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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Eva Noriega, Deputy Clerk

5 Attorneys for Plaintiff

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10 FRANCES NAYAR, an individual; FRANCES)
11 NAYAR as the successor in interest of JOSE)
PEREZ FONG,)

12 Plaintiff,

13 vs.

14 PAPAGAYOS GRILL, INC., a California)
15 Corporation; BERNABE BAHENA RIVERA,)
16 an individual; and DOES 1-100, inclusive)

17 Defendants.)

Case No. 37-2023-00053762-CU-NP-CTL

Unlimited Jurisdiction

CIVIL COMPLAINT FOR DAMAGES

1. **Negligence**
2. **Premises Liability**
3. **Negligent Infliction of Emotional Distress**
4. **Gross Negligence**

DEMAND FOR JURY TRIAL

“Amount in Controversy exceeds the jurisdictional minimum for this court.”

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20 Plaintiff alleges as follows:

21 **GENERAL ALLEGATIONS**

- 22 1. This action arises out of a brutal assault that occurred on April 15, 2023 (“INCIDENT”).
- 23 2. Plaintiff FRANCES NAYAR is, and at all relevant times alleged herein was, an
24 individual residing in the County of San Diego, State of California, and the surviving child and
25 successor in interest of Jose Perez Fong (“Decedent”), who died from fatal injuries caused by the
26 INCIDENT. Plaintiff FRANCES NAYAR has standing to assert the survival claims on behalf of
27 Decedent under California Code of Civil Procedure §377.30. Plaintiff FRANCES NAYAR, as
28

1 Decedent’s Surviving Heir, has standing to assert her wrongful death claim under Code of Civil
2 Procedure § 377.60.

3 3. Plaintiff is informed and believes that Defendant PAPAGAYOS GRILL AND
4 CANTINA (“PAPAGAYOS”), is, and at all relevant times alleged herein was, a corporation organized
5 and existing under California state laws, doing business in the City and County of San Diego,
6 California, and thus subject to venue in this Judicial District.

7 4. Plaintiff is informed and believes that Defendant BERNABE BAHENA RIVERA
8 (“RIVERA”), is, and at all relevant times alleged herein was, an individual residing in the County of
9 San Diego, State of California, and thus subject to venue in this Judicial District.

10 5. Plaintiff is informed and believes that, at all relevant times alleged herein, Defendants
11 PAPAGAYOS, RIVERA, and/or DOES 1-100 were the agents or employees of each other, and/or the
12 employees, agents, contractors, members, officers, subsidiaries, divisions, parent entities, and/or other
13 affiliated entities or individuals of Defendants PAPAGAYOS, RIVERA, and/or DOES 1-100, and
14 were acting within the scope and purpose of such agency or employment, with the power, authority,
15 permission, or consent vested in them, or ratification, endorsement, or approval of the conduct of each
16 other with respect to the events and happenings alleged herein.

17 6. Plaintiff is informed and believes that DOES 1-100 are legally responsible for the
18 events and happenings alleged herein, and thereby legally and proximately caused the harm, injuries,
19 and damages to the DECEDENT and Surviving Heir alleged in this complaint. Plaintiff is ignorant of
20 the true names and capacities of Defendants sued herein as DOES 1 through 100 and therefore sue
21 those Defendants by such fictitious names. Plaintiff will amend this complaint to insert their true names
22 and capacities when ascertained.

23 7. “Defendant PAPAGAYOS” shall mean and refer to Defendants PAPAGAYOS, and
24 DOES 1-100, collectively.

25 8. “Defendant RIVERA” shall mean and refer to Defendant RIVERA and DOES 1-100,
26 collectively.

27 9. Plaintiff is informed and believes that at all relevant times alleged herein, Defendant
28 PAPAGAYOS generally possessed, owned, leased, operated, managed, maintained, repaired,

1 inspected, and/or otherwise controlled the business premises located at 2220 Otay Lakes Rd., Suite
2 505, Chula Vista CA, 91915 (“SUBJECT PREMISES”).

3 10. The events giving rise to this action occurred in the City and County of San Diego, thus
4 venue is proper in this Judicial District.

