

DC-17-04591

Marissa Pittman

CAUSE NUMBER \_\_\_\_\_

D. DARLING	§	IN THE _____
	§	
V.	§	JUDICIAL DISTRICT COURT
	§	
TEXAS ENTERTAINMENT	§	
SERVICES, L.L.C., ICP, LIVE	§	
NATION ENTERTAINMENT, INC.,	§	DALLAS COUNTY, TEXAS
and PSYCHOPATHIC RECORDS		

### **PLAINTIFFS' ORIGINAL PETITION**

TO: THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, D. DARLING, (hereinafter "Plaintiff") filing this, her Plaintiff's Original Petition complaining against: TEXAS ENTERTAINMENT SERVICES, LLC; ICP; LIVE NATION ENTERTAINMENT, INC.; and PSYCHOPATHIC RECORDS (hereinafter "Defendants") and would show the Court as follows:

#### **I. DISCOVERY LEVEL – TRCP 47(C)(2) DAMAGES STATEMENT**

1.01 Discovery in this case will be conducted under Level 2 Discovery Plan pursuant to Rule 190 Tex.R.Civ.Proc. The claims sought consist of monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

#### **II. PARTIES, JURISDICTION AND VENUE**

2.01 Plaintiff D. Darling comes forth as a resident of the Great State of Texas.

2.02 Defendant **TEXAS ENTERTAINMENT SERVICES, LLC** may be served by serving its **registered agent CCH LAMAR PARTNERS I, LP at 320 W. Main Street, Lewisville, Texas 75057.**

2.03 Defendant **ICP *also known as* INSANE CLOWN POSSE** may be served by serving **any one of its members, namely Joseph Bruce or Joseph Utsler at 32575 Folsom Road, Farmington Hills, Michigan 48336.**

2.04 Defendant **LIVE NATION ENTERTAINMENT, INC.** may be served by serving its **registered agent Corporate Creations Network, Inc. at 2425 West Loop South, Houston, Texas 77027.**

2.05 Defendant **PSYCHOPATHIC RECORDS, INC.** may be served by serving its **registered agent William B. Dail at 32575 Folsom Road, Farmington Hills, Michigan 48336.**

2.06 This Court has jurisdiction over the persons and entities listed as Defendants because same have conducted business and/ or committed torts in a manner to establish contacts necessary for the imposition of the jurisdiction of this Court. This Court has jurisdiction over the subject matter because the damages are within the jurisdictional limits of this court.

2.07 LONG ARM JURISDICTION - The Texas Long-Arm Statute allows Texas courts to exercise jurisdiction over a nonresident defendant that "does business" in the state. Tex. Civ. Prac. & Rem. Code Ann. § 17.042 (Vernon 2008). A nonresident defendant's minimum contacts must derive from purposeful availment: a nonresident defendant must have "purposefully availed" itself of the privileges and benefits of conducting business in the foreign jurisdiction to establish sufficient contacts with the forum to confer personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76, 105 S. Ct. 2174, 2183-84 (1985)); *Xenos Yuen v. Fisher*, 227 S.W.3d 193, 200 (Tex. App.--Houston [1st Dist.] 2007, no pet.). An act or acts "by which the defendant purposefully avails itself of the privilege of conducting activities" in Texas and "thus invok[es] the benefits and protections" of Texas law, constitutes sufficient contact with Texas to confer personal jurisdiction. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005) (*quoting Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)). In the instant case, the Defendants Psychopathic Records, Inc. presented the popular music recording act ICP - INSANE CLOWN POSSE for a performance in Dallas, Texas wherein the performers assaulted a patron. LIVE NATION

ENTERTAINMENT, INC. is the booking agent for the venue SOUTHSIDE BALLROOM on Lamar Street in Dallas and booked the group ICP for the event, knowing that the tortious conduct may occur. All Defendants did business in Dallas County, Texas availing themselves to the jurisdiction of Dallas County, Texas. Moreover, Defendants committed torts in Dallas County, Texas which caused injuries to Plaintiff for which she now sues.

