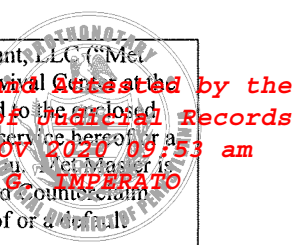


<p>I hereby certify that I have served a copy of this paper upon all other parties or their attorneys by:</p> <p><input type="checkbox"/> Regular Mail <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Other: Phila. CCP ECF</p> <p>By: <u>/s/Andrew J. DeFalco, Esquire</u> Andrew J. DeFalco, Esquire</p>	<p>To: Plaintiffs Holy Ghost Met Master Tenant, LLC ("Met Master") and Holy Ghost Headquarters Revival Center at the Met, Inc.: You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof or a default judgment may be entered against you. Met Master is also hereby notified to plead to the enclosed Counterclaim within twenty (20) days from service hereof or a default judgment may be entered against you.</p> <p>By: <u>/s/Andrew J. DeFalco, Esquire</u> Andrew J. DeFalco, Esquire</p>
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SPECTOR GADON ROSEN VINCI, P.C.

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Attorneys for Defendants

HOLY GHOST MET MASTER TENANT,
LLC, et al.;

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT, INC., *et al.*

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
PENNSYLVANIA

DECEMBER TERM, 2019

NO. 1618

ANSWER WITH NEW MATTER AND COUNTERCLAIM OF DEFENDANTS LIVE NATION ENTERTAINMENT, INC. AND GEOFFREY S. GORDON

Defendants/Counterclaim Plaintiffs, Live Nation Entertainment, Inc. and Geoffrey S. Gordon (collectively "Live Nation Parties") by and through their undersigned counsel, respectfully submit the following Answer to the Complaint Plaintiffs Holy Ghost Met Master Tenant, LLC ("Met Master") and Holy Ghost Headquarters Revival Center at the Met, Inc. with

New Matter, as well as the following Counterclaim against Met Master. Live Nation states as follows:

ANSWER TO COMPLAINT

1. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).
2. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).
3. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).
4. Admitted in part, denied in part. Live Nation Parties admit the Met opened on the stated date. The remaining allegations in this Paragraph are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).
5. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.
6. Admitted in part, denied in part. Live Nation Parties admit only that it is a publicly traded company. As to the remaining allegations respecting yearly income and ticket sales, because the allegations in this Paragraph are assertions relating to yearly income and ticket sales, but the year in question is not specified, the remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).
7. Denied.
8. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: Denied.

9. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: Denied.

10. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

11. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

12. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

13. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

14. Admitted.

15. Admitted.

16. Admitted.

17. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

18. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

19. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

20. Admitted in part, denied in part. Live Nation Parties admit that the Met is located at the stated address. The remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

21. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

22. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

23. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

24. Denied.

25. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize an article that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

26. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

27. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

28. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

29. Admitted.

30. Admitted.

31. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to specify the year referenced in this Paragraph.

32. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize an article that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

33. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to identify the publication or publications referenced in this Paragraph.

34. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

35. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

36. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

37. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

38. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

39. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a press release that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

40. Admitted.

41. Admitted.

42. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

43. Admitted in part, denied in part. Live Nation Parties admit only that Blumenfeld, Gordon, and many others, took part in the negotiations referenced in this Paragraph. To the extent that the allegations in this Paragraph differ from the foregoing, they are denied.

44. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize an assignment that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

45. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

46. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

47. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize an article that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

48. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to specify the year referenced in this Paragraph.

49. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to specify the persons referenced in this Paragraph.

50. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize an article that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

51. Admitted in part, denied in part. Live Nation Parties admit only that as the Regional President of Live Nation, Gordon is involved in the operations of the Met in a manner consistent with his job title and responsibilities. To the extent that the allegations in this Paragraph differ from the foregoing, they are denied.

52. Admitted.

53. Admitted.

54. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied. Further answering, the full text of the referenced provision states:

Permitted Use: The operation of a first-class *live entertainment venue*, together with ancillary uses thereto, *including, without limitation, operation of food and*

beverage service (including, without limitation, food storage, preparation, service and consumption and bar service and the sale and consumption of alcoholic beverages), *VIP rooms and facilities, product exhibitions, meetings, fund raising events, charity events, broadcasting, recording, sale of concessions and sale of merchandise related to the operations or events at the Premises, exhibiting of pay-per-view events, events for viewing on a screen*, the display and sale of works of art, videotapes, promotional items, music, CDs, DVDs, and other items sold generally from time to time at live entertainment venues.

