

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
Austin Division

PETRA UGARTE,

PLAINTIFF,

V.

DOUBLETREE HOTEL CORPORATION,
DOUBLETREE HOTEL SYSTEMS, INC.,
X DBA DOUBLETREE HOTEL and
ANDREW SALDANA

DEFENDANTS

CIVIL ACTION NUMBER
A 03 CA 596 SS

PLAINTIFF'S FOURTH AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

PETRA UGARTE, PLAINTIFF, with leave of Court, makes, files and presents Plaintiff's Fourth Amended Original Complaint.

1. This amendment is filed pursuant to Fed.R.Civ.P. 15(a) with leave of Court granted by scheduling order made pursuant to Local Rule CV-16.

JURISDICTION

2. This Court has original jurisdiction over the subject matter of this suit pursuant to 18 U.S.C. § 1964(c), 28 U.S.C. § 1331, and 42 U.S.C. § 2000e-5f(1).
3. This Court has supplemental jurisdiction over the subject matter pursuant to 28 U.S.C. § 1367(a).

VENUE

4. Venue of this suit is in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. §1391(b) and (c).

PARTIES

Plaintiff

5. Plaintiff Petra Ugarte (“Ugarte”) is a resident of Austin, Travis County, Texas.

Defendants

6. Defendant Doubletree Hotels Corporation (“Doubletree Hotels”) is an Arizona corporation duly qualified to engage in business in the State of Texas pursuant to a Certificate of Authority issued by the Secretary of State of Texas. Its Registered Agent for service is Corporation Service Company d/b/a CSC-Layers Incorporating Service Company with its Registered Office being located at 800 Brazos Street, Austin, Texas 78701. Defendant has heretofore appeared and made general appearance. No additional service is required.
7. Defendant Hilton Hotels Corporation (“Hilton”) is a Delaware corporation duly qualified to engage in business in the State of Texas pursuant to a Certificate of Authority issued by the Secretary of State of Texas. Its Registered Agent for service is Corporation Service Company d/b/a CSC-Layers Incorporating Service Company with its Registered Office being located at 800 Brazos Street, Austin, Texas 78701. Defendant has heretofore appeared and made general appearance. No additional service is required.
8. Defendant Doubletree Hotel Systems, Inc. (“Doubletree Systems”) is an Arizona corporation duly qualified to engage in business in the State of Texas pursuant to a Certificate of Authority issued by the Secretary of State of Texas. Its Registered Agent for service is Corporation Service Company d/b/a CSC-Layers Incorporating Service Company with its Registered Office being located at 800

Brazos Street, Austin, Texas 78701. Defendant has heretofore appeared and made a general appearance. No additional service is required.

9. Defendant DT Management, Inc. (“DT Management”) is an Arizona corporation duly qualified to engage in business in the State of Texas pursuant to Certificate of Authority issued by the Secretary of State of Texas. Its Registered Agent for service is Corporation Service Company d/b/a CSC-Layers Incorporating Service Company with its Registered Office being located at 701 Brazos Street, Suite 1050, Austin, Texas 78701.
10. Defendant Doubletree Management Company is a business entity whose form of business is unknown. On information and belief, Defendant operates or has operated within the State of Texas without first acquiring a Certificate of Authority or otherwise complying with the laws of the State of Texas. Its last known business address is 755 Crossover Lane, Memphis, Tennessee, 38117-4900.
11. On information and belief there may be other legal entities, known to the named Defendants, which as a consequence of contractual and/or legal organizational relationships are directly or vicariously liable to Plaintiff for all or part of her causes of action against named Defendants. Until such time as discovery has been completed and such Defendants are correctly identified, they are identified herein as X D/B/A Doubletree Hotel. Plaintiff believes it is the intention of the named Defendants who have heretofore appeared herein and made general appearance that they also appear and make general appearance for X D/B/A Doubletree Hotel Defendants, if such Defendants exist. Until such time as any X D/B/A Doubletree

Hotel Defendants are correctly identified and it is determined that they have not heretofore appeared and made general appearance, no service is requested.

12. Defendant Andrew Saldana (“Saldana”) is a resident of Austin, Travis County, Texas, wherein service of citation may be secured upon him at his place of residence which is 8505 Tyhurst, Austin, Texas 78749. Defendant Saldana has heretofore appeared and made his general appearance. No additional service is required.

GENERAL FACTS UNDERLYING SUIT

13. Ugarte is a citizen of Mexico and a resident of Travis County, Texas. At all times material to Ugarte’s suit, she was employed by Doubletree Defendants.
14. Ugarte is a female and the sole support of her six minor children.
15. Defendants Doubletree Hotels, Doubletree Systems, Hilton, DT Management, Doubletree Management and X D/B/A Doubletree Hotel, on information and belief and at all times material to this suit, through various legal organizational and contractual relationships own and operate the Doubletree Guest Suites Austin located at 303 West 15th Street, Austin, Texas 78701 and as part of their legal relationships do business as Doubletree Hotel and Doubletree Guest Suites Austin. For purposes of convenience of identification, Defendants collectively shall be referred to as “Doubletree Defendants.”
16. At all times material to her suit Ugarte was employed by Doubletree Defendants as a housekeeper by the Doubletree Defendants at the Doubletree Guest Suites.