5 11. On or about the evening of April 15, 2023, and at all relevant times mentioned herein,
6 Decedent was lawfully on the SUBJECT PREMISES and providing an economic benefit to Defendants
7 PAPAGAYOS and DOES 1-100, as a business patron and paying customer. Just prior to the
8 INCIDENT, DECEDENT was enjoying the live music on the dancefloor in the SUBJECT PREMISES.
9 As DECEDENT was dancing, Defendant RIVERA began brutally assaulting and battering
10 DECEDENT, which resulted in DECEDENT’S death on April 21, 2023.

11 **FIRST CAUSE OF ACTION**

12 **(Survival & Wrongful Death Claims for Negligence against Defendants Papagayos and DOES**
13 **1-100)**

14 12. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 11, as though
15 fully and completely set forth herein.

16 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times herein,
17 Defendants PAPAGAYOS and DOES 1-100 owned, operated, controlled, and/or managed the
18 SUBJECT PREMISES. As such owners, operators, controllers, and/or managers of the SUBJECT
19 PREMISES, Defendants owed a duty to the general public, including DECEDENT, and Surviving
20 Heir, to exercise reasonable care in the operation and maintenance of the SUBJECT PREMISES. This
21 duty includes, but is not limited to, the duty to take reasonable care to maintain the SUBJECT
22 PREMISES in a safe condition, and to protect DECEDENT from foreseeable criminal acts of third-
23 parties.

24 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 negligently owned, maintained,
26 controlled, managed, and/or operated the SUBJECT PREMISES so as to fail to protect Decedent from
27 criminal acts of third-parties, and/or failed to warn Decedent of the dangerous condition created by the
28 criminal acts of third-parties, in that Defendants knew, or in the exercise of reasonable care should

1 have known, that dangerous persons and other persons having no legitimate business purposes in or
2 on the SUBJECT PREMISES, frequented the SUBJECT PREMISES..

3 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
4 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,
5 controlled, managed, and/or operated the SUBJECT PREMISES in that Defendants knew, or should
6 have known, that prior incidents of criminal activity, sufficiently similar and/or comparable to the
7 INCIDENT, had occurred on the SUBJECT PREMISES to have alerted Defendants of such criminal
8 activity on the SUBJECT PREMISES.

9 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
10 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 negligently owned, maintained,
11 controlled, managed, and/or operated the SUBJECT PREMISES in that they knew or should have
12 known of the prior criminal activity described in paragraph 15, and failed to provide adequate security
13 measures to avoid injury to business patrons and invitees of the SUBJECT PREMISES, including
14 Decedent.

15 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
16 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,
17 controlled, managed, and/or operated the SUBJECT PREMISES in that they knew or should have
18 known of the prior criminal activity described in paragraph 15, and failed to take reasonable
19 precautions to avoid injury to business patrons and invitees of the SUBJECT PREMISES, including
20 Decedent.

21 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
22 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,
23 controlled, managed, and/or operated the SUBJECT PREMISES in that they knew or should have
24 known of the prior criminal activity described in paragraph 15, and failed to warn business patrons and
25 invitees of the SUBJECT PREMISES to avoid harm from dangerous persons on the SUBJECT
26 PREMISES.

27 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
28 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,

1 controlled, managed, and/or operated the SUBJECT PREMISES in that they knew or should have
2 known of the prior criminal activity described in paragraph 15, and failed to reasonably anticipate
3 criminal conduct of third-parties occurring in or on the SUBJECT PREMISES.

4 20. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
5 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,
6 controlled, managed, and/or operated the SUBJECT PREMISES in that they knew or should have
7 known of the prior criminal activity described in paragraph 15, and failed to take adequate precautions
8 against such foreseeable harm.

