

CAUSE NO. _____

NOAH GUTIERREZ,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	___ JUDICIAL DISTRICT
	§	
LIVE NATION WORLDWIDE, INC.,	§	
LIVE NATION ENTERTAINMENT,	§	
INC., CONTEMPORARY SERVICES	§	
CORPORATION, AND SCOREMORE	§	
HOLDINGS, LLC,	§	
	§	
<i>Defendants.</i>	§	HARRIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Noah Gutierrez, and hereby file this his Plaintiff’s Original Petition against Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc., Contemporary Services Corporation, and Scoremore Holdings, LLC (collectively referred to as “Defendants”), and for cause of action would respectfully show unto the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to the provisions of Texas Rule of Civil Procedure 190.4, Plaintiff proposes to conduct discovery according to Discovery Control Plan Level 3.

II. PARTIES

2. Plaintiff, Noah Gutierrez is an individual residing in El Paso, Texas.
3. Defendant Live Nation Worldwide, Inc. a foreign corporation organized under the laws of the state of Delaware conducting business within the state of Texas. Defendant Live Nation Worldwide, Inc. maintains its principal place of business at 2000 West Loop South, Suite 1300,

Houston, Texas 77027, and may be served through its registered agent: Corporate Creations Network, Inc. located at 5444 Westheimer Rd., Suite 1000, Houston, Texas 77056. **Service will be by private process server. Service is hereby requested.**

4. Defendant Live Nation Entertainment, Inc. a foreign corporation conducting business within the state of Texas. Defendant Live Nation Entertainment, Inc. maintains its principal place of business at 2000 West Loop South, Suite 1300, Houston, Texas 77027, and may be served through its registered agent: Corporate Creations Network, Inc. located at 5444 Westheimer Rd., Suite 1000, Houston, Texas 77056. **Service will be by private process server. Service is hereby requested.**

5. Defendant Contemporary Services Corporation a foreign corporation conducting business within the state of Texas, and may be served through its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company located at 211 E. 7th Street, Suite 620, Austin, Texas 78701. **Service will be by private process server. Service is hereby requested.**

6. Defendant Scoremore Holdings, LLC is a limited liability company conducting business within the state of Texas. Defendant Scoremore Holdings, LLC maintains its principal place of business at 5704 West Highway 290, Austin, Texas 78735, and may be served through its registered agent: Corporate Creations Network, Inc. located at 5444 Westheimer Rd., Suite 1000, Houston, Texas 77056. **Service will be by private process server. Service is hereby requested.**

7. Upon information and belief, Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc., and Scoremore Holdings, LLC organized, produced, advertised, promoted, and operated the Astroworld Festival held at the NRG Park located at NRG Pkwy, Houston, Texas 77054. Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc., and Scoremore

Holdings, LLC contracted with Defendant Contemporary Services Corporation to provide security and crowd management services as well as an unknown for-profit company to provide medical service providers for the purpose of providing emergency lifesaving equipment for the Astroworld Festival as part of Defendants duty to ensure the safety and well-being of Astroworld attendees, including Plaintiff.

8. Unless specifically stated otherwise, Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc., Scoremore Holdings, LLC, and Contemporary Services Corporation will be collectively referred to as “Defendants”. These Defendants are involved in a partnership or joint venture, and/or each is the alter ego, agent, or apparent agent of the other.

III. VENUE AND JURISDICTION

9. Plaintiff seeks monetary relief of over \$1,000,000.00 for the negligent and grossly negligent conduct of the Defendants, in accordance with Rule 47 of the Texas Rules of Civil Procedure.

10. This Court has personal jurisdiction over the Defendants because the Defendants either reside in or engage in foreseeable, intentional, continuous, and/or systematic contacts within Texas, so that there is both general and specific personal jurisdiction, and exercising jurisdiction over the Defendants does not offend the notions of fair play and substantial justice.

11. Venue is proper in Harris County, Texas, pursuant to Texas Civil Practice & Remedies Code §15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas.

12. Plaintiff expressly disavows that any claims are being made pursuant to federal law, treaties, or constitution. Although the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, there is a lack of complete diversity because of the presence of both Plaintiff

and one or more of the Defendants that are citizens of Texas. As such, this case is not removable to Federal Court. Any removal would be improper and should be remedied by sanctions and a remand with an award of all costs, expenses, and fees including, but not limited to, attorney fees under 28 U.S.C. § 1447(c).

IV. FACTUAL BACKGROUND

13. On or about November 5, 2021, Plaintiff was attending a Travis Scott concert at the Astroworld Festival held at NRG Park located at NRG Pkwy, Houston, Texas 77054. Upon information and belief, Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc. and Scoremore Holdings, LLC, organized, produced, advertised, promoted, and operated the Astroworld Festival held at the NRG Park located at NRG Pkwy, Houston, Texas 77054. Defendants Live Nation Worldwide, Inc., Live Nation Entertainment, Inc., and Scoremore Holdings, LLC, contracted with Contemporary Services Corporation to provide security and crowd management services as well as an unknown for-profit company to provide medical service providers for the purpose of providing emergency lifesaving equipment for the Astroworld Festival as part of Defendants duty to ensure the safety and well-being of Astroworld attendees, including Plaintiff.