[Lease, § 1.1 (b)]

55. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

56. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

57. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

58. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

59. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied. Further answering, the full text of the quoted paragraph states:

The term "Ticket Sales" wherever used herein shall be defined to mean the total number of paid tickets, paid admission entry passes, or other paid vouchers permitted entry to a public live entertainment performance or public live

entertainment event held at the Premises. For purposes of calculating the Percentage Rent due and payable hereunder, however, the re-selling of any such tickets, admission entry passes, or other vouchers by third parties shall not be included in the calculation of Ticket Sales hereunder (it being understood that each such ticket, admission entry pass or other voucher shall only be counted once. Notwithstanding anything to the contrary provided herein, in the event that any ticket, admission entry pass, or other voucher permits entry to more than one performance event, the total number of performances or events to which admission is permitted thereunder shall be added to the number of Ticket Sales calculated hereunder. [Lease, § 11.3 (a)]

However, the Lease clarifies that the only “Ticket Sales” that must be reported to Met Master, and calculated for purposes of ascertaining Percentage Rent, are the “Tenant’s Ticket Sales,” i.e., Ticket Sales by Live Nation – the “paid ticket count data received by [Live Nation] from its ticketing company.” [Lease, § 11.5 (a)] Thus, the plain language of the Lease confirms “Ticket Sales” by entities other than Live Nation are not subject to reporting requirements or the requirements relating to payment and/or calculation of Percentage Rent.

60. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

61. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

62. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

63. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

64. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

65. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

66. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

67. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

68. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

69. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

70. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

71. Admitted in part, denied in part. Live Nation Parties admit only that Live Nation agreed to increase the number of complimentary tickets directed to Blumenfeld, but denies the remaining characterizations in this Paragraph.

72. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: Denied.

73. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a transaction that is evidenced by a writing that speaks for itself, which involved among other things a use similar to that referenced in this Paragraph. Any characterizations inconsistent with its content are denied.

74. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a transaction that is evidenced by a writing that speaks for itself, which involved among other things a use similar to that referenced in this Paragraph. Any characterizations inconsistent with its content are denied.

75. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a transaction that is evidenced by a writing that speaks for itself, which involved among other things a use similar to that referenced in this Paragraph. Any characterizations inconsistent with its content are denied.

76. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

77. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. Further answering, under Pennsylvania law, a tenant has no

obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, the tenant pays substantial fixed minimum rent. See Erie Plaza Partners, L.P. v. Save-A-Lot Food Stores, 1376 DEC. TERM 2003, 2004 WL 2554618, at *2 (Pa. Com. Pl. Nov. 4, 2004) (“Plaintiff further maintains that defendant has failed to apply its best efforts to drive sales over the “break point” [after which percentage rent would be owed]. Reviewing the lease and the amendment to determine the parties’ obligations demonstrates an absence of any language requiring Moran to use its best efforts to drive its gross receipts above the break even point denoted therein. ***The obligation to pay a substantial minimum annual base rent supports this courts interpretation that payment of percentage rent is not obligatory but conditional.***”)

78. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize transactions that are evidenced by writings that speak for themselves. Any characterizations inconsistent with their content are denied.

79. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize transactions that are evidenced by writings that speak for themselves. Any characterizations inconsistent with their content are denied.

80. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

81. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to specify the transactions or the time period referenced in this Paragraph.

82. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c), as Plaintiffs have failed to specify the transactions or the time period referenced in this Paragraph.

83. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

84. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. Further answering, under Pennsylvania law, a tenant has no obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, the tenant pays substantial fixed minimum rent. See Erie Plaza Partners, L.P., Supra (“Plaintiff further maintains that defendant has failed to apply its best efforts to drive sales over the “break point” [after which percentage rent would be owed]. Reviewing the lease and the amendment to determine the parties’ obligations demonstrates an absence of any language requiring Moran to use its best efforts to drive its gross receipts above the break even point denoted therein. ***The obligation to pay a substantial minimum annual base rent supports this courts interpretation that payment of percentage rent is not obligatory but conditional.***”)

85. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

86. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed

factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

87. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

88. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

89. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

90. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a communication that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

91. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a communication that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

92. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a communication that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

93. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a communication that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

94. Denied.

95. Denied.

96. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a communication that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

97. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: Live Nation denies that it has “failed to share” with Met Master any amount due and owing to Met Master. Any allegation inconsistent with the foregoing is denied.

