Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Michael Whitaker

Jennifer A. Clingo (SBN 223831) 1 jennifer@clingolaw.com **CLINGO LAW GROUP** 2 633 West 5th Street 3 **Suite 2600** Los Angeles, CA 90071 4 Tel: 310.409.9331 5 Attorneys for Plaintiff SUSAN FOUNTAIN 6 7 8 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT 11 12 21STCV30626 13 SUSAN FOUNTAIN, an individual, CASE NO. 14 **COMPLAINT FOR DAMAGES** Plaintiff. 15 v. 1. **ASSAULT** 16 BRIAN HUGH WARNER aka MARILYN **BATTERY** MANSON, an individual. 17 and DOES 1 through 10, Inclusive. INTENTIONAL INFLICTION OF 18 **EMOTIONAL DISTRESS** Defendants. 19 **DEMAND FOR JURY TRIAL** 20 21 Plaintiff SUSAN FOUNTAIN alleges as follows: 22 **PARTIES AND JURISDICTION** 23 1. Plaintiff SUSAN FOUNTAIN (hereinafter referred to as "Ms. Fountain" or "Plaintiff") 24 is, and at all times herein mentioned was, a competent adult. 25 2. On information and belief, Plaintiff alleges that Defendant BRIAN HUGH WARNER 26 aka MARILYN MANSON ("Defendant" or "WARNER") is, and at all times herein mentioned was, 27 an individual residing in the County of Los Angeles. 28

3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend the complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously named Defendants is responsible for the alleged occurrences and injuries to Plaintiff.

- 4. The Court has jurisdiction in this case because Defendant WARNER is a resident of Los Angeles County, State of California, and the potential amount of damages and civil penalties are within the jurisdictional amounts of the Superior Court of California.
- 5. Venue is proper under Code of Civil Procedure §395 in that Defendant resides within this jurisdiction at all relevant times. Sub-venue is also proper in the Central District pursuant to Los Angeles Superior Court Local Rule 2.3(a).

## **GENERAL ALLEGATIONS**

- 6. At all times relevant herein, Plaintiff Susan Fountain was employed as a camera operator by Metronome Media in New Hampshire and worked at various events, including but not limited to concerts.
- 7. On 8/18/19, Ms. Fountain was working as a camera operator and filming at the Marilyn Manson concert at the Bank of New Hampshire Pavilion venue in Gilford, New Hampshire.
- 8. During the filing, Ms. Fountain was located in the "pit", an area directly in front of and against the stage. In an effort to capture the best possible shots, Ms. Fountain stood on a platform and a road case. Ms. Fountain's upper body was above the stage, enabling her to properly film the production.
- 9. At approximately 8:15 p.m. on 8/18/19, Defendant WARNER aka Marilyn Manson moved towards Ms. Fountain, where she was standing and filming. WARNER then crouched down, leaned forward, and brought his face level with Ms. Fountain's camera lens. WARNER then expectorated sputum onto the camera lens. WARNER deliberately caused salvia to be sprayed on Ms. Fountain's right hand that was using the zoom function on the lens. Her left hand was under the hood. The hood had sputum both on and in it. Both the camera lens and hood had to be cleaned.

- 10. Ms. Fountain was shocked and disgusted by WARNER'S conduct. She was aware of others witnessing the assault and heard the director comment to the effect that it was "gross and disgusting".
- 11. Ms. Fountain climbed down from the case and paused to collect herself. She then cleaned the lens and the hood, removing a "puddle of sputum". During that time, her filming duties and the video were interrupted.
- 12. Once she had cleaned the camera equipment, Ms. Fountain once again began to video WARNER. Defendant then approached Ms. Fountain. Fearing a second bodily fluid attack, Ms. Fountain hurriedly removed herself from the road case, and was no longer on the platform. WARNER then turned and began to walk away.
- 13. Ms. Fountain re-positioned herself onto the case and started filming from a higher angle. Ms. Fountain, who had worked a camera operator for countless musical acts over 20 years of her career, was experienced ensuring that she was properly situated for filming without disrupting the production.
- 14. However, once she was back on the platform and/or case, WARNER then abruptly turned around and approached Ms. Fountain. Despite her fear of being assaulted again, she continued to film. WARNER then occluded one of his nostrils and expelled bodily fluids right onto Ms. Fountain.
- 15. Upset, Ms. Fountain cursed at WARNER who did not have any reaction to her and she hurried down from the platform, removed her headset, and placed the camera on the ground.
- 16. WARNER mocked and pointed at Ms. Fountain while laughing in her face. His assault was captured on the large venue monitors for the attendees to see. Fans in the crowd also recorded WARNER'S disgusting conduct and offensive behavior, and subsequently posted video of the assault on YouTube.
- 17. After being humiliated and assaulted with bodily fluids, she immediately left the pit and went to the restroom facilities. Ms. Fountain was wearing short sleeves and shorts, and had to wash down both arms and legs.
  - 18. Afterwards, Ms. Fountain went to the video office, whereby she was removed from the

pit and unable to continue her job - i.e. film the remainder of the event.