14. During the concert, Plaintiff was in the VIP Section, and he was suddenly forced to watch in terror as several concertgoers were injured and killed as a result of a crowd surge. Crowd surges are extremely dangerous events that can occur at large concerts when too many people are packed together into too small of a space. When the crowd makes a sudden movement toward the stage, the people in front can be shoved, trampled, unable to breathe, or crushed to death. Crowd surges are often deadly for younger fans.

15. As the crowd surged towards the stage at Astroworld, several concertgoers were kicked, stepped on, trampled, and tragically crushed to death as a result of compressive asphyxia, which is caused when people are pushed against one another so tightly that their airways become constricted. Many individuals were seen lifting up the unconscious bodies of friends and strangers and surfed them over the top of the crowd, hoping to send them to safety. Further, several individuals were shouting for help with CPR and pleading with Defendants to stop the concert. Despite the chaos which Defendants were aware of or should have been aware of, Defendants failed to stop until over 40 minutes after city officials said the “mass casualty event” had begun.

16. At all relevant times, Plaintiff was an invitee and reasonably relied on Defendants, as premises owners/operators, producers, promoters, performers and/or subcontractors—including for-profit medical staffing company and for-profit security consultants specializing in concert crowd control to perform certain duties and to exercise reasonable care for the protection of invitees at concerts. However, Defendants egregiously failed in their duty to protect the health, safety, and lives of those in attendance at the concert, including but not limited to the failure to provide adequate security personnel to implement crowd control measures and the failure to provide a sufficient amount of emergency medical support. As a direct and proximate result of Defendants’ numerous inexplicable failures, Plaintiff experienced severe and lifelong emotional trauma.

17. At all relevant times, Defendants operated both independently, as well as jointly and in concert with each other. Accordingly, the Defendants are individually, jointly, and severally liable for their acts and omissions, which directly and proximately caused the conditions that led to Plaintiff’s injuries and damages.

18. Each of these acts and/or omissions, whether taken singularly or in any combination constitute negligence and gross negligence which proximately caused the injuries of Plaintiff, and other losses as specifically set forth herein, all of which Plaintiff suffered and which Plaintiff will continue to suffer in the future, and for the rest of his life.

V. CAUSES OF ACTION AGAINST DEFENDANTS LIVE NATION WORLDWIDE, INC., LIVE NATION ENTERTAINMENT, INC., CONTEMPORARY SERVICES CORPORATION, AND SCOREMORE HOLDINGS, LLC

A. NEGLIGENCE

19. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein.

20. Plaintiff would show that Defendants are liable for negligence in one or more of the following respects, and the Defendants owed a legal duty to Plaintiff, and breached that duty due to Defendants' actions, and/or inactions.

21. Plaintiff would show that Defendants are liable for negligence in one or more of the following respects, and the Defendants owed a legal duty to Plaintiff, and breached that duty due to Defendants' actions, and/or inactions, which include but are not limited to the following:

- a. Failing to create, enforce, and/or follow proper safety protocols, policies, and procedures;
- b. Failing to maintain proper crowd control;
- c. Failing to suspend operations on the premises until the hazardous and/or dangerous condition or practice or activity had been terminated or remedied;
- d. Failing to provide adequate security personnel to keep the premises safe from a foreseeable threat such as a crowd surge;

- e. Failing to protect stadium patrons from a foreseeable and unreasonable risk of harm;
- f. Failing to provide a sufficient number of trained medical staff on site;
- g. Failing to provide sufficient emergency medical supplies;
- h. Failing to provide an adequate number of defibrillator machines;
- i. Failing to provide emergency IV kits;
- j. Failing to provide an adequate number of stretchers;
- k. Failing to provide an adequate number of security personnel;
- l. Failing to adequately train security personnel in crowd control measures;
- m. Failing to warn Plaintiff of the dangerous conditions;
- n. Failing to staff the subject music festival with qualified employees.
- o. Failing to ensure employees, staff, and contractors were properly trained, qualified and/or certified; and
- p. Failing to follow state laws and regulations.

22. Defendants, by their actions and/or inactions, directly and proximately caused injury to Plaintiff and the severe injuries suffered by Plaintiff., which resulted in the damages described herein.

B. NEGLIGENCE HIRING, TRAINING, SUPERVISION, AND RETENTION

23. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein.