98. Denied.

99. Denied.

100. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

101. Denied.

102. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

103. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

104. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

105. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

106. Denied.

107. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

108. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

109. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

110. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

111. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed

factual, Live Nation Parties respond: denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

112. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease and other documents that are writing and speak for themselves. Any characterizations inconsistent with their content are denied.

113. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

114. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

115. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

116. Denied.

117. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Although Live Nation Parties admit that Gordon was involved in various negotiations, Live Nation cannot quantify the

assertion of a “significant factor,” and therefore, that allegation is denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

118. Admitted in part, denied in part. Although Live Nation Parties admit that Gordon has input into decisions referenced in this Paragraph, he is an agent Live Nation and not a separate party, and Live Nation Parties cannot quantify the assertion of a “certain degree of control,” and therefore, that allegation is denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

119. Admitted in part, denied in part. Live Nation Parties admit only that at certain times, Live Nation, through certain of its employees, including Gordon, will distribute tickets in accordance with Live Nation’s established practices. To the extent that the allegations in this Paragraph differ from the foregoing, they are denied.

120. Admitted in part, denied in part. Live Nation Parties admit only that at certain times, Live Nation, through certain of its employees, including Gordon, will distribute tickets in accordance with Live Nation’s established practices. To the extent that the allegations in this Paragraph differ from the foregoing, they are denied.

121. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: due to the lack of specificity with respect to the phrase “Gordon’s tickets,” these allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

122. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: because Live Nation does not understand this Paragraph as

it is phrased, these allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

123. Due to the lack of specificity with respect to the phrase “the tickets that Gordon exercises control over,” these allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

124. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

125. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

126. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

127. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied.

128. Because Live Nation does not understand this Paragraph as it is phrased, these allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (c).

129. Admitted in part, denied in part. Live Nation Parties admit only that Gordon stayed in a vacation home referenced in this Paragraph. The remaining characterizations are denied.

130. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed

factual, Live Nation Parties respond: denied. Further answering, under Pennsylvania law, a tenant has no obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, the tenant pays substantial fixed minimum rent. See Erie Plaza Partners, L.P., Supra (“Plaintiff further maintains that defendant has failed to apply its best efforts to drive sales over the “break point” [after which percentage rent would be owed]. Reviewing the lease and the amendment to determine the parties’ obligations demonstrates an absence of any language requiring Moran to use its best efforts to drive its gross receipts above the break even point denoted therein. ***The obligation to pay a substantial minimum annual base rent supports this courts interpretation that payment of percentage rent is not obligatory but conditional.***”)

131. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: denied. Further answering, as set forth above, under Pennsylvania law, a tenant has no obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, the tenant pays substantial fixed minimum rent.

132. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only the existence of the correspondence referenced in this Paragraph, which is a document in writing that speaks for itself. Any characterizations inconsistent with its content are denied.

133. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit

only the existence of the correspondence referenced in this Paragraph, which is a document in writing that speaks for itself. Any characterizations inconsistent with its content are denied.

134. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

135. Admitted in part, denied in part. Live Nation Parties admit only that the allegations in this Paragraph purport to characterize a Lease that is in writing and speaks for itself. Any characterizations inconsistent with its content are denied.

136. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

AS TO COUNT I

137. This is an incorporation paragraph, requiring no response.

138. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

139. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

140. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

141. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

142. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

143. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

144. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

145. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

WHEREFORE, Live Nation Parties respectfully request that judgment be entered in their favor and against Plaintiffs, and that this Honorable Court award to Live Nation Parties' attorney's fees, costs of suit, and such other and further relief as this Court deems just.

AS TO COUNT II

146. This is an incorporation paragraph, requiring no response.

147. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

148. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

149. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

150. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

WHEREFORE, Live Nation Parties respectfully request that judgment be entered in their favor and against Plaintiffs, and that this Honorable Court award to Live Nation Parties' attorney's fees, costs of suit, and such other and further relief as this Court deems just.

AS TO COUNT III

151. This is an incorporation paragraph, requiring no response.

152. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

153. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

154. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: admitted in part, denied in part. Live Nation Parties admit only that Gordon, and others, utilize an additional room at the Met, but Live Nation denies Plaintiffs' characterization of that room.

155. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent that the allegations in this Paragraph are deemed factual, Live Nation Parties respond: Live Nation denies that it ever failed to make any tickets available to Plaintiffs as required by the subject Lease.

156. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

157. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

158. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

WHEREFORE, Live Nation Parties respectfully request that judgment be entered in their favor and against Plaintiffs, and that this Honorable Court award to Live Nation Parties' attorney's fees, costs of suit, and such other and further relief as this Court deems just.

