

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY
STATE OF OHIO

KEVIN DARAGO)
1868 Lancaster Street)
Cuyahoga Falls, Ohio 44221,)
)
Plaintiff,)

Case No. _____

Judge: _____

-vs.-

LIVE NATION ENTERTAINMENT, INC.)
c/o Corporation Creations Network, Inc.)
1430 Truxtun Avenue, 5th Floor)
Bakersfield, California 93301,)
)
and)

COMPLAINT:

- 1. Negligence
- 2. Negligent Hiring, Training and Supervision
- 3. Vicarious Liability/*Respondeat Superior*
- 4. Declaratory Judgment

VIKING WIZARD EYES, LLC)
c/o Bo Gardner, Statutory Agent)
2850 Ocean Park Boulevard, Suite 300)
Santa Monica, California 90405,)
)
and)

JURY DEMAND ENDORSED HEREON

MARK HOPPUS)
2850 Ocean Park Boulevard, Suite 300)
Santa Monica, California 90405,)
)
and)

TRAVIS BARKER)
2850 Ocean Park Boulevard, Suite 300)
Santa Monica, California 90405,)
)
and)

MATT SKIBA)
c/o Viking Wizard Eyes, LLC)
2850 Ocean Park Boulevard, Suite 300)
Santa Monica, California 90405,)
)
and)



JAMES GRANT GROUP LTD)
 9000 Sunset Boulevard, #1000)
 Los Angeles, California 90069,)
)
 and)
)
 DECKSTER)
 c/o Kevin Wolff)
 9100 Wilshire Boulevard)
 Beverly Hills, California 90212,)
)
 and)
)
 OHIO BUREAU OF WORKERS')
 COMPENSATION)
 30 West Spring Street)
 Columbus, Ohio 43215,)
)
 and)
)
 JOHN DOES 1-10, JANE DOES 1-10,)
 DOE PARTNERSHIPS 1-10, DOE)
 CORPORATIONS 1-10, DOE)
 GOVERNMENTAL AGENCIES 1-10 and)
 DOE ENTITIES 1-10,)
)
 Defendants.)
)
)

Now comes, KEVIN DARAGO, Plaintiff herein, by and through his attorney, Robert C. Meeker, of Blakemore, Meeker & Bowler Co., L.P.A., and hereby complains against LIVE NATION ENTERTAINMENT, INC., VIKING WIZARD EYES, LLC, MARK HOPPUS, MATT SKIBA, TRAVIS BARKER, JAMES GRANT GROUP LTD, DECKSTER, OHIO BUREAU OF WORKERS' COMPENSATION, JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE GOVERNMENTAL AGENCIES 1-10 and DOE ENTITIES 1-10, names unknown, collectively as Defendants herein, as follows:



A. PARTIES

1. During all relevant times herein, Plaintiff was a resident of Summit County, Ohio, whose address is 1868 Lancaster Street, Cuyahoga Falls, Ohio 44221.

2. During all relevant times herein, Defendant VIKING WIZARD EYE, LLC (“Viking”) was a California entity, whose address is 2850 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405.

3. During all relevant times herein, Defendant MARK HOPPUS (“Hoppus”) maintained and/or operated a business, located at 2850 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405.

4. During all relevant times herein, Defendant TRAVIS BARKER (“Barker”) maintained and/or operated a business, located at 2850 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405.

5. During all relevant times herein, Defendant MATT SKIBA (“Skiba”) was an individual doing business in Santa Monica California, whose address is 2850 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405.

6. During all relevant times herein, Defendant JAMES GRANT GROUP LTD (“Group Ltd”) was, and is, a California entity, that maintained and/or operated a business at 2850 Ocean Park Boulevard, Suite 300, Santa Monica, California 90405.

7. During all relevant times herein, Defendant DECKSTER was a California entity, that maintained and/or operated a business in or around Beverly Hills, California, which maintains an address at c/o Kevin Wolff, 9100 Wilshire Boulevard, Beverly Hills, California 90212.

8. During all relevant times herein, Defendant OHIO BUREAU OF WORKERS’



COMPENSATION (“BWC”) was an agency that regularly provides employee benefits for injuries sustained in the course and scope of employment throughout the State of Ohio, including Summit County, Ohio, whose address is 30 West Spring Street, Columbus, Ohio 43215.