24. Defendants owed a duty to Plaintiff at the subject music festival to hire, supervise and train, competent employees. Defendants breached that duty in one or more of the following aspects:

- a. Failing to ensure that the representative on the premises had the requisite knowledge, training and skill to adequately supervise the operations at the music festival;
- b. Failing to ensure that the representative had the requisite knowledge, training and skill to properly instruct the employees, staff, and contractors at the music festival;
- c. Failing to ensure that the designated representative had the requisite knowledge, training and skill to recognize unsafe operations and/or cease operations due to safety concerns;
- d. Failing to properly supervise operations; and
- e. Other negligent acts.

25. As a direct and proximate result of Defendants' various failures, actions, and omissions, the Plaintiff has suffered irreparable harm making the basis of this suit.

C. PREMISES LIABILITY

26. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein.

27. To the extent Defendants owned, occupied, maintained, and/or controlled the area where Plaintiff was injured sufficient to trigger premises liability standards, the condition of the area where Plaintiff was injured posed an unreasonable risk of harm, and Defendants and/or their agents had actual knowledge or reasonably should have known of the unreasonably dangerous condition and/or situation. Plaintiff did not have actual knowledge of the unreasonably dangerous condition and/or situation. Plaintiff was an invitee who entered Defendants' premises with Defendants' knowledge and for Defendants' benefit. Defendants had a duty to either warn Plaintiff of this unreasonably dangerous condition and/or situation, or make the unreasonably dangerous condition and/or situation reasonably safe. Defendants breached this duty by failing to warn Plaintiff of this known unreasonably dangerous condition and/or situation, and by failing to make

the unreasonably dangerous condition and/or situation reasonably safe. Defendants' breaches of these duties proximately caused Plaintiff's injuries.

D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

28. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein.

29. The actions of Defendants as mentioned in the preceding paragraphs were a reckless disregard to the safety of Plaintiff.

30. The actions of the Defendants as mentioned in the preceding paragraphs caused Plaintiff to suffer from severe mental and emotional distress. As a direct and proximate result of Defendants' negligent infliction of emotional distress, Ms. Hicks has suffered the injuries and damages set forth in this Petition.

E. GROSS NEGLIGENCE

31. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein.

32. The conduct of Defendants described above was more than momentary thoughtlessness, inadvertence, or error of judgment and was such a character as to make Defendants guilty of gross negligence. Defendants' acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which the Defendants had actual awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Therefore, Plaintiff sues for exemplary damages, pursuant to Texas Civil Practice and Remedies Code § 41.003, in the amount determined by the trier of fact.

33. Plaintiff would further show that the limitations on exemplary damages set forth in section 41.008 of the Texas Civil Practice & Remedies Code, do not apply because Defendants

engaged in activity that resulted in injury to a minor child as defined by section 41.008(c)(7). Plaintiff reserves the right to plead additional conduct as described in section 41.008(c) as discovery reveals it.

VI. DAMAGES

34. Plaintiff seeks all damages that are proper under Texas Law. Plaintiff seeks unliquidated damages in an amount that is within the jurisdictional limits of the Court. Further, as a result of Defendants' negligence and gross negligence of Defendants, Plaintiff is entitled to exemplary damages.

35. As a proximate result of the conduct of Defendants, Plaintiff suffered indescribable emotional pain and mental anguish. Plaintiff brings allegations contained herein, and any other claims permitted, to recover all damages provided by Texas law, including but not limited to past and future pain and suffering, past and future lost wages, past and future lost earnings, and past and future medical bills.

VII. EXEMPLARY DAMAGES

36. The conduct of Defendants described above was more than momentary thoughtlessness, inadvertence, or error of judgment and was such a character as to make Defendants guilty of gross negligence. Defendants' acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which the Defendants had actual awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, and Plaintiff therefore seeks unlimited exemplary damages, pursuant to Texas Civil Practice & Remedies Codes sections 41.003 and 41.008(c)(7), in the amount determined by the trier of fact.

VIII. CONDITIONS PRECEDENT

37. All conditions precedent to Plaintiff's right to recover the relief sought herein have occurred or been performed.

IX. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

38. Plaintiff seeks pre- and post-judgment interest as allowed by law.

X. NOTICE OF SELF-AUTHENTICATION

39. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby notified that the production by Defendants of any document in response to written discovery authenticates the document for use against Defendants in any pre-trial proceeding or at trial.

XI. JURY DEMAND

40. Plaintiff requests a jury trial on this matter.

XII. SPOILIATION AND PRESERVATION OF EVIDENCE

41. Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voice mail, text message, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute "spoliation" of the evidence.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited to appear and required to answer herein accordingly to law, that this cause be set for trial before a jury, that Plaintiff recover judgment of and from said Defendants, jointly and severally, for her actual damages in this cause in such amounts as the evidence may show and the jury may determine proper, together with costs of suit, pre-judgment interest and post-judgment interest, and for all such other and further relief, both in equity and at law, to which Plaintiff may be justly entitled.

Respectfully submitted,

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