees including that of bouncer "Big Ed".

28

1 19. Such ratification of the conduct of bouncers like "Big Ed" known of the past
2 violent criminal behavior by management of SAFE IN HEAVEN DEAD, INC. dba
3 THE VIPER ROOM, entitles Plaintiff to an award of punitive or exemplary damages
4 under California Civil Code Section 3294(a) and (c).

5 California Civil Code section 3294(a) and (c) is the controlling authority, which
6 states:

7 "In an action for the breach of an obligation not arising from contract, where
8 it is proven by clear and convincing evidence that the defendant has been
9 guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual
10 damages, may recover damages for the sake of example and by way of
11 punishing the defendant." Malice' means conduct which is intended by the
12 defendant to cause injury to the plaintiff or despicable conduct which is
13 carried on by the defendant with a willful and conscious disregard of
14 the rights and safety of others. (emphasis added)

15 As the landmark, California case of Grimshaw v. Ford Motor Company (1981) 119
16 Cal. App. 3d 757, 174 Cal. Rptr. 348, which held that the term "malice" as used in
17 California Civil Code, Section 3294, authorizing punitive damages, as used in the statute
18 need not include only a malicious intention to injure the specific person harmed, but only
19 allege conduct evincing a conscious disregard of the probability that the actor's conduct
20 will result in injury to others. (emphasis added).

21 Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM knew of prior
22 similar criminal violence and behavior against patrons and customers by bouncers, like
23 "Big Ed," but did nothing to stop it. As such, fact Defendant SAFE IN HEAVEN DEAD,
24 INC. dba THE VIPER ROOM ratified the conduct, thereby allowing Plaintiff to make a
25 claim for punitive damages.

26 20. Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM was
27 therefore under a duty to exercise care to supervise, operate, maintain, entrust, and
28

1 protect and patrol with security, the invitees and patrons of Defendant SAFE IN HEAVEN
2 DEAD, INC. dba THE VIPER ROOM and control the behavior of their employees.

3 21. Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM failed
4 and neglected to exercise care to supervise, operate, maintain, entrust, and protect and
5 patrol with security, the invitees and patrons of Defendant and moreover, ratified and
6 encouraged the criminal conduct of their employees, like bouncer "Big Ed".

7 22. As a direct result of the failure and neglect of Defendant SAFE IN HEAVEN
8 DEAD, INC. dba THE VIPER ROOM to exercise due care, the above conduct was the
9 substantial cause of severe damage and injury to Plaintiff, including personal and bodily
10 injury, emotional distress, general and compensatory damages, medical expenses, loss
11 of earnings and earnings capacity, in amounts unknown at this time but beyond this
12 Court's jurisdictional minimum.

13 23. Moreover, as Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER
14 ROOM knew of the past violent criminal behavior of their employees including bouncer
15 "Big Ed" and ratified and encouraged their violent criminal behavior, Defendant SAFE IN
16 HEAVEN DEAD, INC. dba THE VIPER ROOM is guilty of malice and Plaintiff is entitled
17 to punitive or exemplary damages pursuant to Civil Code Section 3294, in an amount
18 according to proof at trial.

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28

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. General damages in an amount which will conform to proof at the time of trial;
 2. Special damages for medical and related expenses according to proof;
 3. For loss of earnings and loss of future earning capacity according to proof;
 4. For punitive or exemplary damages, pursuant to the Second Cause of Action;
 5. For costs of suit incurred herein;
 6. For prejudgment interest as provided by law; and
 7. And for such other and further relief as the court may deem just and proper.

Respectfully Submitted,

Dated: August 22, 2003

SHIRI & DARDASHTI, LLP

Bvz

Robert Shiri
ROBERT R. SHIRI
Attorneys for Plaintiff
ROCKY LEONARD GEORGE, JR.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 501 Santa Monica Blvd., Suite 610, Santa Monica, CA 90401-2432.

On August 25, 2003, I served the foregoing document described as **PLAINTIFF'S FIRST AMENDED** on all concerned parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Michael N. Schonbuch, Esq.
David L. Weisberg, Esq.
DANIELS, FINE, ISRAEL & SCHONBUCH, LLP
1801 Century Park East, 9th Floor
Los Angeles, CA 90067

____ (BY FACSIMILE) I transmitted the foregoing document to interested parties in this action from fax number (310)899-9844 to fax number

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

X (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on that same day with postage thereon fully prepared at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Dated: August 25, 2003

Betty Farmer
BETTY L. FARMER

1
2 PROOF OF SERVICE
3

4 I am employed in the County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action; my business address is
6 501 Santa Monica Blvd., Suite 610, Santa Monica, CA 90401-2432.
7

8 On November 7, 2003, I served the foregoing document described as
9 **PLAINTIFF'S OPPOSITION TO DEFENDANT SAFE IN HEAVEN DEAD, INC.**
10 **dba THE VIPER ROOM'S MOTION TO STRIKE** on all concerned parties in this
11 action by placing the true copies thereof enclosed in sealed envelopes
12 addressed as follows:

13 Michael N. Schonbuch, Esq.
14 DANIELS, FINE, ISRAEL & SCHONBUCH, LLP
15 1801 Century Park East, 9th Floor
16 Los Angeles, CA 90067

17 ____ (BY FACSIMILE) I transmitted the foregoing document to interested
18 parties in this action from fax number (310)899-9844 to fax number

19 ____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the
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24 fully prepared at Santa Monica, California, in the ordinary course of business. I
25 am aware that on motion of the party served, service is presumed invalid if
26 postal cancellation date or postage meter date is more than one day after date of
27 deposit for mailing in affidavit.