AS TO COUNT IV

159. This is an incorporation paragraph, requiring no response.

160. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

161. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

162. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

163. The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required.

WHEREFORE, Live Nation Parties respectfully request that judgment be entered in their favor and against Plaintiffs, and that this Honorable Court award to Live Nation Parties' attorney's fees, costs of suit, and such other and further relief as this Court deems just.

NEW MATTER

164. Live Nation Parties incorporate their Answer as though fully set forth herein.

165. Live Nation Parties incorporate their Counterclaim as though fully set forth herein.

166. Plaintiffs have failed to state a claim entitling them to any form of relief.

167. Plaintiffs are not are not entitled to any relief sought through the Complaint.

168. Live Nation Parties incorporate by reference all of the Preliminary Objections to the Complaint filed in the above-captioned case, and their Memorandum of Law in Support of those Preliminary Objections, as well as all of Live Nation Parties' responses and replies filed in

support thereof. Based on the facts and legal argument set forth therein, Plaintiffs are not entitled to any relief sought through the Complaint.

169. All of Met Master's claims are barred by its own material breaches of the subject Lease. Due to the material breaches by Met Master, it is now precluded from insisting that Live Nation perform.

170. Met Master's claims are barred by its own breach of contract, bad faith, contributory negligence, the doctrine of *in pari delicto*, and the breach of the duty of good faith and fair dealing.

171. Some or all of Met Master's claims are barred and/or limited by Pa.R.Evid. 408, Pennsylvania's litigation privilege and judicial privilege.

172. Some or all of Met Master's claims must be dismissed as a matter of law based upon the parol evidence rule.

173. Met Master's claims are barred and/or limited by the terms of the subject Lease.

174. Met Master's claims are barred and/or limited by the Section 27.2 of the Lease, the "no oral modification" clause.

175. Met Master's claims are barred and/or limited because any asserted "implied duty" cannot trump express terms of the Lease.

176. Met Master's claims are barred and/or limited because Live Nation has no duty to maximize percentage rent in light of the extreme amount of fixed rent Live Nation pays.

177. Met Master's claims are barred and/or limited by Pennsylvania's "gist of the action" doctrine.

178. Met Master's claims in equity are barred and/or limited by the existence of the Lease and contractual privity.

179. Plaintiffs' claims are barred and/or limited by the doctrines of accord and satisfaction, waiver and substantial compliance.

180. Some or all of Plaintiffs' claims are barred by lack of consideration.

181. Met Master's claims are barred and/or limited by their unclean hands.

182. Met Master's claims are barred and/or limited by their breaches of the duty of good faith and fair dealing.

183. Met Master's claim for tortious interference is barred because Gordon is not a "third party" under the Lease.

184. Met Master's unjust enrichment claims are barred because Met Master conferred no tickets upon Gordon, Gordon did not retain the Complimentary Tickets, and Met Master fails to allege any corresponding exchange of value.

185. Some or all of Met Master's claims are barred by the doctrines of justification, privilege, and failure to mitigate damages.

186. Met Master's claims are barred because they arise solely or in part from Met Master's own actions.

187. Met Master's claims are barred by equitable estoppel.

188. Live Nation Parties never breached the Lease agreement or any other contract or obligation owed to Plaintiffs.

189. Any act or omission on the part of Live Nation was not a proximate legal direct cause of, or a substantial contributing factor to, the alleged harm.

190. Live Nation Parties reserve the right to assert each and every defense available under Pa.R.Civ.P. 1030 (a).

191. Live Nation Parties assert all of the defenses and limitations of remedies available to them and avers that Plaintiffs' claims and remedies are barred, controlled, or limited accordingly.

192. Live Nation Parties reserve the right to amend or supplement this New Matter based on information developed during discovery, or otherwise.

193. Live Nation Parties expressly reserve the right to assert any additional affirmative defenses that may become available during investigation and discovery and to adopt and assert defenses, if any, asserted by any other defendant to this action.