17. At all times material to Plaintiff's suit herein, Doubletree Defendants, collectively as well as individually, were persons within the meanings of 29 U.S.C. §203(a) and 42 U.S.C. §2000e(a).
18. At all times material to her suit, Ugarte was an employee of Doubletree Defendants within the meanings of 29 U.S.C. §203(e)(1); 42 U.S.C. §2000e(f) and Texas Labor Code § 21.002(7).
19. At all times material to Plaintiff's suit herein, Doubletree Defendants collectively as well as individually, were employers of Ugarte within the meanings of 29 U.S.C. §203(d), 42 U.S.C. § 2000e(b) and Texas Labor Code §21.002(8)(A).
20. At all times material to her suit, Ugarte was an hourly employee. As an employee she participated in a group health care insurance plan the premiums of which were entirely paid by her through payroll deduction. The plan covered her and her children.
21. Doubletree Defendants' status as an employer extended through its agents and anyone acting directly or indirectly in their interests within the context of 29 CFR §784.7-8 and Texas Labor Code § 21.002(8)(A)and (B).
22. At all times material to Plaintiff's suit, Saldana was an employee of Doubletree Defendants as well as Plaintiff's immediate supervisor.
23. Defendant Saldana was an agent of Doubletree Defendants and an "employer" of Ugarte within the context of Texas Labor Code § 21.002(8)(A)and (B).
24. On information and belief, at all times material to Ugarte's suit, Doubletree Defendants, in violation of Federal and Texas laws hereafter more specifically set

forth, engaged in the systematic employment and exploitation of female undocumented workers for the purpose of satisfying Doubletree Defendants' unskilled labor requirements and reducing their labor and related operating expenses associated with the ownership and management of Defendants' hotels and other overnight facilities in intra and interstate commerce, including Doubletree Guest Suites Austin. Doubletree Defendants knowingly employed undocumented female workers, including Ugarte, utilizing their undocumented status as management and business tools integral to their overall business plans and otherwise in the pursuit of their profit motives. As part of their business plan, purpose, exploitation and scheme, Doubletree Defendants directly as well as indirectly solicited the employment of female undocumented workers. As part of the solicitation, Doubletree Defendants promoted, encouraged and assisted the undocumented workers through Doubletree Defendants' supervisory, management and human resources personnel to obtain and utilize false social security numbers for among other reasons to assist Doubletree Defendants to ostensibly comply with its obligation to obtain and retain an I9 Form. Doubletree Defendants, in the furtherance of their scheme, continued the employment of the undocumented workers until Doubletree Defendants determined that it was to their legal and/or economic advantage to terminate the employment. Often, the basis for termination of employment by Doubletree Defendants was the rejection by the United States Government of a social security number on grounds of lack of authentication.

25. On information and belief, at all times material to her suit, Doubletree Defendants also utilized the undocumented status of female employees, including Ugarte, as a means for its supervisors and managers to exercise control and, among other things, minimize Doubletree Defendants exposure to legal liability duties, rights and benefits accorded to documented workers. As part of Doubletree Defendants' scheme, they feigned compliance with various Federal and State laws regarding civil rights, discrimination, labor and related laws hereinafter more specifically set forth. As part of Doubletree Defendants' efforts, they would from time to time publish certain documents and information to employees regarding their legal rights. However, the efforts were *pro forma* and accompanied by coercive acts and conduct to obtain the signatures of undocumented workers to forms purportedly signifying their understanding that their rights had been explained and understood. In fact, the substance and import of the forms were false. Moreover, Doubletree Defendants admonished the undocumented workers that they must sign the documents and forms and do nothing to offend or dissatisfy Doubletree Defendants at the risk of their jobs and deportation.
26. Alternatively, on information and belief, Doubletree Defendants had constructive knowledge, i.e., knowledge that a reasonable person would infer from the known facts, that its supervisors and managerial personnel were soliciting, hiring and harboring undocumented workers; utilizing the undocumented workers' status as a means of discrimination, control and otherwise furtherance of the business purposes of Doubletree Defendants and keeping undocumented workers ignorant of their legal rights regarding discrimination and sexual harassment. The facts

known to Doubletree Defendants and their supervisory and managerial personnel included without limitation:

- (a) The I-9 Employment Eligibility form had not been properly completed;,
- (b) The undocumented workers had no knowledge of the legal significance of a social security number;
- (c) The undocumented workers could not speak or understand English; and
- (d) Direct knowledge from other employees.