28 ____ (STATE) I declare under penalty of perjury under the laws of the State of
29 California that the above is true and correct.

30 Dated: November 7, 2003

31 _____
32 BETTY L. FARMER

11/17/3

1 Robert R. Shiri (SBN 150892)
2 SHIRI & DARDASHTI, LLP
3 501 Santa Monica Blvd., Suite 610
4 Santa Monica, CA 90401-2432
5 (310)829-9943 (310)899-9844Fax

6
7
8 Attorney for Plaintiff,
9 ROCKY LEONARD GEORGE, JR.

JFF FILED
LOS ANGELES SUPERIOR COURT

RECEIVED NOV 07 2003

JOHN A. CLARKE, CLERK
NOV 07 2003 *de la*
BY NEVESTRADA, DEPUTY
SUPERIOR COURT
WEST DISTRICT
SANTA MONICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10
11 ROCKY LEONARD GEORGE, JR.,
12 Plaintiff,
13 vs.
14 VIPER ROOM INC.; JOHNNY
15 DEPP; and DOES 1-50, inclusive,
16 Defendants.
17
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19
20
21
22

CASE NO.: SC073752

(Assigned for all purposes to the
Hon. Richard Neidorf - Dept. "O")

PLAINTIFF'S OPPOSITION TO
DEFENDANT SAFE IN HEAVEN
DEAD, INC. dba THE VIPER
ROOM'S DEMURRER

Date: November 17, 2003
Time: 8:30 a.m.
Dept.: "O"

Date Complaint Filed: 09-03-02
Trial Date: 12-31-03

23 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

24 Plaintiff ROCKY LEONARD GEORGE, JR. ("Plaintiff") file this opposition
25 to Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM
26 ("Defendant").

1 **I. PRELIMINARY STATEMENT**

2 On September 12, 2001, at approximately 2:00 A.M., Plaintiff ROCKY
3 LEONARD GEORGE, JR. was a lawful invitee/patron visiting the Defendant VIPER
4 ROOM in West Hollywood, California. Defendant's premises were supervised by
5 several security guards/bouncers who were responsible for admitting and
6 controlling the customers/patrons in or on Defendant's premises. Plaintiff was
7 walking out of the night club when, suddenly and without warning, two security
8 guards/bouncers, one known as "Big Ed" and the other name unknown to Plaintiff,
9 physically attacked Plaintiff. It is known that The Viper Room and the bouncer known
10 as "Big Ed" have a history of violence against patrons. Moreover, it's Plaintiff's
11 contention that Defendant the Viper Room knew of bouncer "Big Ed's" violent behavior
12 and ratified such conduct.

13 Plaintiffs filed suit against the Defendant The Viper Room for Negligence,
14 Assault and Battery and Premises Liability. Further regarding the Assault and Battery
15 cause of action, Plaintiff is also seeking punitive damages, as defendant The Viper
16 Room knew of bouncer "Big Ed's" violent propensity and ratified and encourage the
17 conduct, thereby establishing the malice requirements of California Civil Code, Section
18 3294.

19 **II. GENERAL PRINCIPALS OF LAW**

20 The *Code of Civil Procedure* provides that unless the grounds for a demurrer are
21 distinctly specified, it may be disregarded. (*Code of Civ. Proc.* § 430.60) Where there
22 are several grounds for demurrer, each must be stated in a separate paragraph and
23 must state whether the challenge is to the entire pleading or to some specific cause of
24 action therein. (*California Rules of Court* § 325 (a).)

25 Each ground for demurrer should be separately stated and supported in the
26 points and authorities. There should be relevant case citations and arguments to
27 support each ground. A mere cite to *Code of Civil Procedure* section 430.10, or any

1 subparagraph is not enough. Defendant's demurrs, and each of them, hopelessly fail
2 to comply with either *Code of Civil Procedure* sections 430.60, 430.10(e) or with
3 *California Rules of Court* section 325(a). As such, each of Defendant's demurrs
4 should be overruled.

5

6 **III. PLAINTIFF'S FIRST CAUSE OF ACTION FOR NEGLIGENCE CLEARLY**
7 **STATES FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION**

8 In the present action, Plaintiffs' First Cause of Action, for Negligence, pleads
9 facts with sufficient particularity. Plaintiffs First Cause of Action is based on the
10 contention that Plaintiff was lawfully on the premises as a business invitee, a patron,
11 when an employee of Defendant, "Big Ed," a bouncer, without just cause beat Plaintiff
12 up cause severe and permanent injuries.