COUNTERCLAIM

Counterclaim Plaintiffs, Live Nation Entertainment, Inc. ("Live Nation") and Geoffrey S. Gordon ("Gordon") (collectively "Live Nation Parties") counterclaim and allege against Counterclaim Defendant Holy Ghost Met Master Tenant, LLC (the "Met Master"), as follows:

1. Live Nation Parties repeat and reallege all prior paragraphs as though the same were fully set forth herein.

INTRODUCTION

2. Live Nation and Met Master entered into a Lease with an Effective Date of April 24, 2017 (the "Lease"), which Lease is attached herewith as Exhibit "1." Pursuant to the Lease, in exchange for leasing the renovated building known as the Metropolitan Opera House (the "Met") to operate a live entertainment venue, Live Nation pays to Met Master, as Live Nation's landlord, an exorbitant rent of \$1,500,000 per year, plus percentage rent of \$2.00 per ticket sale for the first 200,000 tickets sold, and \$3.00 per ticket sale for each additional ticket sale. Live Nation also agreed to pay to Met Master a percentage of revenue for the "Name-in-Title" sponsorship of the Met (i.e., for the sponsor who obtained the naming rights to the building – for

example, Lincoln Financial is the “Name-in-Title” sponsor of Lincoln Financial Field). These terms were exceedingly generous, they provided a windfall to Met Master, they are standard in the industry, and they are not subject to any serious debate as to their meaning or import.

3. Under the Lease, Met Master, and its principal, Philadelphia developer and man-about-town Eric Blumenfeld (“Blumenfeld”), were obligated to perform a significant amount of work to ensure that the Met was in satisfactory condition to open and continue to operate (the “Landlord’s Work”).

4. However, after the Lease was signed, Blumenfeld’s development empire began to collapse as many of his creditors called in loans on other projects and, in several instances, brought lawsuits against Blumenfeld for his failure to honor his debts. As a result, Blumenfeld had virtually no cash to continue his operations, and needed an enormous amount of money to keep his creditors at bay and keep other projects afloat.

5. Faced with this dilemma, Blumenfeld hatched a scheme to extort cash from Live Nation, believing (1) he could save cash by having Met Master refuse to perform the Landlord’s Work it was (and is) obligated as landlord to perform under the Lease with Live Nation, and (2) that through Met Master he could extort Live Nation, its tenant under the Lease, into paying far more money than Live Nation actually owed under the Lease, because Blumenfeld was a deadbeat and owed serious money to his other creditors, which money he hoped to obtain through his extortion of Live Nation.

6. Ultimately, after creating a false scheme to assert that Live Nation owed to Met Master millions of dollars over and above the extremely generous rent Met Master currently receives, while ignoring the fact that Met Master completely ignored its own obligations to perform Landlord’s Work under the Lease, Blumenfeld, through Met Master, brought the above-

captioned lawsuit. Among other frivolous arguments made in the Complaint, Met Master argued, *inter alia*, (1) that the unambiguous phrase “Name-in-Title” sponsorship actually means *all* sponsorships in the Met, (2) that although no such duty appears in the Lease (and Pennsylvania law is clear that no such duty exists), in addition to the fact that Met Master already receives an exorbitant \$1.5 million in fixed rent per year, Live Nation can *only* hold events if those events otherwise inure to Blumenfeld’s financial benefit under the Lease (after previously arguing that events held by Live Nation for a flat license fee for hospitals, charity events etc. were actually “sublets” of the premises entitling Met Master to half of the fees); and (3) that Live Nation cannot provide “complimentary” tickets to anyone besides Met Master and Blumenfeld. Obviously, all of these claims made by Met Master are meritless.

7. Unfortunately for Blumenfeld, Live Nation will not be extorted. Not only are the claims made by the Met in the above-captioned litigation frivolous under the law and the terms of the Lease, but also, Met Master is precluded from recovering *any* damages in all cases because Met Master is, and has been at all times material, in material breach of the Lease. Because Pennsylvania law is clear that a party may not insist upon performance of a contract when that party is itself guilty of a material breach of the contract, Live Nation Parties now ask the Court to issue a declaratory judgment stating that Met Master is precluded from insisting upon Live Nation’s performance under the Lease due to Met Master’s own material breaches.

FACTS COMMON TO ALL COUNTS

8. As noted above, Live Nation signed the twenty-nine (29) year Lease with Met Master’s predecessor. [Lease, § 1.1]

9. In return for its Lease of the Met, Live Nation pays to Met Master an exorbitant and generous sum of \$1,500,000 in fixed minimum rent per year, payable in equal monthly installments. [Lease, § 1.1 (g)]

10. Live Nation also pays, as “percentage rent”:

- \$2.00 per ticket sale for each of the first 200,000 ticket sales during each year, and
- \$3.00 per ticket sale for each additional ticket sales. [Lease, § 1.1 (h)]

The Lease makes clear that so-called “Ticket Sales” under the Lease are “Tenant’s Ticket Sales,” i.e., Ticket Sales by Live Nation – the “paid ticket count data received by [Live Nation] from its ticketing company.” [Lease, § 11.5 (a)]

11. Live Nation leased the Met to engage in the following “Permitted Use”:

Permitted Use: The operation of a first-class live entertainment venue, together with ancillary uses thereto, including, without limitation, operation of food and beverage service (including, without limitation, food storage, preparation, service and consumption and bar service and the sale and consumption of alcoholic beverages), VIP rooms and facilities, **product exhibitions, meetings, fund raising events, charity events, broadcasting, recording, sale of concessions and sale of merchandise related to the operations or events at the Premises**, exhibiting of pay-per-view events, events for viewing on a screen, the display and sale of works of art, videotapes, promotional items, music, CDs, DVDs, and other items sold generally from time to time at live entertainment venues.