27. On information and belief, Doubletree Defendants acted with reckless disregard for the legal consequences of the acts and conducts of its employees, agents, supervisors and managerial personnel of soliciting, providing and introducing undocumented workers into Doubletree Defendants' work force and violations of anti-discrimination, sexual harassment, labor, immigration and other laws of the United States and Texas, hereinafter more specifically set forth
28. The acts and conduct of Doubletree Defendants indirectly or indirectly hiring or harboring undocumented workers constitute individual and continuing criminal offenses of 8 U.S.C. §1323(a),(c), 1324(a)(1)(A)(iii), (iv),(d) and other immigration related law.
29. On or about 25 February 1996, Ugarte became an employee of Doubletree Defendants for whom she performed housekeeping services at Doubletree Guest Suites Austin, located at 303 West 15th Street, Austin, Travis County, Texas. Ugarte continued her employment without interruption until on or about 27 December 2001, at which time Ugarte terminated her employment as a direct and

proximate cause of the acts and conduct of Saldana as well as Doubletree Defendants as hereinafter set forth.

30. On or about 20 August 2001, Ugarte reported a leg injury to her immediate supervisor, Defendant Saldana, and requested medical assistance. At Defendant Saldana's direction, Ugarte went to Defendant Saldana's office at which time, in the presence of another supervisor Defendant Saldana inappropriately and over the protests of Ugarte touched and felt Ugarte's leg and thigh. Defendant Saldana denied Ugarte's renewed request for medical assistance and Ugarte returned to work.
31. On or about 6 September 2001, Defendant Saldana accosted Ugarte in a room in which she was cleaning, sexually fondled her, while threatening her that he had the power as her supervisor to do what he chose with her, including satiating his carnal appetites. Defendant Saldana terminated his conduct after continuous reproach, rejection and objection by Ugarte.
32. On or about 15 September 2001, Defendant Saldana came to the room in which Ugarte was cleaning, fondled, sexually groped, physically accosted and attempted to remove Ugarte's clothing. Defendant Saldana, in the process of his conduct, threatened physical harm to Ugarte and her children, as well as threatened Ugarte with firing and deportation if she did not submit to his carnal desires. Saldana stated to Ugarte that no one would believe her if she revealed his conduct because he was her supervisor.
33. On or about 22 September 2001, Defendant Saldana forcibly raped Ugarte in a room in which she was cleaning.

34. On or about 15 October 2001, Defendant Saldana again forcibly raped Ugarte in a room in which she was cleaning. Contemporaneous with the events, Defendant Saldana reiterated his prior threats of physical harm to Ugarte and her children, as well as terminating Ugarte's employment and causing Ugarte and her children to be deported.
35. Ugarte complained to a person to whom she believed was the appropriate person designated by Doubletree Defendants to receive such a complaint regarding Defendant Saldana's conduct. Although unknown to Ugarte at this time, for purposes of identification, the person to whom Ugarte complained will be identified as a Human Resources ("HR") person within Doubletree Defendants' organization. Among other reasons, because of the fear of the physical reprisal of Defendant Saldana upon Ugarte's children, Ugarte's complaint to HR was limited to the improper touching by Defendant Saldana at the time that Ugarte sought medical attention for her leg injury. Additionally, Ugarte as a consequence of the inability of other undocumented workers to obtain remedies for improper conduct of supervisory personnel, reasonably believed that HR would in all probability ignore her complaints. Consistent with her belief, HR summarily rejected Ugarte's complaint with the statement that Defendant Saldana would not engage in improper conduct with female employees and suggested to Ugarte that her complaint was without substance and motivated by Ugarte's ulterior improper reasons.

36. On information and belief, Doubletree Defendants failed and refused to reasonably investigate Ugarte's the complaint and otherwise to provide her with a reasonable remedy from improper conduct by Saldana.
37. Following the summary dismissal of her complaint by Doubletree Defendants' HR person, Ugarte as consequence of Doubletree Defendants' failure to promulgate information and procedures for an aggrieved employee to make a complaint to alternate HR persons where such complaint and relief may not be reasonably made and obtain from the assigned HR person, Ugarte had no known recourse and out of financial necessity continued her employment under hostile work conditions. In effect, Doubletree Defendants denied Ugarte the rights accorded to her in law to be protected from employer discrimination, sexual harassment and a hostile work environment.
38. As a consequence of Ugarte's complaint to Doubletree Defendants' HR, Defendant Saldana commenced a campaign of intimidation and retaliation against Plaintiff, which included, among other things, materially reducing her work schedule, resulting in material losses of wage income to Ugarte.
39. Subsequent to Ugarte's initial complaint to HR, Defendant Saldana physically confronted Ugarte in the hall of Defendant Doubletree's facility. After Defendant Saldana separated from Ugarte and as a consequence of the commotion, Defendant Doubletree's HR person confronted Ugarte and directed her to the HR person's office. Ugarte intended to give in graphic description the full and complete details of Defendant Saldana's conduct, but before she could do so, the HR person refused to give her an opportunity to make her complaints, outright

rejected any complaints and summarily denied Ugarte any relief or recourse with an admonition that she should make no criticism of Defendant Saldana. As in the case of her initial complaint, Defendant Doubletree's HR person failed to make any reasonable inquiry or investigation regarding Ugarte's complaints.