9 21. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
10 mentioned herein, Defendants PAPAGAYOS and DOES 1-100 further negligently owned, maintained,
11 controlled, managed, and/or operated the SUBJECT PREMISES in that they in that Defendants
12 PAPAGAYOS and DOES 1-100 were unprepared to render appropriate first aid to DECEDENT and/or
13 failed to render proper first aid to DECEDENT, and further negligently and with reckless disregard for
14 human life or safety moved DECEDENT'S body before medical personnel arrived to the SUBJECT
15 PREMISES

16 22. Defendants' negligence was the actual, legal, and proximate cause, and a substantial
17 factor in causing DECEDENT to sustain major injuries to his body, injuring him in his health, strength,
18 and activity, all of which caused him great physical, mental, and emotional pain and suffering, and
19 which ultimately resulted in his death on April 21, 2023.

20 23. As a further proximate result of the Defendants' negligence, the Decedent was attended
21 by health care providers and incurred medical and incidental expenses.

22 24. As a further proximate cause of the Defendants' negligence, Plaintiff FRANCES
23 NAYAR has suffered and continues to suffer a loss of the financial support that her father would have
24 contributed to her and her household, and the gifts and benefits that would have been expected and
25 received from her father.

26 25. As a further proximate cause of the Defendants' negligence, Plaintiff FRANCES
27 NAYAR has suffered and continues to suffer a loss of love, companionship, comfort, care, assistance,
28 protection, affection, society, moral support, training, guidance, and other losses typical of a parental

1 relationship.

2 26. Plaintiff FRANCES NAYAR is informed and believes that Defendants PAPAGAYOS
3 and DOES 1-100 carried out the abovementioned actions with such conscious disregard for Decedent's
4 safety and right to be free from such tortious behavior so as to constitute oppression, fraud, or malice
5 pursuant to California Civil Code Section 3294, entitling Decedent, by and through his successor-in-
6 interest, Plaintiff FRANCES NAYAR, to punitive damages in an amount appropriate for the sake of
7 example and to punish Defendants.

8 **SECOND CAUSE OF ACTION**
9 **(Survival & Wrongful Death Claims for Premises Liability against Defendants Papagayos and**
10 **DOES 1-100)**

11 27. Plaintiff re-alleges and incorporates by reference the allegations contained in
12 paragraphs 1 through 26 as though fully and completely set forth herein.

13 28. Plaintiff is informed and believes, and thereon alleges, that at all relevant times herein
14 mentioned, Defendants PAPAGAYOS and DOES 1-100 owned, maintained, leased, rented, operated,
15 controlled, repaired, supervised, and/or managed the SUBJECT PREMISES.

16 29. Plaintiff is further informed and believes, and thereon alleges, that Defendants
17 PAPAGAYOS and DOES 1-100 operated a shopping/dining/entertainment business on the SUBJECT
18 PREMISES, where safe maintenance of the property required Defendants' attention to foreseeable
19 criminal acts by third parties.

20 30. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times
21 herein mentioned, Defendants PAPAGAYOS and DOES 1-100 knew, or through the exercise of
22 reasonable care and diligent inspection should have known, that criminal acts of third-parties similar
23 and/or comparable to the INCIDENT, had occurred on the SUBJECT PREMISES, which created an
24 unreasonably unsafe and unnecessarily dangerous condition to the public, including Decedent.

25 31. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times
26 herein mentioned, Defendants PAPAGAYOS and DOES 1-100 knew, or through the exercise of
27 reasonable care and diligent inspection should have known, that taking reasonable precautions to
28 protect against such foreseeable criminal acts of third-parties was necessary to protect the public,

1 including Decedent, against the foreseeable risk of being injured or killed as a result of a third-party
2 criminal act.

3 32. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times
4 herein mentioned, Defendants knew, or through the exercise of reasonable care and diligent inspection
5 should have known, that the likelihood of criminal acts of third parties unreasonably increased the risk
6 of injury to the public, including Decedent.

7 33. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times
8 herein mentioned, Defendants breached said duties by:

9 (1) failing to use reasonable care in owning, managing, and/or controlling the
10 SUBJECT PREMISES;

11 (2) failing to use reasonable care in owning, managing, and/or operating a business on
12 the SUBJECT PREMISES;

13 (3) failing to use reasonable care and engaging in misfeasance, which put patrons at risk
14 of harm from the foreseeable criminal acts of third parties on the SUBJECT PREMISES;

15 (4) failing to control, eliminate, and protect patrons, namely Decedent, from being
16 injured as a result of the foreseeable criminal acts of third parties;

17 (5) failing to have and/or implement first aid protocol for injured patrons on the
18 SUBJECT PREMISES.