[Lease, § 1.1 (b)] (emphasis supplied).

12. Subject to narrow exceptions, Live Nation has under the Lease “**the exclusive right to hold or host for-profit live entertainment events at the Project**” [Lease, § 5.3 (b)], and Live Nation’s business operations are to be conducted “**in a manner which is consistent with its operations of similarly situated venues nationwide.**” [Lease, § 8.4 (a)] Additionally, under Pennsylvania law, a tenant such as Live Nation has no obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, Live Nation pays substantial fixed minimum rent. See Erie Plaza Partners, L.P., Supra (“Plaintiff further maintains

that defendant has failed to apply its best efforts to drive sales over the “break point” [after which percentage rent would be owed]. Reviewing the lease and the amendment to determine the parties’ obligations demonstrates an absence of any language requiring Moran to use its best efforts to drive its gross receipts above the break even point denoted therein. ***The obligation to pay a substantial minimum annual base rent supports this courts interpretation that payment of percentage rent is not obligatory but conditional.***”).

13. While the Lease prohibits Live Nation from acting to “mortgage, pledge, encumber, assign, or in any manner transfer this Lease ... nor sublet all or any part of the Premises,” which are defined collectively as a “Transfer,” the Lease quite obviously does not preclude Live Nation from hosting licensees on the Premises for specific events, with Live Nation maintaining control over the Premises, and providing *inter alia* the staffing and operational services necessary to host the events. [Lease, § 21.1 (a)]

14. The Lease also references so-called “Name-in-Title” sponsorships, which are sponsorships “***for the naming rights of the entirety of the Premises.***” [Lease, § 8.5 (a)] For example, Lincoln Financial is the “Name-in-Title” sponsor of Lincoln Financial Field in Philadelphia. Met Master receives 50% of revenue from those sponsorships, if they exist. [Lease, § 8.5]

15. As to a “Name-in-Title” sponsorship, Met Master’s approval is required, but Met Master’s approval “***shall not be required for any other type or character of sponsorship.***” [Lease, § 8.5 (a)] In conjunction with the fact that Met Master’s approval rights, and entitlement to 50% revenue, relate only to sponsorships “***for the naming rights of the entirety of the Premises,***” and not to other types of sponsorships, the Lease provides that Met Master has approval rights over signs on the *exterior* of the Premises, but not with respect to “signage which

is located within the Premises and [] not visible from the exterior of the premises.” [Lease, § 14.1]

16. Thus, aside from the “Name-in-Title” sponsorship, Live Nation is solely entitled to all other revenue from sponsorships, without any right of participation from Met Master.

17. According to the Lease, Met Master was required to “deliver” the Premises to Live Nation on approximately October 1, 2018. [Lease, § 1.1 (e)] Sixty (60) days thereafter, Met Master was required to have substantially completed all of the “Landlord’s Work” as set forth in the Lease. [Lease, § 1.1 (f)] As to “Landlord’s Work,” the Lease provides:

Section 6.1. Landlord’s Responsibilities. Except as otherwise set forth in Exhibit B of this Lease and the attachments thereto, Landlord is completing the work specifically allocated to Landlord in Exhibit B in order to deliver the premises in turnkey condition, all of which is defined as Landlord’s Work in Exhibit B. Subject to Landlord’s completion of the Landlord’s Work, Tenant agrees that Tenant will accept the Premises in its AS-IS condition, subject to Section 15.1 (a), WITH ALL FAULTS as of the date of delivery, and that Landlord shall not be required to perform any tenant improvements with respect thereto, ***subject to Landlord’s representation and warranty that the Landlord’s work has been performed and completed in accordance with the Landlord’s Performance Standard (as defined below)***. For purposes of the foregoing, certain obligations of Landlord and Tenant with respect to Landlord’s Work and Tenant’s Work, respectively, are described in greater detail in the responsibility matrix attached hereto as Exhibit B-2. ***Landlord shall cause Landlord’s Work to be completed in a first-class, good and workmanlike manner and in compliance with all applicable Requirements (as defined in Section 27.4 herein), the “Landlord Performance Standard”***. In addition, Landlord Hereby warrant’s Landlord’s Work for a period of one (1) year from the Commencement Date and shall, upon written notice from Tenant received during said period, make any repair and/or replacement necessary with respect thereto (except to the extent that any such repair or replacement is caused by the misuse, damage, negligence or willful misconduct of Tenant, it[s] agents, contractors or employees). Any notice given to Landlord within such one (1) year period, but not performed within the one (1) year period, shall not exclude Landlord from performing such repairs and/or replacement. [Lease, § 6.1]