40. On or about 23 December 2001, as a consequence of the hostile environment created by Defendant Saldana and the tangible adverse employment actions, with the express or otherwise tacit approval of Doubletree Defendants, Ugarte left the employment of Doubletree Defendants.
41. On or about April 2002, Doubletree Defendants formally terminated the employment of Ugarte on the basis that her social security number, given by her to Doubletree Defendants in 1996, could not be authenticated.
42. Subsequent to her termination, Ugarte's son as a consequence of cancer had to have his leg amputated. As a consequence of the loss of her health care insurance obtained through her employment with Doubletree Defendants which would have paid for her son's medical expenses, Ugarte became personally liable for her son's past and future medical expenses.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

43. Plaintiff timely filed with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission ("EEOC") a charge of discrimination against Doubletree Defendants. Plaintiff received a Notice of Right to File a Civil Action from the EEOC and the Texas Commission on Human Rights within sixty (60) days of the filing of the Original Petition in the state court which suit was

removed by Defendants to the United States District Court. A copy of the Notice of Right to File a Civil Action is attached hereto as Exhibit "A."

VIOLATIONS OF TITLE VIII CIVIL RIGHTS ACT OF 1964 AS AMENDED

COUNT I.

Quid Pro Quo Sexual Harassment

(Germane to Doubletree Defendants)

44. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
45. Ugarte belongs to a protected group as provided in 42 U.S.C. §2000e-2.
46. Ugarte was subjected by her supervisor with Doubletree Defendants to unwelcome sexual harassment, sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature which was unwelcome, unsolicited and unincited and which was offensive to Ugarte.
47. The sexual harassment was based on Ugarte's gender.
48. Defendant Saldana, in his capacity as Doubletree Defendants' supervisor over Ugarte victimized and discriminated against Ugarte predicated upon her female gender by:
 - (a) Conditioning the continuation of Ugarte's employment upon Ugarte engaging in sexual activities with Defendant Saldana upon his demand;
 - (b) Conditioning Ugarte's regular and overtime employment hours upon Ugarte engaging in sexual activities with Defendant Saldana upon his demand;
 - (c) Raping Ugarte;
 - (d) Assaulting Ugarte;

- (e) Committing batteries upon Ugarte;
- (f) Other misconduct directed against Ugarte predicated upon her female gender.

49. The acts and conduct of Defendant Saldana was sufficiently pervasive so as to alter the conditions of Ugarte's employment and create an abusive working environment. The acts and conduct of Defendant Saldana directly and proximately caused tangible adverse employment actions against Ugarte including without limitation the following:

- (a) materially reducing her regular and employment hours resulting in lost wages;
- (b) physical injuries;
- (c) emotional injuries;
- (d) creating a sexually hostile employment environment, the consequence of which caused Ugarte to terminate her employment;
- (e) the loss of Ugarte's healthcare insurance benefits.

50. As a direct and proximate cause of the acts and conduct of Defendant Saldana, Ugarte suffered actual damages consisting of:

- (a) loss of back pay;
- (b) loss of forward pay;
- (c) physical injuries, pain and suffering;
- (d) emotional harm;
- (e) liability for healthcare expenses which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;

(f) other damages.

51. Doubletree Defendants knew or should have known of the sexual harassment, hostile work environment and tangible adverse employment actions and failed to take prompt and reasonable remedial action.

52. As a direct and proximate cause of the sexual harassment, Ugarte was constructively discharged from her employment resulting her terminating the employment on or about 21 December 2001.

COUNT II

Hostile Work Environment

(Germane to Doubletree Defendants)

53. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.

54. Ugarte belongs to a protected group as provided in 42 U.S.C. §2000e-2.

55. Ugarte was subjected to unwelcome sexual harassment, sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature which was unwelcome, unsolicited and uncited and which was offensive to Ugarte.

56. The sexual harassment was based upon Ugarte's gender.

57. The sexual harassment was sufficiently pervasive so as to alter the conditions of Ugarte's employment and create an abusive working environment.

58. Doubletree Defendants knew or should have known of the harassment in question and failed to take prompt and reasonable remedial action.

59. As a direct and proximate cause of the hostile sexual environment, Ugarte was constructively discharged from her employment resulting in her terminating the employment on or about 21 December 2001.

60. As a consequence of the hostile sexual environment, Ugarte suffered tangible adverse employment actions including:
- (a) loss of back pay;
 - (b) loss of forward pay;
 - (c) physical injuries, pain and suffering;
 - (d) emotional harm;
 - (e) liability for healthcare expenses which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
 - (f) other damages.

COUNT III

Discrimination

(Germane to Doubletree Defendants)

61. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
62. Ugarte belongs to a protected group as provided in 42 U.S.C. §2000e-2.
63. Doubletree Defendants intentionally discriminated against Ugarte because of her gender and national origin in violation of 42 U.S.C. §2000e-2.
64. Doubletree Defendants used the following discriminatory employment practices:
- (a) hiring undocumented workers, including Ugarte, with the intention of exploiting their undocumented worker status by paying them wages and providing benefits to a lesser degree than they would pay and provide to non-undocumented workers;
 - (b) employing undocumented workers and ostensibly complying with the employer contribution requirements regarding social security and

Medicare with the knowledge and the intent of discharging the undocumented worker at a time convenient to Doubletree Defendants with the right of refund of the employer contributions;

- (c) exploiting the status of undocumented workers, including Ugarte, in order to exercise control and authority over them.