19 34. As such, on April 15, 2023, Decedent was fatally beaten by Defendant RIVERA on the
20 SUBJECT PREMISES.

21 35. Plaintiff is further informed and believes, and thereon alleges, that at all relevant times
22 herein mentioned, that prior incidents of third-party criminal activity, sufficiently similar and/or
23 comparable to the INCIDENT, had occurred on the SUBJECT PREMISES to have alerted Defendants
24 of such criminal activity on the SUBJECT PREMISES and thus to have been discovered, remedied,
25 warned, or otherwise protected against before DECEDENT was fatally beaten.

26 36. By virtue of their status as owners, maintainers, lessors, operators, controllers, repairers,
27 supervisors, and/or managers of the subject property, Defendants PAPAGAYOS and DOES 1-100 are
28 responsible for the unreasonable risk of harm which Defendants knew, or had reason to know, existed

1 on their premises.

2 37. Defendants' negligence was the actual, legal, and proximate cause, and a substantial
3 factor in causing Decedent to sustain major injuries to his body, injuring him in his health, strength,
4 and activity, all of which caused him great physical, mental, and emotional pain and suffering, and
5 which ultimately resulted in his death on April 21, 2023.

6 38. As a further proximate result of the Defendants' negligence, the Decedent was attended
7 by health care providers, and incurred medical and incidental expenses.

8 39. As a further proximate cause of the Defendants' negligence, Plaintiff FRANCES
9 NAYAR has suffered and continues to suffer a loss of the financial support that her father would have
10 contributed to her and her household, and the gifts and benefits that would have been expected and
11 received from her father.

12 40. As a further proximate cause of the Defendants' negligence, Plaintiff FRANCES
13 NAYAR has suffered and continues to suffer a loss of love, companionship, comfort, care, assistance,
14 protection, affection, society, moral support, training, guidance, and other losses typical of a parental
15 relationship.

16 41. Plaintiff FRANCES NAYAR is informed and believes that Defendants carried out the
17 abovementioned actions with such conscious disregard for DECEDENT'S safety and right to be free
18 from such tortious behavior so as to constitute oppression, fraud, or malice pursuant to California Civil
19 Code Section 3294, entitling Decedent, by and through his successor-in-interest, Plaintiff FRANCES
20 NAYAR, to punitive damages in an amount appropriate for the sake of example and to punish
21 Defendants.

22 **THIRD CAUSE OF ACTION**

23 **(Survival Claim for Negligent Infliction of Emotional Distress against Defendants Papagayos**
24 **and DOES 1-100)**

25 42. Plaintiff FRANCES NAYAR re-alleges and incorporates by reference the allegations
26 contained in paragraphs 1 through 41 as though fully set forth herein.

27 43. At all relevant times herein mentioned, Defendants PAPAGAYOS and DOES 1-100
28 owed a duty to DECEDENT to act reasonably so as not to cause DECEDENT to suffer unreasonable

1 mental suffering. Defendants PAPAGAYOS and DOES 1-100 breached this duty by causing
2 DECEDENT to suffer foreseeable and unreasonable distress by being brutally beaten by Defendant
3 RIVERA on the SUBJECT PREMISES.

4 44. Defendants PAPAGAYOS and DOES 1-100 further breached this duty by causing
5 DECEDENT to suffer foreseeable and unreasonable distress when Defendants failed to render proper
6 first aid to DECEDENT, including but not limited to moving DECEDENT'S body before medical
7 personnel arrived at the SUBJECT PREMISES.

8 45. Defendants' misconduct was the actual, legal, and proximate cause, and a substantial
9 factor in causing DECEDENT to suffer extreme and severe annoyance, discomfort, pain,
10 apprehension, tension, anxiety, fear, mental anguish, grief, worry, mortification, shock, physical pain,
11 and emotional distress.

12 46. As a further actual, legal, and proximate cause of Defendants' misconduct,
13 DECEDENT sustained medical expenses for his injuries, specifically alleged above, and incurred other
14 incidental expenses.