13 Irrespective of the labels attached by the pleader to any alleged cause of action,
14 we examine the factual allegations of the complaint, to determine whether they state a
15 cause of action on any available legal theory. Ellenberger v. Espinosa (1994) 30 Cal.
16 App. 4th, 947. In this case, at the pleading stages, where the Court must accept the
17 allegations in the complaint as true, Plaintiff states in Paragraph No. 8 that, "On
18 September 12, 2001, at approximately 2:00 a.m., Plaintiff ROCKY LEONARD
19 GEORGE, Jr. was a lawful invitee/patron visiting the Defendant VIPER ROOM in West
20 Hollywood, California. Defendants' premises were supervised by several
21 security/bouncers who were responsible for admitting and controlling the
22 customers/patrons in or on Defendants' premises. Plaintiff was walking out of the night
23 club when, suddenly and without warning, two security guards/bouncers, one known as
24 "Big Ed" and the other unknown to Plaintiff physically attacked Plaintiff."

25 Based in these allegations, which the Court must accept at the pleading stages
26 as true, Plaintiff has clearly stated as cause of action for negligence.

27 Defendant's claim that Plaintiff's complaint need provide facts of similar prior
28 incidents is misplaced. Even if such claim where true, Plaintiff has pleaded at

1 paragraph No. 19 "Defendants SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM
2 knew of prior similar criminal violence and violence and behavior against other patrons
3 and customers by bouncer, like "Big Ed", but did nothing to stop it." Therefore, contrary
4 to Defendant's assertion, Plaintiff has alleged prior similar acts, as claimed in cases of
5 Ann M. V. Pacific Plaza Shopping Center (1993) 6 Cal. 4th 66, 680, and Sharon P. v.
6 Arman Ltd. (1999) 21 Cal. 4th 1181, 1191 cited by Defendant.

7 Consequently, Defendant's demurrer to Plaintiff's First Cause of Action should
8 be overruled.

9 In the alternative, if the Court determines that Defendant County's demurrer to
10 Plaintiff's First Cause of Action should be sustained, Plaintiffs respectfully requests that
11 the Court grant Plaintiff leave to amend.

12

13 **IV. PLAINTIFF'S SECOND CAUSE OF ACTION**

14 **STATES FACTS SUFFICIENT TO**

15 **CONSTITUTE A CAUSE OF ACTION**

16 Plaintiff's Second Cause of Action, for "Negligent Hiring and Retention" states
17 facts sufficient to constitute a cause of action for "Negligent Hiring and Retention."
18 Once again, at the pleading stages, the Court must accept the allegations in the
19 complaint as true, Plaintiff states in Paragraph No. 8 that, "On September 12, 2001, at
20 approximately 2:00 a.m., Plaintiff ROCKY LEONARD GEORGE, Jr. was a lawful
21 invitee/patron visiting the Defendant VIPER ROOM in West Hollywood, California.
22 Defendants' premises were supervised by several security/bouncers who were
23 responsible for admitting and controlling the customers/patrons in or on Defendants'
24 premises. Plaintiff was walking out of the night club when, suddenly and without
25 warning, two security guards/bouncers, one known as "Big Ed" and the other unknown
26 to Plaintiff physically attacked Plaintiff." Plaintiff further states, at Paragraph No. 11,
27 that, ". . . Defendant SAFE IN HEAVEN DEAD, Inc. dba THE VIPER ROOM employed
28 bouncer "Big Ed" knowing his past criminal and violent conduct. In addition, Defendant

SAFE IN HEAVEN DEAD, Inc. dba THE VIPER ROOM was made aware through other complaints from patrons of bouncer "Big Ed" violent and uncontrollable nature and continued to employ him, despite the fact that police had been called to question him for numerous prior instances of violence against other patrons." As such, Defendant knew of "Big Ed's" unlawful use of violence and continued to employ him thereby ratifying his conduct.

The court considered the issue of ratification as it applies to punitive damages under California Civil Code Section 3294 in Greenfield v. Spectrum Investment Corp. (1985) 174 Cal.App.3d 111, 219 Cal.Rptr. 805, wherein a Budget Rent-A-Car office continued employing an irascible, volatile employee, even after said employee violently assaulted a customer who was exiting the office. According to the court, "[f]ailure to discharge [said] employee under such circumstances is evidence in and of itself to show ratification." Greenfield v. Spectrum Investment Corp. (1985) 174 Cal.App.3d 111, 121, 219 Cal.Rptr. 805, 811 (overruled on other grounds); see also Coats v. Construction and General Laborers Local No. 185 (1971) 15 Cal.App.3d 908, 914, 93 Cal.Rptr. 639, 642 ("If the employer after knowledge or opportunity to learn of the [employee's] misconduct retains the wrongdoer in service, the employer may make himself liable in punitive damages." (citing Shoopman v. Pacific Greyhound Lines (1959) 169 Cal.App.2d 848, 856)).