65. As a consequence of the discrimination, Ugarte suffered tangible adverse employment actions including:

- (a) loss of back pay;
- (b) loss of forward pay;
- (c) physical injuries, pain and suffering;
- (d) emotional harm;
- (e) liability for healthcare expenses which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- (f) other damages.

COUNT IV

Retaliation

(Germane to Doubletree Defendants)

66. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.

67. Doubletree Defendants through Defendant Saldana in his capacity as supervisor retaliated against Ugarte for the complaint by her regarding Defendant Saldana's sexual misconduct by:

- (a) materially reducing her regular hours of employment;
- (b) materially reducing her overtime hours of employment;

- (c) implementing and maintaining hostile work conditions compelling Ugarte to terminate her employment or otherwise constructively discharging Ugarte.

68. As a consequence of the retaliation, Ugarte suffered tangible adverse employment actions including:

- (a) loss of back pay;
- (b) loss of forward pay;
- (c) physical injuries, pain and suffering;
- (d) emotional harm;
- (e) liability for healthcare expenses which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- (f) other damages.

CONSPIRACY TO VIOLATE CIVIL RIGHTS UNDER 42 U.S.C. §1985(3)

COUNT V

(Germane to Doubletree Defendants)

- 69. Ugarte incorporates by reference paragraphs 13 – 43 inclusive.
- 70. By their actions described above, Doubletree Defendants conspired and acted with animus towards Ugarte as an undocumented worker and documented workers with the purpose of hindering and preventing Federal and state officials from performing their affirmative obligations to Ugarte, including but not limited to the obligations of these officials to ensure that all employees in the United States are paid Federal and applicable state statutory minimum wages and

overtime, and that they enjoy minimum benefits such as worker's compensation protection and social security coverage.

71. Ugarte has been injured in her person and property and has been deprived of rights and privileges guaranteed by the laws and the Constitution of the United States.
72. The acts and conduct of Doubletree Defendants constitute a conspiracy to violate Ugarte's civil rights under 42 U.S.C. §1985(3).
73. As a consequence of Doubletree Defendants' violations of 42 U.S.C. §1985(3), Ugarte has sustained compensatory damages in an amount to be determined in the course of discovery and as may be proven at trial on the merits.

VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPTION

ORGANIZATION ACT ("RICO")

COUNT VI

(Germane to Doubletree Defendants)

74. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
75. At all times material to Ugarte's Civil RICO claims, Doubletree Defendants engaged in an enterprise within the context of 18 U.S.C. §1961(4). More specifically, the Doubletree Defendants engaged generally in providing hotel, motel and other transient facility services to the general public in interstate commerce in which general business on information and belief Doubletree Defendants adopted a business plan which included the systematic and unlawful employment of undocumented workers; the promotion with the undocumented workers of their obtaining and use of fictitious social security numbers; the

utilization of fictitious social security numbers as part of feigned compliance with the Immigration and Naturalization Act; feigned compliance with employer obligations regarding the filing of IRS Forms 940, 941 and related IRS reporting requirements and feigned compliance with Federal and State labor law. As a material part of the enterprise, Doubletree Defendants engaged in a pattern of racketeering activity within the context of 18 U.S.C. §1961(1) and (5) hereinafter more specifically described.

76. At all times material to Ugarte's Civil RICO claims, Doubletree Defendants engaged in patterns of racketeering activity within the context of 18 U.S.C. §1961(1)(B) and (F). More specifically, on information and belief, Doubletree Defendants:

- (a) Violated 18 U.S.C. §1341 by devising or intending to devise a scheme or artifice to defraud the governments of the United States and the State of Texas by utilizing the United States Mail;
- (b) Promoted the illegal entry of aliens into the United States by offering and providing employment to undocumented workers and/or harboring illegal aliens by employing them in violation of 8 U.S.C. §1324 (a)(1)(A)(i), (iii), (iv), and (v); 8 U.S.C. §1324(a)(2).

77. At all times material to Ugarte's Civil RICO claims, Doubletree Defendants as part of their enterprise and in multiple conspiracies with one another engaged in prohibited activities in violation of 18 U.S.C. §1962 in the following particulars:

- (a) they received income derived, directly or indirectly, from a pattern of racketeering activity as above described to use, or invest, directly or

indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of their enterprise which activity affected interstate or foreign commerce.

- (b) They maintained, directly or indirectly, an interest in or control of their enterprise the activities of which affected interstate or foreign commerce;
- (c) by association with their enterprise, they engaged in activities which affected interstate or foreign commerce for the purpose of conducting or participating, directly or indirectly, in the conduct of such enterprises' affairs through patterns of racketeering activity as described above;
- (d) they conspired to violate the provisions of 18 U.S.C. §1962(a),(b) and (c).