9. During all relevant times herein, Defendant Does were, and are, individuals, persons, corporations, partnerships, governmental agencies and entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff(s), or his/her/its/their attorney(s), and could not discover said names who in some manner may be liable to Plaintiff(s), contractually, vicariously, tortiously, jointly and/or severally, arising from the events described herein. Plaintiff(s) will be obtaining updated reports, as to identity, liability, existence of additional claims and/or causes of action or otherwise, in connection with or in addition to the claim or claims herein. Plaintiff(s) reserve(s) the right to plead Defendant Does as party defendant(s) and/or plead additional claim(s) to this action once their identities, capacities, activities, liabilities and claims or causes of action become known.

10. During all relevant times herein, Defendants maintained a presence in Summit County, State of Ohio, actual, physical, and/or through their respective agents, employees, representatives, members, directors or officers.

B. PRELIMINARY STATEMENT

11. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

12. During all relevant times herein, all transactions and occurrences occurred, in whole or in part, in Summit County, Ohio.

13. During all relevant times herein, Plaintiff was employed by C and C WD Studio

Productions LLC (“C and C”) on a part time basis. C and C was in the business of providing staff members to venues, where musical groups and bands performed.

14. During all relevant times herein, Plaintiff was gainfully employed, full time, as a Senior Staff Accountant at Coleman Professional Services.

15. Plaintiff was not employed by any of the named Defendants in this action.

16. Upon information and belief, Defendant Viking was an entity created under the laws of the State of California, whose members included Defendants Hoppus and Barker and which was in the business of providing entertainment services.

17. In addition to its entertainment services, Defendant Viking was also doing business as blink-182, a musical band that played pop-punk rock music; as a band, blink-182 would travel throughout the United States and perform at selected venues, including Blossom Music Center, located at 1145 West Steels Corners Road, Cuyahoga Falls, Ohio 44223.

18. The band members of blink-182 included Defendant Hoppus, Defendant Barker and Defendant Skiba.

19. Blossom Music Center (“Blossom”) is an entertainment venue, which includes Pavilion seating and lawn seating. As a policy, Blossom does not allow crowd surfing and moshing by patrons.

20. The Pavilion accommodates over 6,000 seated patrons, while the lawn accommodates over 17,000 general admission patrons.

21. Upon information and belief, Defendant Live Nation was an entity that arranged musical performances at Blossom, including promoting musical groups and bands.

22. Upon information and belief, Defendant Group Ltd was the management company



that managed blink-182.

23. Upon information and belief, Defendant Deckster was the manager which oversaw the operations and/or performances of blink-182.

24. These named Defendants, collectively and in concert, did promote, arrange, manage and operate concerts at venues, where blink-182 would perform, including a requirement that there be a standing room only area for some patrons.

25. Defendants collectively, and in concert, arranged an appearance by blink-182 for the purpose of performing a concert at Blossom to be held on or about August 9, 2016.

26. The concert was attended by approximately 20,000 patrons, which would include largely the 20's and 30's age group, who would be served and consume alcoholic beverages.

27. Below are examples of how Blossom appeared when an event is held, with patrons on the lawn and in the Pavilion.



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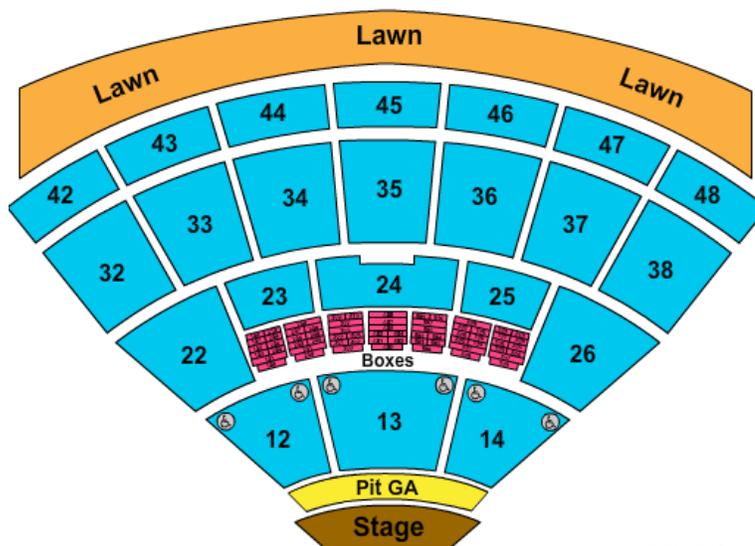
28. In addition, Defendants’ employees, agents, representatives, managers and officers did attend the concert to oversee and manage the concert, as blink-182 performed.

29. On August 9, 2016, the blink-182 concert was held at Blossom and was attended by approximately 20,000 patrons. Alcohol was served and consumed at the concert. Below is a depiction of the crowd in the pit at the event on August 9, 2016.