Similar to Budget Rent-A-Car in Greenfield, the Defendant in the present case further ratified its employees' violent attack on Plaintiff by continuing to employ the security personnel, including "Big Ed" Shaw and others, after learning of, or having the opportunity to learn of, the subject incident through the Sheriff Department's investigation and/or through Defendant's own internal investigation.

Essentially, Plaintiff has met the burden of alleging an intentional act, and has met the minimum burden, at least at the pleading stages, of overcoming the Defendant's demurrer as to this case of action.

1 Based on all of the above, Defendant's demurrer to Plaintiff's Second Cause of
2 Action should be overruled. In the alternative, if the Court determines that Defendant
3 County's demurrer to Plaintiff's Second Cause of Action should be sustained, Plaintiff
4 respectfully requests that the Court grant Plaintiff leave to amend.

5

6 **VI. CONCLUSION**

7 For all of the foregoing reasons, Plaintiff respectfully requests that Defendant's
8 demurrer to Plaintiff's entire complaint and the First and Second Causes of action be
9 overruled, and that Defendant be ordered to answer Plaintiff's complaint without further
10 delay. Alternatively, if the Court determines that Defendant's demurrer should be
11 sustained in any part, Plaintiff respectfully requests the Court to grant them leave to
12 amend his complaint.

13

14 Respectfully Submitted

15 DATED: November 7, 2003

16 SHIRI & DARDASHTI, LLP

17 By:

18 
19 ROBERT R. SHIRI
Attorney for Plaintiff,
ROCKY LEONARD GEORGE, Jr.

1
2 PROOF OF SERVICE
3

4 I am employed in the County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action; my business address is
6 501 Santa Monica Blvd., Suite 610, Santa Monica, CA 90401-2432.
7

8 On November 7, 2003, I served the foregoing document described as
9 **PLAINTIFF'S OPPOSITION TO DEFENDANT SAFE IN HEAVEN DEAD, INC.**
10 **dba THE VIPER ROOM'S DEMURRER** on all concerned parties in this action
11 by placing the true copies thereof enclosed in sealed envelopes addressed as
12 follows:

13 Michael N. Schonbuch, Esq.
14 David L. Weisberg, Esq.
15 DANIELS, FINE, ISRAEL & SCHONBUCH, LLP
16 1801 Century Park East, 9th Floor
17 Los Angeles, CA 90067

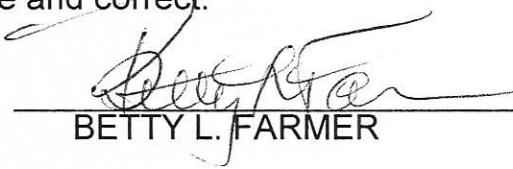
18 ____ (BY FACSIMILE) I transmitted the foregoing document to interested
19 parties in this action from fax number (310)899-9844 to fax number

20 ____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the
21 offices of the addressee.

22 X (BY MAIL) I am readily familiar with the firm's practice of collection and
23 processing correspondence for mailing. Under that practice, it would be
24 deposited with the U. S. Postal Service on that same day with postage thereon
25 fully prepared at Santa Monica, California, in the ordinary course of business. I
26 am aware that on motion of the party served, service is presumed invalid if
27 postal cancellation date or postage meter date is more than one day after date of
28 deposit for mailing in affidavit.

29 (STATE) I declare under penalty of perjury under the laws of the State of
30 California that the above is true and correct.

31 Dated: November 7, 2003

32 
33 BETTY L. FARMER

8/18/03

1 Robert R. Shiri (SBN 150892)
2 SHIRI & DARDASHTI, LLP
3 501 Santa Monica Blvd., Suite 610
Santa Monica, CA 90401-2432
3 (310)829-9943 (310)899-9844 Fax

4 Attorney for Plaintiff,
5 ROCKY LEONARD GEORGE, JR.

FILED
LOS ANGELES SUPERIOR COURT
AUG 04 2003
JOHN A. CLARKE, CLERK
BY NEYA ESTRADA, DEPUTY

6

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10

11 ROCKY LEONARD GEORGE, JR.,
12 Plaintiff,

13 vs.

14 VIPER ROOM INC.; JOHNNY
DEPP; and DOES 1-50, inclusive,
15 Defendants.

CASE NO.: SC073752

(Assigned for all purposes to the
Hon. Richard Neidorf - Dept. "O")

PLAINTIFF'S OPPOSITION TO
DEFENDANT SAFE IN HEAVEN
DEAD, INC. dba THE VIPER
ROOM'S DEMURRER

Date: August 18, 2003
Time: 8:30 a.m.
Dept.: "O"

Date Complaint Filed: 9/3/02
Motion Cutoff: None
Discovery Cutoff: None
Trial Date: None

21

22

23 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

24 Plaintiff ROCKY LEONARD GEORGE, JR. ("Plaintiff") file this opposition
25 to Defendant SAFE IN HEAVEN DEAD, INC. dba THE VIPER ROOM
26 ("Defendant").