78. More specifically, on information and belief, Doubletree Defendants:

- (a) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that were significantly lower than wages would be in labor market comprised solely of legally authorized workers for the purpose of reducing its employee expenses and correspondingly increasing its income, which economic benefits were utilized by Doubletree Defendants in the operation of their enterprise within the context of 18 U.S.C. §1962(a);
- (b) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers for the purpose of depressing employee wages below the levels they would otherwise be required to pay if they were unable to hire substantial

numbers of illegal immigrants resulting in a reduction of employee expenses and a corresponding increase of income which was utilized by Doubletree Defendants in the operation of their enterprise within the context of 18 U.S.C. §1962(a);

(c) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that were significantly lower than wages would be in labor market comprised solely of legally authorized workers for the purpose of reducing its employee expenses and corresponding increasing of income, which was utilized by Doubletree Defendants in maintaining, directly or indirectly, their interest in or control of the enterprise within the context of 18 U.S.C. §1962(b);

(d) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers for the purpose of depressing employee wages below the levels they would otherwise be required to pay if they were unable to hire substantial numbers of illegal immigrants resulting in a reduction of employee expense and a corresponding increase of income which was utilized by Doubletree Defendants to maintain, directly or indirectly, their interest in or control of their enterprise within the context of 18 U.S.C. §1962(b);

(e) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that were significantly lower than wages would be in labor market comprised solely of legally authorized workers for the

purpose of reducing its employee expenses and corresponding increase of income, which was utilized by Doubletree Defendants to conduct or participate, directly or indirectly, in the conduct of their enterprise affairs through patterns of racketeering activity as herein above described 18 U.S.C. §1962(c);

- (f) knowingly hired workers of illegal status because the illegal workers were willing to accept wages that are significantly lower than wages would be in a labor market comprised solely of legally authorized workers for the purpose of depressing employee wages below the levels they would otherwise be required to pay if they were unable to hire substantial numbers of illegal immigrants resulting in a reduction of employee expense and a corresponding increase of income which was utilized by Doubletree Defendants to conduct or participate, directly or indirectly, in the conduct of their interest through patterns of racketeering activity within the context of 18 U.S.C. §1962(c).

79. As a consequence of the Civil RICO violations by Doubletree Defendants, Ugarte:

- (a) Failed to receive wages and benefits accorded by Doubletree Defendants to documented workers employed by Doubletree Defendants in similar activities;
- (b) Failed to receive wages and benefits, which otherwise she would have received, due to her economic situation and fear of asserting her rights due to her illegal status;

- (c) Agreed to work for depressed wages;
- (d) Was deprived of economic benefits and working conditions accorded to her under the Fair Labor Standards Act and the Texas Labor Code;
- (e) Sustained loss of earnings due to her diminished capacity to engage in her business of providing housekeeping services.

80. As a direct and proximate cause of the Civil RICO violations by Doubletree Defendants, Ugarte sustained actual damages including without limitation:

- (a) loss of back pay;
- (b) loss of front pay;
- (c) liability for past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- (d) liability for future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- (e) temporary diminished capacity to perform her services; and
- (f) other damages.

CONSPIRACY TO VIOLATE FAIR LABOR STANDARDS ACT

COUNT VII.

Fair Labor Standards Act

(Germane to Doubletree Defendants)

- 81. Ugarte incorporates by reference paragraphs 13- 43 inclusive.
- 82. Section 6 and 7 of the Fair Labor Standards Act, 29 U.S.C. §§206 and 207, establish the right of all persons who are “suffered or permitted to work” to be paid a minimum wage for all hours worked and overtime pay at one and one-half

times the person's regular rate for all hours worked in excess of forty (40) hours per week. Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. §216(b), entitle such persons to recover all unpaid wages plus interest, an equivalent amount as liquidated damages and reasonable attorney's fees and costs.

83. At all times relevant to this action Defendants, and each of them, failed and refused to pay Plaintiff's minimum wage for all hours worked and the overtime premiums required by the Fair Labor Standards Act, to Ugarte's damage in amounts to be proven at trial.
84. Ugarte consents to be a party to this action pursuant to Fair Labor Standards Act 29 U.S.C. §256.
85. Doubletree Defendants' failure to provide compensation for all hours worked by Ugarte with the knowledge, consent, and expectation of Doubletree Defendants supervisors and other managing agents constitutes a deliberate and willful violation of the Fair Labor Standards Act.
86. Ugarte is an "employee" as defined in the Fair Labor Standards Act, 29 U.S.C. §203(e)(1).
87. Doubletree Defendants, regardless of a technical legal relationship between them and Ugarte, are "employers" as defined in the Fair Labor Standards Act, 29 U.S.C. §203(d) and 29 U.S.C. §203(g).
88. As Ugarte's joint employers, under common law and statutory definitions, Doubletree Defendants are jointly and severally liable for Ugarte's back pay, liquidated damages, and other relief under the Fair Labor Standards Act.

VIOLATIONS OF TEXAS LABOR CODES

COUNT VIII.

Violations of Texas Labor Code § 21.051(1)

(Germane to Doubletree Defendants)

89. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
90. The acts and conduct of Doubletree Defendants violated Texas Labor Code § 21.051(1).
91. As a consequence of violations of Texas Labor Code § 21.051(1), Ugarte sustained actual damages including:
- (a) loss of back pay;
 - (b) loss of front pay;
 - (c) physical injuries, pain and suffering;
 - (d) emotional harm;
 - (e) liability for past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
 - (f) liability for future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
and
 - (g) other damages.