2.08 Venue is proper in this Dallas County because the facts constituting the causes of action herein occurred in whole or in part in Dallas County, Texas.

### **III. FACTS**

3.01 On October 18, 2015, Defendant LIVE NATION ENTERTAINMENT, INC. (“LIVE NATION”) promoted, produced and presented a concert (“the concert”) at a venue operated by Defendant TEXAS ENTERTAINMENT SERVICES, LLC which does business as Gilley’s Dallas aka Southside Ballroom (TEXAS ENTERTAINMENT SERVICES, LLC is also referred to as “Southside” or “Southside Ballroom”).

3.02 The concert featured the live performance of the popular music recording artists ICP, also known as INSANE CLOWN POSSE.

3.03 Southside is booked and promoted exclusively by Live Nation, the world's leading live entertainment company.

3.04 Prior to the concert, Plaintiff was a fan of ICP’s recorded music (and remains a fan as of today). Although Plaintiff found out that she may get Faygo soda sprayed on her, Plaintiff had no way of knowing that she would be assaulted by being struck in the eye with a filled 2 liter bottle projected from the stage by ICP.

3.05 At approximately 9:00PM the evening of the concert, the band ICP started to perform. Plaintiff had heard from other concert goers that the band may spray people

with soda from the stage during the show. Therefore, Plaintiff stood away from the stage area.

3.06 At some point in the concert, the band started spraying soda on the audience and dropping confetti in the room. The confetti drop continued for quite a while. Plaintiff moved forward in order to feel the confetti falling. Plaintiff's friend, who attended the concert with her, witnessed what appeared to be a full two-liter bottle of soda violently flung from the stage, striking Plaintiff in the eye socket. Plaintiff's eye immediately began bleeding profusely, covering her face with blood and preventing her from being able to see from the eye.

3.07 Plaintiff suffered major injuries to her eye. Venue staff carried Plaintiff out of the concert area in a wheelchair. The parking lot was crowded, thus ingress and egress to the facility was obstructed. Without time to wait on an ambulance being able to arrive and make its way through the lot, Plaintiff's friend rushed Plaintiff to the Emergency Room at nearby Baylor Hospital. The large amount of blood in the eye completely obstructed Plaintiff's vision. The throbbing pain was excruciating and the fear of the loss of sight created great anxiety. Plaintiff underwent medical treatment for weeks. In an effort to lessen the scarring, surgical glue was used to close the wound. It was later revealed that Plaintiff suffered a degree of retinal detachment.

3.08 In addition to the pain and suffering, Plaintiff suffered lost wages and medical expenses.

3.09 Plaintiff made numerous demands upon the band, record label, promoter and the venue in order to resolve the matter. However, not one of the defendants has made any offer to pay a nickel of her damages. Plaintiff has been met with denial and avoidance. As a result, Plaintiff has had to file this suit.

#### **IV. CAUSES OF ACTION**

4.01 **NEGLIGENCE** --- Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 3.09 as though fully restated and set forth herein. Defendants TEXAS ENTERTAINMENT SERVICES, LLC, ICP (INSANE CLOWN POSSE), LIVE NATION ENTERTAINMENT, INC. and PSYCHOPATHIC RECORDS, INC. owed a duty to Plaintiff to act reasonably and perform their responsibilities in such a way as to entertain without injury. Defendants breached their duties by: throwing a projectile (2 liter bottle of soda) from the stage in the direction of Plaintiff; failing to employ adequate security to prevent the act and/or injury; failing to oversee the stage activities in such a way as to prevent injurious items from being projected from the stage into the audience; failing to control the who was on stage at the request of the performers; failing to prevent injury to Plaintiff. Defendants' breach of duty was the proximate cause of Plaintiff's injuries. As a result, each Defendant is jointly and severally liable for the commission of the act. Plaintiff suffered damages and now sues.