27
28

1 **I. PRELIMINARY STATEMENT**

2 On September 12, 2001, at approximately 2:00 A.M., Plaintiff ROCKY
3 LEONARD GEORGE, JR. was a lawful invitee/patron visiting the Defendant VIPER
4 ROOM in West Hollywood, California. Defendant's premises were supervised by
5 several security guards/bouncers who were responsible for admitting and
6 controlling the customers/patrons in or on Defendant's premises. Plaintiff was
7 walking out of the night club when, suddenly and without warning, two security
8 guards/bouncers, one known as "Big Ed" and the other name unknown to Plaintiff,
9 physically attacked Plaintiff. It is known that The Viper Room and the bouncer known
10 as "Big Ed" have a history of violence against patrons. Moreover, it's Plaintiff's
11 contention that Defendant the Viper Room knew of bouncer "Big Ed's" violent behavior
12 and ratified such conduct.

13 Plaintiffs filed suit against the Defendant The Viper Room for Negligence,
14 Assault and Battery and Premises Liability. Further regarding the Assault and Battery
15 cause of action, Plaintiff is also seeking punitive damages, as defendant The Viper
16 Room knew of bouncer "Big Ed's" violent propensity and ratified and encourage the
17 conduct, thereby establishing the malice requirements of California Civil Code, Section
18 3294.

19 **II. GENERAL PRINCIPALS OF LAW**

20 The *Code of Civil Procedure* provides that unless the grounds for a demurrer are
21 distinctly specified, it may be disregarded. (*Code of Civ. Proc.* § 430.60) Where there
22 are several grounds for demurrer, each must be stated in a separate paragraph and
23 must state whether the challenge is to the entire pleading or to some specific cause of
24 action therein. (*California Rules of Court* § 325 (a).)

25 Each ground for demurrer should be separately stated and supported in the
26 points and authorities. There should be relevant case citations and arguments to
27 support each ground. A mere cite to *Code of Civil Procedure* section 430.10, or any
28

1 subparagraph is not enough. Defendant's demurrers, and each of them, hopelessly fail
2 to comply with either *Code of Civil Procedure* sections 430.60, 430.10(e) or with
3 *California Rules of Court* section 325(a). As such, each of Defendant's demurrers
4 should be overruled.

5

6 **III. PLAINTIFF'S FIRST CAUSE OF ACTION FOR NEGLIGENCE CLEARLY**
7 **STATES FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION**

8 In the present action, Plaintiffs' First Cause of Action, for Negligence, pleads
9 facts with sufficient particularity. Plaintiffs First Cause of Action is based on the
10 contention that Plaintiff was lawfully on the premises as a business invitee, a patron,
11 when an employee of Defendant, "Big Ed," a bouncer, without just cause beat Plaintiff
12 up cause severe and permanent injuries.

13 Irrespective of the labels attached by the pleader to any alleged cause of action,
14 we examine the factual allegations of the complaint, to determine whether they state a
15 cause of action on any available legal theory. Ellenberger v. Espinosa (1994) 30 Cal.
16 App. 4th, 947. In this case, at the pleading stages, where the Court must accept the
17 allegations in the complaint as true, Plaintiff states in Paragraph No. 8 that, "On
18 September 12, 2001, at approximately 2:00 a.m., Plaintiff ROCKY LEONARD
19 GEORGE, Jr. was a lawful invitee/patron visiting the Defendant VIPER ROOM in West
20 Hollywood, California. Defendants' premises were supervised by several
21 security/bouncers who were responsible for admitting and controlling the
22 customers/patrons in or on Defendants' premises. Plaintiff was walking out of the night
23 club when, suddenly and without warning, two security guards/bouncers, one known as
24 "Big Ed" and the other unknown to Plaintiff physically attacked Plaintiff."

25 Based in these allegations, which the Court must accept at the pleading stages
26 as true, Plaintiff has clearly stated as cause of action for negligence.

27 Defendant's claim that Plaintiff's complaint need provide facts of similar prior
28 incidents is misplaced. Even if such claim where true, Plaintiff has pleaded at

1 paragraph No. 21, that “ . . . [Defendants] knew or should have known that there had
2 been prior acts and incidents of the same or similar criminal violence and behavior
3 against other patrons and customers and others at Defendants’ premises.” Therefore,
4 contrary to Defendant’s assertion, Plaintiff has alleged prior similar acts, as claimed in
5 cases of Ann M. V. Pacific Plaza Shopping Center (1993) 6 Cal. 4th 66, 680, and
6 Sharon P. v. Arman Ltd. (1999) 21 Cal. 4th 1181, 1191 cited by Defendant.

7 Consequently, Defendant’s demurrer to Plaintiff’s First Cause of Action should
8 be overruled.

9 In the alternative, if the Court determines that Defendant County’s demurrer to
10 Plaintiff’s First Cause of Action should be sustained, Plaintiffs respectfully requests that
11 the Court grant Plaintiff leave to amend.