The specifics of the “Landlord’s Work” required to be performed by Met Master are set forth on Exhibit “B” to the Lease.

18. After signing the Lease, however, Blumenfeld realized his development empire in Philadelphia and its surrounding areas was in severe distress, and he did not have sufficient cash to continue many his operations and fund his lavish, high-end lifestyle.

19. For example, Blumenfeld was indebted to Wachovia Bank in the amount of \$1,750,000, and was required to make monthly payments to pay down that debt, but beginning on June 1, 2018, Blumenfeld stopped making those monthly payments. [See the Complaint in the Case Wells Fargo Bank, N.A. v. Eric Blumenfeld, et al, Superior Court of New Jersey, Chancery Division, Atlantic County, No. 023483 (the “Wells Fargo Lawsuit”), Ex. “2”].

20. Likewise, Blumenfeld had a line of credit with M&T Bank for \$2,500,000, but he stopped making monthly payments on that line of credit in August 2019. [See the Complaint in the case M&T Bank v. Eric Blumenfeld, Philadelphia County Court of Common Pleas, January Term, 2020, No. 4391 (the “M&T Bank Lawsuit”), Ex. “3”]

21. As a result, at the same time Met Master was supposed to be performing the Landlord’s Work at the Met, Blumenfeld had virtually no cash, and he needed an enormous amount to money to keep his creditors at bay, keep his other projects afloat, and keep enjoying his lavish lifestyle.

22. Because the financial noose was tightening around his development empire, at the same time he was supposed to be performing the Landlord’s Work at the Met, Blumenfeld hatched a plan. His plan was to divert the cash and resources necessary to complete the Landlord’s Work at the Met to other projects and debts, and at the same time attempt to extort Live Nation, which Blumenfeld believed to be a “cash cow” from which he could squeeze money to fund his other projects and interests, by making frivolous claims regarding Live Nation’s obligations to Met Master under the Lease.

23. As part of this extortion, Blumenfeld began to claim that although Met Master was only entitled to 50% of the revenue from the so-called “Name-in-Title” sponsorship (i.e., the sponsor that acquired the naming rights to the entire building – for example, Citizens Bank is the name-in-title sponsor to Citizens Bank Park) under the Lease, Met Master was actually entitled to 50% of *all* sponsorships at the Met. Blumenfeld hoped to obtain millions of dollars in quick cash from this gambit, in order to pay down his debts on other projects, despite this contention being patently false.

24. Additionally, despite receiving \$1.5 million per year in base rent from Live Nation, Blumenfeld cooked up a false and frivolous theory that under the Lease, Live Nation could only hold events at the Met if those events inured directly to Blumenfeld’s financial benefit over and above what Met Master was already receiving in base rent. Initially, to support this assertion, Blumenfeld contended (falsely) that events that did not sell tickets at the Met for Met Master’s benefit were actually “subleases” to which Met Master was entitled to 50% of the revenue.

25. Needless to say, because Blumenfeld was devoting cash previously earmarked to complete the Landlord’s Work at the Met to other more emergent projects and demands, Blumenfeld fell way behind on completing Met Master’s Landlord’s Work. This resulted in the Premises being, at all relevant times, in an unacceptable condition. For example, the basement of the Met flooded every time there was a rain storm, giving rise to significant potential problems. Roof leaks and other plumbing leaks wreaked havoc on Live Nation’s operations, damaging valuable equipment and raising safety concerns. In fact, as of the summer of 2019, Met Master was so far behind schedule that it had not yet installed the required sign on the roof of the Met (which was supposed to be the “centerpiece” sign announcing the Met’s “name-in-

title sponsor). These are but three of the hundreds of examples of Met Master's failure to comply with its obligations under the Lease.

26. Ultimately, the above-referenced demands, and other frivolous and extortionate demands, were set forth in a May 15, 2019 letter from Met Master to Live Nation. [See May 15, 2019 letter, Ex. "4"] This letter was sent at the time Blumenfeld's development empire was crumbling, solely to extort money from Live Nation to save his over-extended other projects.