4.02 **GROSS NEGLIGENCE**--- Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 4.01 as though fully restated and set forth herein. TEXAS ENTERTAINMENT SERVICES, LLC, ICP (INSANE CLOWN POSSE), LIVE NATION ENTERTAINMENT, INC. and PSYCHOPATHIC RECORDS, INC. engaged in acts and omissions of booking ICP when they knew the dangers associated with the act. Defendants failed to control ICP in such a way as to prevent the conduct which resulted in Plaintiff's injuries. The conduct of Defendants: (A) which when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Defendants' gross negligence was the proximate cause of Plaintiff's injuries. As a result, each Defendant is jointly

and severally liable for the commission of the act. Plaintiff suffered damages and now sues.

4.03 ASSAULT --- Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 4.02 as though fully restated and set forth herein. Defendants ICP recklessly caused bodily injury to Plaintiff. Defendants' assault was the proximate cause of Plaintiff's injuries. As a result, each Defendant is jointly and severally liable for the commission of the act. Plaintiff suffered damages and now sues.

4.04 NEGLIGENCE PER SE --- Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 4.03 as though fully restated and set forth herein. Throwing a 2 liter bottle into a crowded audience constitutes reckless assault. Reckless assault is a criminal offense in the state of Texas. Therefore, such conduct also constitutes negligence per se. Defendants' reckless assault fell below the standard of care required of Defendants and was the proximate cause of Plaintiff's injuries. As a result, each Defendant is jointly and severally liable for the commission of the act. Plaintiff suffered damages and now sues.

4.05 AIDING AND ABETTING-- Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 4.04 as though fully restated and set forth herein. Defendants TEXAS ENTERTAINMENT SERVICES, LLC, ICP (INSANE CLOWN POSSE), LIVE NATION ENTERTAINMENT, INC. and PSYCHOPATHIC RECORDS, INC. gave substantial assistance and encouragement in the commission of the reckless assault. As a result, each Defendant is jointly and severally liable for the commission of the act itself. Plaintiff suffered injuries as a result of Defendants' aiding and abetting the tortious conduct. Plaintiff hereby sues for damages.

4.06 - PREMISES LIABILITY - Plaintiff incorporates the allegations set forth in paragraphs 1.01 through 4.04 as though fully restated and set forth herein. Defendants were in control of the premises. Plaintiff D. Darling was a business invitee of Defendants TEXAS ENTERTAINMENT SERVICES, LLC, ICP (INSANE CLOWN POSSE), LIVE NATION ENTERTAINMENT, INC. and

PSYCHOPATHIC RECORDS, INC. Defendants knew, or should have known, that ICP would likely commit and/ or incite acts or omissions which would result in injury to an audience member. Defendants were aware of the history of ICP and the type of conduct likely to occur at an ICP concert. By producing and promoting the performance, Defendants created an environment of risk and exposed Plaintiff to the environment. Defendants had a duty to use ordinary care to protect invitees from acts Defendant knew or had reason to know of an unreasonable and foreseeable risk of harm to invitee, Plaintiff. Once the band started spraying soda from the stage and dropping confetti, Defendants had actual and direct knowledge that assaultive conduct was imminent. Defendants acted negligently in unreasonably failing to respond to the band's conduct and failed to require security to do so. Defendants failed to have adequate and trained security in place to prevent the type of injury which occurred in this matter. Defendants failed to provide admonishments and instruction to ICP preventing the acts which caused the damages set forth herein. Defendants are liable under the theory of premises liability as a result of failing to use ordinary care to reduce or eliminate an unreasonable risk of harm created by a premises condition that they knew about or should have known about.

WHEREFORE PREMISES CONSIDERED, Plaintiffs move this Honorable Court to award Plaintiffs the following:

- a. Actual Damages;
- b. Consequential Damages; Exemplary and Punitive Damages;
- c. Pre-judgment interest as allowed by law;
- d. Post-judgment interest as allowed by law;
- e. All relief at law and in equity to which Plaintiff may show justly entitled.

Respectfully submitted,

/s/ David A. Small  
Law Office of David A. Small  
Texas State Bar Number 00784987  
501 Elm Street, Suite 385  
Dallas, Texas 75202  
PHONE (214) 965-9400  
FACSIMILE (214) 752-7798  
**ATTORNEY FOR PLAINTIFF**  
**D. DARLING**