12

13 **IV. PLAINTIFF’S SECOND CAUSE OF ACTION**

14 **STATES FACTS SUFFICIENT TO**
15 **CONSTITUTE A CAUSE OF ACTION**

16 Plaintiff’s Second Cause of Action, for “Assault & Battery/Negligence” states
17 facts sufficient to constitute a cause of action for “Assault & Battery/Negligence.” Once
18 again, at the pleading stages, the Court must accept the allegations in the complaint as
19 true, Plaintiff states in Paragraph No. 8 that, “On September 12, 2001, at approximately
20 2:00 a.m., Plaintiff ROCKY LEONARD GEORGE, Jr. was a lawful invitee/patron visiting
21 the Defendant VIPER ROOM in West Hollywood, California. Defendants’ premises
22 were supervised by several security/bouncers who were responsible for admitting and
23 controlling the customers/patrons in or on Defendants’ premises. Plaintiff was walking
24 out of the night club when, suddenly and without warning, two security
25 guards/bouncers, one known as “Big Ed” and the other unknown to Plaintiff physically
26 attacked Plaintiff.” Plaintiff further states, at Paragraph No. 16, that, “ In performing the
27 act of assaulting and battering Plaintiff . . . [Defendant] intended to and did cause
28 Plaintiff . . . “ apprehension and bodily injury. Essentially, Plaintiff has met the burden

1 of alleging an intentional act, and has met the minimum burden, at least at the pleading
2 stages, of overcoming the Defendant's demurrer as to this case of action.
3

4 Plaintiff believes that discovery is required to develop additional evidence,
5 information and factual details pertinent to establishing the negligence of Defendant.
6 Furthermore, Plaintiff believe the ultimate negligence of Defendant and Does 1 through
7 50 are questions of fact to be determined by the ultimate trier of fact.
8

9 Based on all of the above, Defendant's demurrer to Plaintiff's Second Cause of
10 Action should be overruled. In the alternative, if the Court determines that Defendant
11 County's demurrer to Plaintiff's Second Cause of Action should be sustained, Plaintiff
12 respectfully requests that the Court grant Plaintiff leave to amend.
13

14

15 **V. PLAINTIFF'S THIRD CAUSE OF ACTION FOR PREMISES LIABILITY**
STATES FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

16 Once again, irrespective of the labels attached by the pleader to any alleged
17 cause of action, we examine the factual allegations of the complaint, to determine
18 whether they state a cause of action on any available legal theory. Ellenberger v.
19 Espinosa (1994) 30 Cal. App. 4th, 947. In this case, at the pleading stages, where the
20 Court must accept the allegations in the complaint as true, Plaintiff states in Paragraph
21 No. 8 that, "On September 12, 2001, at approximately 2:00 a.m., Plaintiff ROCKY
22 LEONARD GEORGE, Jr. was a lawful invitee/patron visiting the Defendant VIPER
23 ROOM in West Hollywood, California. Defendants' premises were supervised by
24 several security/bouncers who were responsible for admitting and controlling the
25 customers/patrons in or on Defendants' premises. Plaintiff was walking out of the night
26 club when, suddenly and without warning, two security guards/bouncers, one known as
27 "Big Ed" and the other unknown to Plaintiff physically attacked Plaintiff." (emphasis
28 added)

Based in these allegations, which the Court must accept at the pleading stages

1 as true, Plaintiff has clearly stated as cause of action for premises liability.
2

3 Defendant's claim that Plaintiff's complaint need provide facts of similar prior
4 incidents is misplaced. Even if such claim where true, Plaintiff has pleaded at
5 paragraph No. 21, that " . . . [Defendants] knew or should have known that there had
6 been prior acts and incidents of the same or similar criminal violence and behavior
7 against other patrons and customers and others at Defendants' premises." Therefore
8 contrary to Defendant's assertion, Plaintiff has alleged that the hazard at the premises
9 are the security/bouncer personnel who have a history of prior similar acts, i.e. beating
10 up patrons and others.

11 Consequently, Defendant's demurrer to Plaintiff's Third Cause of Action should
12 be overruled.

13 In the alternative, if the Court determines that Defendant's demurrer to Plaintiff's
14 Third Cause of Action should be sustained, Plaintiff respectfully requests that the Court
15 grant Plaintiff leave to amend.
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1
2 **VI. CONCLUSION**
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For all of the foregoing reasons, Plaintiff respectfully requests that Defendant's demurrer to Plaintiff's entire complaint and the First and Third Causes of action be overruled, and that Defendant be ordered to answer Plaintiff's complaint without further delay. Alternatively, if the Court determines that Defendant's demurrer should be sustained in any part, Plaintiff respectfully requests the Court to grant them leave to amend his complaint.