- 19. Ms. Fountain subsequently consulted a physician and underwent testing to ensure that she had not contracted any communicable diseases as a result of her exposure to potentially hazardous body fluids. Ms. Fountain underwent a second round of testing several months later to ensure that she was not exposed.
- 20. In addition to the video recordings evidencing the incident and WARNER'S assault on Ms. Fountain, Plaintiff also reported the incident to the Gilford Police Department and directly to the concert venue.
- 21. Plaintiff is informed and believes that WARNER had engaged in this conduct at other concerts. For example, there was a video capturing him stating that he had swine flu just before he blew his nose on people on the stage.

## FIRST CAUSE OF ACTION FOR ASSAULT

(As Against All Defendants)

- 22. Plaintiff repeats and repleads and incorporates by reference, paragraphs 1 through 21, inclusive, above, as though fully set forth herein.
- 23. "Assault" under California law consists of (1) defendant threatened to touch plaintiff in a harmful or offensive manner; (2) it reasonably appeared to the plaintiff the defendant was about to carry out the threat; (3) the plaintiff did not consent to the defendant's conduct; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing plaintiff's harm. See Judicial Council of Cal., Civil Jury Instructions No. 1301.
- 24. Defendant knowingly caused and/or attempted to cause Plaintiff to come into contact with his bodily fluids namely sputum and snot in a manner that offends a reasonable sense of personal dignity.
  - 25. Plaintiff never consented to this offensive or harmful contact by Defendant WARNER.
- 26. As described herein, Plaintiff was harmed by the Defendant's offensive and harmful contact.
  - 27. Defendant WARNER is liable for assault upon Plaintiff.

- 28. As a direct and proximate result of the acts of Defendant, as alleged above, Plaintiff has incurred compensatory damages, including but not limited to amounts incurred for the treatment of emotional injuries and medical treatment, in an amount to be ascertained at the time of trial.
- 29. As a direct and proximate result of the acts of Defendant, as alleged above, Plaintiff has suffered humiliation, mental and emotional distress, anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the time of trial.
- 30. The above-described acts of Defendant, were willful, intentional and malicious and done with the intent to vex, injure and annoy Plaintiff and warrant the imposition of exemplary and punitive damages in an amount sufficient to punish said Defendant and to deter others from engaging in similar conduct.

## SECOND CAUSE OF ACTION FOR BATTERY

(As Against All Defendants)

- 31. Plaintiff repeats and repleads and incorporates by reference, paragraphs 1 through 30, inclusive, above, as though fully set forth herein.
- 32. The elements for "battery" include (1) the defendant touched the plaintiff or caused the plaintiff to be touched with the intent to harm or offend the plaintiff; (2) the plaintiff did not consent to the touching; (3) the plaintiff was harm or offended by the defendant's conduct; and (4) a reasonable person in plaintiff's situation would have been offended by the touching. See Judicial Council of Cal., Civil Jury Instructions No. 1300.
- 33. As described hereinabove, Defendant WARNER touched Plaintiff through the expelling of medical fluids with the intent to harm and/or offend Plaintiff.
  - 34. Plaintiff never consented to this offensive or harmful contact by Defendant WARNER.
- 35. Plaintiff was offended by the Defendant's conduct, and as a result of the contact with and/or exposure to the potentially harmful bodily fluids, Plaintiff was forced to seek medical treatment to be tested for communicable diseases.
- 36. As a direct and proximate result of the acts of Defendant, as alleged above, Plaintiff has incurred compensatory damages, including but not limited to amounts incurred for the treatment

of emotional and mental injuries, in an amount to be ascertained at the time of trial.

- 37. As a direct and proximate result of the acts of Defendant, as alleged above, Plaintiff has suffered humiliation, mental and emotional distress, anxiety, and nervousness and has been generally damaged in an amount to be ascertained at the time of trial.
- 38. The above-described acts of Defendant, were willful, intentional and malicious and done with the intent to vex, injure and annoy Plaintiff and warrant the imposition of exemplary and punitive damages in an amount sufficient to punish Defendant and to deter others from engaging in similar conduct.

## THIRD CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(As Against All Defendants)

- 39. Plaintiff repeats and repleads and incorporates by reference, paragraphs 1 through 38 inclusive, above, as though fully set forth herein.
- 40. The conduct set forth above is extreme and outrageous, exceeding the bounds of decency normally tolerated in a civilized society.
- 41. Defendant acted with blatant disregard of Plaintiff and deliberately engaged in outrageous and severe conduct intended to cause Plaintiff emotional distress.
- 42. Defendant's disgusting and outrageous conduct towards Plaintiff was witnessed by the attendees at the concert through the large monitors. Plaintiff was also subjected to further humiliation and embarrassment when videos of the incident were posted on YouTube.
- 43. Defendant WARNER was well aware of his outrageous and offensive conduct towards Plaintiff, as he mocked and attacked her not just once, but twice during the same event.
- 44. Plaintiff not only suffered emotional distress from the offensive touching itself, but also from the fear and anxiety that she could have potentially contracted a communicable disease as a result of the exposure to Defendant's bodily fluids. She was forced to undergo medical testing immediately following the incident and several months later to ensure that she had not contracted a serious disease.

Attorneys for Plaintiff

SUSAN FOUNTAIN

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2	DEMAND FOR JURY TRIAL
3	Plaintiff hereby demands a trial by jury of the causes of action and claims asserted herein.
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5	CLINGO LAW GROUP
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7	Dated: August 18, 2021  By:  Jennifer A Clingo
8	Attorneys for Plaintiff SUSAN FOUNTAIN
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