30. Also, on August 9, 2016, C and C provided event staff, which included crowd management members, including Plaintiff.

31. Before the concert, Defendants, collectively, arranged, or caused to be arranged, the seating and standing areas of the Pavilion. Below is a diagram of the Pavilion.



32. The Pavilion contains a pit area, identified as “Pit GA” in said diagram.

33. On August 9, 2016, the pit area was arranged in which a standing room only area was created, as required by Defendants, to accommodate approximately 600 patrons.

34. Within the pit area, adjacent to the stage, a strip area, or an aisle, was created between the standing room only area and the stage; this aisle, which ran along the entire front edge of the stage, was barricaded with four-foot metal fencing, bordering the standing room only area, to prevent patrons from accessing the stage.

35. Prior to the concert, a meeting was held in which Defendants, despite Blossom’s prohibition, instructed the crowd management members and other staff members to allow patrons to “crowd surf” and “mosh,” because Defendants wanted the patrons to “have fun.”

36. Crowd surfing involves lifting and passing around a patron overhead by other patrons during a rock concert. It occurs in an area near the stage, where patrons stand to watch the concert.

37. Moshing involves uninhibited, often frenzied, activities, such as intentional collision, with others near the stage at a rock concert.

38. Below are examples of “crowd surfing” and “moshing.”



39. On August 9, 2016, the patrons arrived at Blossom and entered the gates. At the gates, a video and/or audio was being played and/or broadcasted over a PA system, providing information to patrons as they entered. The information included Blossom's prohibition of crowd surfing and moshing.

40. Included among the patrons were a number of the 20's and 30's age group.

41. Similarly, on August 9, 2016, the crowd management members, including Plaintiff, took their places in the aisle, within the barricaded area.

42. blink-182 then came out onto the stage and performed.

43. During the performance, several patrons began to crowd surf in the standing room only area. Crowd surfers would be passed around overhead by other patrons in the standing room only area and passed toward the barricaded area. When a crowd surfer reached the barricaded area, crowd management members would assist the patron down to the floor. The patron would then be escorted back to the pit area.

44. Upon information or belief, one of the patron surfers was a female wearing tennis shoes. The female patron was passed around overhead in the standing room only area and towards the barricaded area. When the female patron reached the barricaded area, a crowd management member assisted the patron, and she was escorted out of the barricaded area accordingly. The female patron crowd surfed on several occasions. On one occasion, as the female patron approached the barricaded area, with feet first, she began kicking as she was being helped down to the floor. In doing so, as Plaintiff supported the crowd management member, the female patron's foot struck Plaintiff's left eye, causing Plaintiff to suffer permanent eye damage, including permanent loss of sight.

45. On September 29, 2018, Plaintiff was terminated from his employment with Coleman Professional Services, as a result of the loss of his eye sight, resulting in his inability to perform his accounting duties properly.

C. CAUSE(S) OF ACTION

Count One
[Negligence]

46. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

47. During all relevant times herein, Defendants, collectively, owed a duty of ordinary care to Plaintiff.

48. As part of their duty, Defendants were required to maintain a safe work area and environment at Blossom during the blink-182 concert on August 9, 2016. This duty to keep safe was not only for the safety of their employees, but also for the employees of other entities, including the entity who employed Plaintiff.

49. Further, Defendants had a duty to comply with the safety policies of Blossom, including prohibiting moshing and crowd surfing at events.

50. Defendants, collectively, breached their ordinary duty of care when they permitted moshing and crowd surfing during the concert, in violation of Blossom's safety policy.

51. As a result of Defendants' acts and/or omissions, Plaintiff suffered great bodily harm, including injuries to his left eye, the loss of his eye sight, pain and suffering and emotional distress.

52. Defendants knew or should have known that by allowing the patrons to mosh and crowd surf would create a dangerous condition of the premises in which Plaintiff was to perform his duties, which could, and did, directly and proximately cause Plaintiff to suffer severe personal



injuries and the eventual loss of his employment.

53. As a result, Plaintiff suffered damages in excess of \$25,000.00, the true amount of which shall be proven in court.

Count Two

[Negligent Hiring, Training and Supervision]

54. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

55. During all relevant times herein, Defendants maintained an employer-employee and/or principal-agent relationship with their respective employees and/or agents.

56. During all relevant times herein, Defendants had a duty to hire qualified employees, agents, managers and officers and properly train and supervise the same in their designated or assigned duties and responsibilities.