9 Respectfully Submitted
10
11

DATED: August 4, 2003

SHIRI & DARDASHTI, LLP

12 By: *Robert Shiri*
13 ROBERT R. SHIRI
14 Attorney for Plaintiff,
15 ROCKY LEONARD GEORGE, Jr.
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FILED
LOS ANGELES SUPERIOR COURT

SEP 03 2002

JOHN A. CLARKE, CLERK
m. Kurihara
BY M. KURIHARA, DEPUTY

1 SHIRI & DARDASHTI, LLP
2 Robert R. Shiri, Esq.
3 501 Santa Monica Boulevard, Suite 610
Santa Monica, California 90401
3 TEL: (310) 829-9943 FAX: (310) 899-9844

5 Attorneys for Plaintiff ROCKY LEONARD GEORGE, JR.
Case Management Conference Set 1-31-03
6 1725 Main St. Santa Monica Dept. 0
Time 9AM

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, WEST DISTRICT

RICHARD NEIDORF

SC073752

11 ROCKY LEONARD GEORGE, JR.,) CASE NUMBER:
12 Plaintiff,)
13 vs.)
14 VIPER ROOM, INC.; JOHNNY DEPP; and) COMPLAINT FOR DAMAGES:
15 DOES 1 through 50, inclusive,)
16 Defendants.)
17)
18 Plaintiff ROCKY LEONARD GEORGE, JR. ("Plaintiff") complains and alleges against
19 Defendants, and each of them, as follows:

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21 THE PARTIES

- 22 1. Plaintiff ROCKY LEONARD GEORGE, JR. is, and all times mentioned
herein was, a resident of the County of Los Angeles, State of California.
- 23 2. The incident alleged herein that is the subject matter of this complaint and
lawsuit occurred on September 12, 2001, at the Viper Room, a nightclub located at 8852
Sunset Boulevard, West Hollywood, in the County of Los Angeles, State of California.
- 24 3. Defendant JOHNNY DEPP is, and all times mentioned herein was, a
resident of the County of Los Angeles, State of California.

CITY/CASE: LOS ANGELES/03-00000000
RECEIPT #: 00000000
DATE PAID: 03/03/2002
PENALTY: \$0.00
CHARGE: 00000000
CASH: 00000000
CHECK: 00000000
ATTACHMENT: 00000000
FEE: 00000000
BALANCE: 00000000

1 4. Plaintiff is informed and believes and thereon alleges that DOE
2 Defendants 1 through 25, inclusive, are, and at all relevant times were, the
3 owners, operators, managers, agents, officers, directors, shareholders, partners
4 and/or joint venturers of and in Defendant Viper Room, and so operated,
5 managed, and controlled Defendant Viper Room in such a manner, and as their
6 alter ego, that they did not observe any business, corporate or other formalities
7 and distinctions between themselves and Defendant Viper Room, such that the
8 corporate veil, if any, of Defendant Viper Room and defendant DOES 1 through
9 25, inclusive, should be pierced.

10 5. Plaintiff is unaware of the true names and capacities of defendants
11 sued herein as DOES 1 through 25, inclusive, whether individual, corporate,
12 associate or otherwise, and therefore sues these defendants by such fictitious
13 names. Plaintiff will seek leave of the Court to amend this Complaint to allege
14 their true names and capacities when ascertained. Plaintiff is informed and
15 believes and thereon alleges that each of the fictitiously named defendants is
16 responsible in some actionable manner for the events and occurrences herein
17 alleged and that Plaintiff's damages as herein alleged were proximately caused
18 by their conduct.

19 6. Plaintiff is informed and believes and thereon alleges that each DOE
20 defendant designated herein is responsible for the events and occurrences
21 alleged herein, which were the substantial cause of injury and damages to
22 plaintiff, as herein alleged.

23 7. Plaintiff is informed and believe and, based thereon, alleges that at all
24 times mentioned herein, Defendants, and each of them, were the agents, principals,
25 partners, associates, joint venturers, employees and/or co-conspirators of each of the
26 remaining co-Defendants; that the Defendants, and each of them, were at all times
27 acting within the course, purpose and scope of said agency, partnership, association,
28 joint venture employment and/or conspiracy and that Defendants, and each of them,

1 were acting with the full knowledge, agreement, authorization, ratification, either express
2 or implied, permission and/or consent of the remaining co-Defendants, and are,
3 therefore, liable, vicariously and/or otherwise, jointly and severally, for the damages and
4 injury they caused Plaintiff.

5

6 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 8. On September 12, 2001, at approximately 2:00 A.M., Plaintiff ROCKY
8 LEONARD GEORGE, JR. was a lawful invitee/patron visiting the Defendant VIPER
9 ROOM in West Hollywood, California. Defendants' premises were supervised by
10 several security guards/bouncers who were responsible for admitting and
11 controlling the customers/patrons in or on Defendants' premises. Plaintiff was
12 walking out of the night club when, suddenly and without warning, two security
13 guards/bouncers, one known as "Big Ed" and the other name unknown to Plaintiff,
14 physically attacked Plaintiff.

15 9. The above conduct was the substantial cause of severe damage and
16 injury to Plaintiff, as well as emotional distress, general and compensatory
17 damages, medical expenses, loss of earnings and loss of earning capacity, all as
18 hereinafter alleged. In fact, Plaintiff was beaten in the face, causing facial bruising and
19 broken teeth.