COUNT IX

Violations of Texas Labor Code § 21.056

(Germane to Doubletree Defendants)

92. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.

93. The acts and conduct of Doubletree Defendants violated Texas Labor Code §21.056 in that Doubletree Defendants abetted, incited and coerced Defendant Saldana to engage in discriminatory practices against Ugarte.
94. As a direct and proximate cause of the violations of Texas Labor Code §21.056, Ugarte sustained actual damages, including:
- (a) loss of back pay;
 - (b) loss of front pay;
 - (c) physical injuries, pain and suffering;
 - (d) emotional harm;
 - (e) liability for past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
 - (f) liability for future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- and
- (g) other damages.

COUNT X

Violations of Texas Labor Code § 21.051(1)

(Germane to All Defendants)

95. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
96. The acts and conduct of Doubletree Defendants and Defendant Saldana jointly violate Texas Labor Code § 21.051(1).

97. As a direct and proximate cause of the violations of Texas Labor Code §21.051(1) by Defendants Doubletree and Defendant Saldana, Ugarte sustained actual damages, including:
- (a) loss of back pay;
 - (b) loss of front pay;
 - (c) physical injuries, pain and suffering;
 - (d) emotional harm;
 - (f) liability for past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;;
 - (g) liability for future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- and
- (h) other damages.

VIOLATIONS OF TEXAS TORT LAW

COUNT XI

Negligent Hiring and Retention

(Germane to Doubletree Defendants)

98. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
99. Doubletree Defendants knew or reasonably should have known that at the time they hired Defendant Saldana he was a convicted felon.
100. Doubletree Defendants knew or reasonably should have known that during the period of time that Defendant Saldana was acting in a supervisory capacity over

undocumented employees, including Ugarte, he sexually exploited the undocumented workers by threatening to discharge and obtain their deportation.

101. Doubletree Defendants negligently employed and/or retained the employment of Defendant Saldana and facilitated his sexual misconduct with female undocumented workers, including Ugarte.
102. As a direct and proximate cause of Doubletree Defendants' negligence, Ugarte sustained actual damages consisting of:
 - (a) Physical injuries, pain and suffering;
 - (b) Emotional harm;
 - (c) Past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants; and
 - (d) Future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants.

COUNT XII

Assault and Battery

(Germane to Defendant Saldana)

103. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
104. Defendant Saldana physically attacked and raped Ugarte.
105. As a consequence of the physical attacks and rapes by Defendant Saldana, Ugarte suffered actual damages consisting of:
 - (a) Physical injuries, pain and suffering;
 - (b) Emotional harm;

- (c) Past healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
- (d) Future healthcare expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants.

COUNT XIII

Intentional Infliction of Emotional Injury

(Germane to Defendant Saldana)

- 106. Ugarte incorporates by reference paragraphs 13 through 43 inclusive.
- 107. The acts and conduct of Defendant Saldana constitute the intentional infliction of emotional harm upon Ugarte.
- 108. As a consequence of the intentional infliction of emotional harm by upon Ugarte be Defendant Saldana, Ugarte sustained actual damages, including without limitation the following:
 - (a) Physical injuries, pain and suffering;
 - (b) Past emotional suffering;
 - (c) Future emotional suffering;
 - (d) Past medical expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants;
 - (e) Future medical expenses, which otherwise would have been covered by the healthcare insurance provided by Doubletree Defendants; and
 - (f) Other actual damages.

DAMAGES

Compensatory Damages

(Under Federal Law)

109. As a consequence of the acts and conduct of Doubletree Defendants and Defendant Saldana, Ugarte has sustained actual damages including without limitation the following:

- (a) Lost back pay in a sum not less than \$404.04;
- (b) Lost wages - \$26,418.00;
- (c) Past healthcare expenses - \$915.00;
- (d) Future healthcare expenses -\$62,400.00;
- (e) Past liability for son's healthcare expenses- \$350,000.00;
- (f) Future liability for son's healthcare expenses, in excess of \$300,000.00;
- (g) Past physical pain, as may reasonably be determined by the court and jury;
- (h) Future physical pain, as may reasonably be determined by the court and jury;
- (i) Past emotional suffering, as may reasonably be determined by the court and jury;
- (j) Future emotional suffering, as may reasonably be determined by the court and jury.

Compensatory Damages

(Under Texas Labor Code)

110. As a consequence of the acts and conduct of Doubletree Defendants, Ugarte has sustained actual damages within the context of Texas Labor Code §21.2585(1) including without limitation the following:

- (a) Lost back pay in a sum not less than \$404.04;
- (b) Lost wages - \$26,418.00;
- (c) Past healthcare expenses - \$915.00;
- (d) Future healthcare expenses -\$62,400.00;
- (e) Past liability for son's healthcare expenses- \$350,000.00;
- (f) Future liability for son's healthcare expenses, in excess of \$300,000.00;
- (g) Past physical pain, as may reasonably be determined by the court and jury;
- (h) Future physical pain, as may reasonably be determined by the court and jury;
- (i) Past emotional suffering, as may reasonably be determined by the court and jury;
- (j) Future emotional suffering, as may reasonably be determined by the court and jury.