57. During all relevant times herein, Defendants knew, or should have known, that moshing and crowd surfing were prohibited conduct at Blossom.

58. Said Defendants, through their respective managers, officers and other management personnel and rank and file employees, also knew, or should have known, that moshing and crowd surfing were being allowed at Blossom during the concert on August 9, 2016.

59. Defendants knew, or should have known, that unqualified and/or improperly trained and supervised managers, officers and other management personnel and rank and file employees would cause injuries to crowd control staff members, including Plaintiff.

60. Defendants breached their duty of ordinary care in hiring unqualified and improperly training and supervising managers, officers, other management personnel and rank and file employees, when, despite their prohibition, said personnel allowed moshing and crowd surfing



during the blink-182 concert.

61. Defendants knew, or should have known, that their acts and omissions would, and, in this case, did, cause injuries to other staff members, including crown management members, such as Plaintiff.

62. As such, Defendants' breaches of their duty of care were negligence, which directly and proximately caused Plaintiff to suffer great bodily harm, pain and suffering and emotional distress and the eventual loss of his employment.

63. As a result, Plaintiff suffered, and continues to suffer, damages in excess of \$25,000.00, the true amount of which shall be proven in court.

Count Three

[Vicarious Liability/*Respondeat Superior*]

64. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

65. During all relevant times herein, Defendants' respective managers, officers and other management personnel and rank and file employees were employees and/or agents of Defendants.

66. As employers and/or principals, the acts and omissions of the respective managers, officers and other management personnel and rank and file employees were the acts and omissions of Defendants, as they were committed in the course and scope of their respective employment and/or agency with said Defendants.

67. As such, Defendants are vicariously liable for the acts and omissions of their respective managers, officers and other management personnel and rank and file employees under the theory of *respondeat superior*.

68. Defendants are liable for the damages suffered by, and continued to be suffered by,



Plaintiff in excess of \$25,000.00, the true amount of which shall be proven in court.

Count Four
[Declaratory Judgment]

69. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

70. This action, in part, is being brought pursuant to Rule 57, Declaratory Judgments, of the Ohio Rules of Civil Procedure (Civ.R.), and Chapter 2721, Declaratory Judgments, of the Ohio Revised Code (R.C.).

71. This Court has jurisdiction over Plaintiff's claim for declaratory relief, pursuant to R.C. Chapters 1907 and 2721 and Civ.R. 8, on the ground that, *inter alia*, the monetary amount exceed the sum of \$25,000.00.

72. Upon information and belief, Defendant BWC has provided benefits for and on behalf of Plaintiff as a result of injuries sustained by him in the course and scope of his employment with C and C.

73. Upon information and belief, Defendant BWC claims to have a subrogated interest or right of reimbursement in this matter by virtue of providing such benefits.

74. Plaintiff seek a declaration determining the rights and obligations of Plaintiff and Defendant BWC regarding the benefits conferred for and on behalf of Plaintiff, including coverage under R.C. Chapter 4123.

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

A. That, as to Count One, the Court grants in favor of Plaintiff against Defendants, jointly and severally, in excess of \$25,000.00, as to each Defendant;

B. That, as to Count Two, the Court grants in favor of Plaintiff against Defendants,

jointly and severally, in excess of \$25,000.00, as to each Defendant;

C. That, as to Count Three, the Court grants in favor of Plaintiff against Defendants, jointly and severally, in excess of \$25,000.00, as to each Defendant;

D. That, as to Count Four, the Court adjudicates and declares the rights of Plaintiff and Defendant BWC;

E. That the Court grants damages and relief in favor of Plaintiff against Defendants Plaintiff's costs and expenses incurred, including, but not limited to, court costs, interest, loss of income, other losses and reasonable attorney fees; and

F. That the Court grants further relief and damages in favor of Plaintiff against Defendants as the Court deems reasonable and proper in the premises.

Dated: Akron, Ohio, July 17, 2018.

Respectfully submitted,

/s/ Robert C. Meeker

ROBERT C. MEEKER (#0013019)
Blakemore, Meeker & Bowler Co., L.P.A.
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330-253-3337 [voice]
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Attorney for Plaintiff
KEVIN DARAGO



JURY DEMAND ENDORSED HEREON

Now comes, Plaintiff(s), by and through his attorney, Robert C. Meeker, of Blakemore, Meeker and Bowler Co., L.P.A., and hereby demands a trial by jury of all issues and fact so triable in this action.

Dated: Akron, Ohio, July 17, 2018.

Respectfully submitted,

/s/ Robert C. Meeker

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