20

21 **FIRST CAUSE OF ACTION FOR NEGLIGENCE**

22 (Negligence against All Named Defendants and
23 DOES 1 through 25, inclusive)

24 10. Plaintiff repeats and realleges herein Paragraphs 1 through 8, inclusive, of
25 this complaint as though fully set forth at length herein.

26 11. Plaintiff is informed and believes and thereon alleges that DOES 1
27 through 25, inclusive, and each of them, knew or should have known that, if they
28 did not exercise due care in their conduct and behavior, plaintiff and other patrons

1 or customers would be substantially injured and damaged by their conduct and
2 behavior.

3 12. These defendants, and each of them, were therefore under a duty to
4 exercise due care in their conduct and behavior and to plaintiff and other patrons
5 and customers.

6 13. Defendants, and each of them, failed and neglected to exercise due
7 care in their conduct and behavior toward Plaintiff and other patrons/customers.

8 14. As a direct result of the failure and neglect of Defendants, and each of
9 them, to exercise due care in their conduct and behavior, their above referenced
10 conduct was the substantial cause of severe damage and injury to Plaintiff,
11 including personal and bodily injury, emotional distress, general and
12 compensatory damages, medical expenses, loss of earnings and earnings
13 capacity, in amounts unknown at this time but beyond this Court's jurisdictional
14 minimum. In fact, Plaintiff was beaten in the face, causing facial bruising and broken
15 teeth.

SECOND CAUSE OF ACTION FOR NEGLIGENCE

18 (Assault & Battery against DOES 26 through 50, inclusive)

19 15. Plaintiff repeats and realleges herein Paragraphs 1 through 13, inclusive, of
20 this complaint as though fully set forth at length herein.

16. In performing the act of assaulting and battering Plaintiff, DOES 26
through 50, inclusive, and each of them, intended to and did cause Plaintiff to
be apprehensive of great severe bodily injury and/or loss of his life, and did
cause Plaintiff severe bodily injury. In fact, Plaintiff was beaten in the face, causing
facial bruising and broken teeth.

26 17. At no time did Plaintiff consent to any of the acts of these
27 Defendants, and each of them.

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1 18. Plaintiff is informed and believes and thereon alleges that the
2 conduct of DOES 26 through 50, inclusive, was intentional, deliberate and in
3 conscious disregard for Plaintiff, and that they are guilty of fraud, oppression and/
4 or malice toward Plaintiff, who is, therefore, entitled to recover exemplary and
5 punitive damages pursuant to California *Civil Code Section 3294*, in an amount
6 according to proof at trial.

THIRD CAUSE OF ACTION

(PREMISES LIABILITY

Against All Named Defendants and

DOES 11 through 25, Inclusive)

12 19. Plaintiff repeats and reallages herein paragraphs 1 through 18, inclusive,
13 of this complaint as though fully set forth at length herein.

14 20. Plaintiff is informed and believes and thereon alleges that all named
15 defendants, and DOES 1 through 25, inclusive, each of them, knew or should have known
16 that if the Defendants' premises and invitees and patrons were not properly supervised,
17 operated, maintained, entrusted, and protected, and patrolled by security, and that if the
18 invitees and patrons did not exercise due care in their conduct and behavior, that Plaintiff
19 and other patrons/customers would be substantially injured and damaged by other patrons
20 and invitees.

21 21. Plaintiff is further informed and believes and thereon alleges that Defendants,
22 and each of them, knew or should have known that there had been prior acts and incidents
23 of the same or similar criminal violence and behavior against other patrons and customers
24 and others at Defendants' premises.

25 22. Defendants, and each of them, were therefore under a duty to exercise care
26 to supervise, operate, maintain, entrust, and protect and patrol with security, the invitees and
27 patrons of Defendants and their premises and to exercise due care in their conduct and
28 behavior.

1 23. Defendants, and each of them, failed and neglected to exercise care to
2 supervise, operate, maintain, entrust, and protect and patrol with security, the invitees and
3 patrons of Defendants and their premises and to exercise due care in their conduct and
4 behavior.

5 24. As a direct result of the failure and neglect of Defendants, and each of them,
6 to exercise due care, the above conduct was the substantial cause of severe damage and
7 injury to Plaintiff, including personal and bodily injury, emotional distress, general and
8 compensatory damages, medical expenses, loss of earnings and earnings capacity, in
9 amounts unknown at this time but beyond this Court's jurisdictional minimum.

10

11 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of
12 them, as follows:

- 13 1. General damages in an amount which will conform to proof at the time of trial;
- 14 2. Special damages for medical and related expenses according to proof;
- 15 3. For loss of earnings and loss of future earning capacity according to proof;
- 16 4. For punitive or exemplary damages;
- 17 5. For costs of suit incurred herein;
- 18 6. For prejudgment interest as provided by law;
- 19 7. And for such other and further relief as the court may deem just and proper.

20 Dated: August 28, 2002

SHIRI & DARDASHTI, LLP

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By: 
ROBERT R. SHIRI
Attorneys for Plaintiff
ROCKY LEONARD GEORGE, JR.

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