15 47. Plaintiff FRANCES NAYAR is informed and believes that Defendants carried out the
16 abovementioned actions with such conscious disregard for DECEDENT'S safety and right to be free
17 from such tortious behavior so as to constitute oppression, fraud, or malice pursuant to California Civil
18 Code Section 3294, entitling DECEDENT, by and through his successor-in-interest, Plaintiff
19 FRANCES NAYAR, to punitive damages in an amount appropriate for the sake of example and to
20 punish Defendants.

21 **FOURTH CAUSE OF ACTION**

22 **(Survival & Wrongful Death Claims for Gross Negligence against Defendant Rivera and DOES**
23 **1-100)**

24 48. Plaintiff re-alleges and incorporates by reference the allegations contained in
25 paragraphs 1 through 47 as though fully set forth herein.

26 49. At all relevant times herein mentioned, Defendant RIVERA owed a duty to Decedent
27 and Surviving Heir to exercise reasonable care in conducting himself on the SUBJECT PREMISES so
28 as not to cause harm to the general public, including Decedent and Surviving Heirs.

1 50. Defendant RIVERA breached his duty to Decedent and Surviving Heir by failing to
2 exercise reasonable care while on the SUBJECT PREMISES by assaulting and brutally battering
3 Decedent, ultimately causing Decedent's death. Defendant RIVERA'S conduct as alleged herein
4 constitutes a lack of any care and/or such an extreme departure from the ordinary standard of care or
5 conduct that a reasonably careful person would exercise in the same situation to prevent harm to others.
6 Such outrageous lack of care and extreme departure from the ordinary standard of care rises to the
7 level of gross negligence.

8 51. Defendant RIVERA'S gross negligence was the actual, legal, and proximate cause, and
9 a substantial factor in causing Decedent to sustain major injuries to his body, injuring him in his health,
10 strength, and activity, all of which caused him great physical, mental, and emotional pain and suffering,
11 and which ultimately resulted in his death on April 21, 2023.

12 52. As a further proximate result of Defendant RIVERA'S gross negligence, the Decedent
13 was attended by health care providers, and incurred medical and incidental expenses.

14 53. As a further proximate cause of Defendant RIVERA'S gross negligence, Plaintiff
15 FRANCES NAYAR has suffered and continues to suffer a loss of the financial support that her father
16 would have contributed to her and her household, and the gifts and benefits that would have been
17 expected and received from her father.

18 54. As a further proximate cause of the Defendant RIVERA'S negligence, Plaintiff
19 FRANCES NAYAR has suffered and continues to suffer a loss of love, companionship, comfort, care,
20 assistance, protection, affection, society, moral support, training, guidance, and other losses typical of a
21 parental relationship.

22 55. Plaintiff FRANCES NAYAR is informed and believes that Defendant RIVERA carried
23 out the abovementioned actions with such conscious disregard for Decedent's safety and right to be
24 free from such tortious behavior so as to constitute oppression, fraud, or malice pursuant to California
25 Civil Code Section 3294, entitling Decedent, by and through his successor-in-interest, Plaintiff
26 FRANCES NAYAR, to punitive damages in an amount appropriate for the sake of example and to
27 punish Defendant RIVERA.

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1 WHEREFORE, Plaintiffs pray for judgment as follows:

- 2 1. For general damages according to proof;
- 3 2. For special damages according to proof;
- 4 3. For incidental damages according to proof;
- 5 4. For punitive damages according to proof;
- 6 5. For attorney’s fees according to proof;
- 7 6. For costs of suit herein incurred;
- 8 7. For prejudgment interest at the legal rate allowed by law and in accordance with the
- 9 provisions of *Section 3291 of the Civil Code of California*; and
- 10 8. For such other and further relief as the court may deem proper.


11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury on all issues so triable.

13 Dated: December 12, 2023

GOMEZ TRIAL ATTORNEYS

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16 By: _____

17 John Gomez, Esq
 18 Charlotte Barone, Esq.
 19 Raul Rabago, Esq.
 20 **Attorneys for Plaintiff**

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