Statutory Damages

Treble Damages Pursuant to 18 U.S.C. §1964(c)

111. In addition to all other relief to which Ugarte is entitled, Ugarte pursuant to 18 U.S.C. §1964(c) is entitled to treble damages for the Civil RICO violations of Doubletree Defendants.

Punitive Damages

Under Federal Law

(Germane to Doubletree Defendants)

112. Doubletree Defendants' acts and conduct is so reprehensible to warrant the imposition of further sanctions to achieve punishment or deterrence.
113. In addition to all other relief to which Ugarte is entitled, Ugarte is entitled to punitive damages reasonable in relationship to the actual damages and considering:
 - (a) the actual harm sustained by Ugarte;
 - (b) the indifference to or reckless disregard by Doubletree Defendants of Ugarte's health and safety;
 - (c) the repetitiveness of the acts and conduct which directly and proximately caused the actual damages of Ugarte;
 - (d) the harm occasioned to Ugarte as a consequence of the exploitation by Doubletree Defendants of Ugarte's undocumented worker status; and
 - (e) other relevant considerations in accordance with law.

Punitive Damages

Under Texas Labor Code

(Germane to All Defendants)

114. In addition to all other relief to which Ugarte is entitled, Ugarte is entitled to punitive damages against Doubletree Defendants and Defendant Saldana pursuant to Texas Labor Code §21.2585(a)(2).

Punitive Damages

Under Tex.Civ.Prac.& Rem. Code §41.003(2)

(Germane to Defendant Saldana)

115. In addition to all other relief to which Ugarte is entitled, Ugarte is entitled to punitive damages against Defendant Saldana pursuant to Tex.Civ.Prac.& Rem. Code §41.003.

OTHER RELIEF

Prejudgment Interest

(Germane to All Defendants)

116. In addition to all other relief to which Ugarte is entitled, she is entitled to prejudgment interest upon her actual damages as well as future damages in accordance with law.

Attorneys Fees

(Germane to Doubletree Defendants)

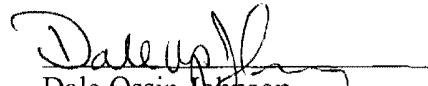
117. In addition to all other relief to which Ugarte is entitled, Ugarte is entitled to attorney's fees as follows:
- (a) Under 42 U.S.C. §2000e-5(K);
 - (b) Under 18 U.S.C. §1964(c);
 - (c) Under 29 U.S.C. §216(b); and
 - (d) Under Texas Labor Code §21.259, including reasonable expert fees.
118. Ugarte's right of recovery for attorney's fees extend to trial on the merits as well as any appeal or ancillary proceeding which may ensue therefrom, subject to proper remittitur.

DEMAND FOR JURY TRIAL

Ugarte hereby requests a jury trial on all issues so triable.

WHEREFORE PREMISES CONSIDERED, Plaintiff Petra Ugarte prays for judgment in accordance with her Fourth Amended Original Complaint including actual damages, statutory damages, punitive damages, prejudgment interest, attorney's fees, costs of court and such other and further relief to which she may show herself entitled at law or in equity.

Respectfully submitted,


Dale Ossip Johnson
SBN: 10700000

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 a true and correct copy of the foregoing document was on the 31st day December 2003 served upon each of the parties by first class mail, postage prepaid, as follows:

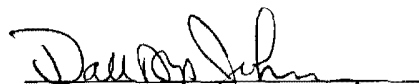
Ronald M. Gaswirth, Esq.
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Dallas, Texas 75201

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TEXAS COMMISSION ON HUMAN RIGHTS

August 18, 2003

NOTICE OF RIGHT TO FILE A CIVIL ACTION

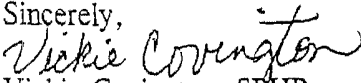
Jason R. Nassour, Atty
FLOREY, KEEL, & NASSOUR, LLP
704 WEST 9TH STREET
AUSTIN, TX 78701

Re: *Petra Ugarte v. DOUBLETREE HOTEL*
EEOC Complaint #36AA200382
TCHR/Local Commission Complaint #

Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, and Chapter 327, Section 327.7 of the Commission's Rules, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. PLEASE BE ADVISED THAT YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION. If the above-referenced case was processed by the United States Equal Employment Opportunity Commission or another agency, you should also notify that agency as to your intention to file a civil action.

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to the Texas Commission on Human Rights Act, as amended.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right-to-sue may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - *et seq.*

Sincerely,

Vickie Covington, SPHR
Employment Investigations Manager

RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:

DOUBLETREE HOTEL
303 W. 15TH STREET
AUSTIN, TX 78701

CERT-C-NCO2(6/92)

"Texas Commission on Human Rights is an Equal Opportunity Employer"

EXHIBIT "A"