27. Remarkably, in this letter, Blumenfeld asserted that Live Nation mistreated the Reverend Mark Hatcher and his church, the Holy Ghost Headquarters Revival Center at the Met, Inc. ("Holy Ghost Church"). To support these false assertions, *Met Master typed a letter that it falsely attributed to Reverend Hatcher* (without Reverend Hatcher's signature), making false allegations against Live Nation.

28. Importantly, the allegations respecting Reverend Hatcher are untrue. Moreover, Live Nation has always held, and continues to hold, Reverend Hatcher and Holy Ghost Church in the highest regard, Live Nation works well with and values Reverend Hatcher and his numerous contributions to the community, and the allegations relating to Reverend Hatcher were made by Blumenfeld only to sow discord between Live Nation and Reverend Hatcher to assist with Blumenfeld's extortion.

29. In response to the trumped-up and baseless assertions in Blumenfeld's May 15, 2019 letter, Live Nation sent a May 20, 2019 letter. [See May 20, 2019 letter, Ex. "5"] In this letter, Live Nation explained that Met Master's extortionate demands were frivolous. Additionally, Live Nation's letter provided express notice to Met Master that it was in default under the Lease for, *inter alia*:

- Failing to comply with the Landlord's construction obligations;

- Failing to achieve the Landlord Performance Standard in connection with Landlord's Work;
- Failing to effect warranty work in connection with Landlord's Work;
- Failing to deliver the Required Capacity within the Premises; and
- Failing to reduce the Fixed Minimum Rent due to Landlord's failure to deliver the Required Capacity.

This letter also stated:

The Landlord has dragged its feet on getting the Landlord Work completed for *sixteen months*. This is absolutely egregious and any other tenant would have already defaulted the Landlord; not to mention how this has disrupted our operations and delayed revenue streams. But being the good partners that we are we have handled the struggle of this delay and tried to assist the Landlord where possible. Unfortunately, not only has the Landlord's Work not been completed but there are several items which were completed that now need correction or repairs due to faults. Not only are these warranty items outstanding but there are also general repair items that the Landlord is responsible for that have not been performed. Once again, we have tried to be good partners and with the Landlord to get these items resolved but unfortunately we have not been successful. [Ex. "5"]

Ultimately, the May 20, 2019 letter gave the Landlord thirty (30) days to cure the referenced breaches.

30. The May 20, 2019 letter also pointed out that the assertions regarding Reverend Hatcher were false, and that Met Master had written the letter and falsely attributed it to Reverend Hatcher. [Ex. "5"]

31. Despite the indisputable fact that Met Master had simply not performed the required Landlord's Work under the Lease, which was documented, Met Master's counsel nevertheless fired back a May 23, 2019 letter falsely asserting, without analysis, that Met Master had completed its Landlord's Work. [See May 23, 2019 letter, Ex. "6"]

32. After these letters were exchanged, Met Master continued to attempt to extort money from Live Nation through its frivolous claims, in order to permit Blumenfeld to attempt

to save his other real estate projects, which were then under water, but Live Nation would not be extorted.

33. Nevertheless, at the same time, and despite multiple meetings were Blumenfeld acknowledged Met Master's failure to complete its Landlord's Work and Met Master's resulting breach of the Lease (at one point guaranteeing that all work would be completed by the date of his son's bar-mitzvah), Blumenfeld and Met Master never cured their own defaults under the Lease, and continued to refuse to complete the Landlord's Work. The original "Landlord's Work" was to be completed before occupancy by Live Nation, but it was never completed, and there were additional, continuing problems (including leaks and electric issues) that have never been addressed or remedied.

34. Despite Blumenfeld's frivolous and unsavory demands of Live Nation, meant to obtain cash to which he was not entitled under the Lease in an attempt to save his other real estate projects and empire, and otherwise permit him to continue the lavish standard of living to which he had become entitled despite the collapse of his interests, Live Nation would not be extorted.

35. Accordingly, and although Met Master was at all relevant times in default under the Lease due to its failure to complete the Landlord's Work, on December 10, 2019, the Met filed a Complaint in the above-captioned matter seeking cash damages.

36. Met Master's Complaint continued to make the frivolous assertion that despite the Lease stating that Met Master was only entitled to a portion of sponsorship revenue from the "Name-in-Title" sponsor, Met Master was actually entitled to 50% of **all** sponsorships.

37. Additionally, while Met Master previously asserted that Live Nation could only hold events at the Met if those events inured directly to Blumenfeld's financial benefit under a

“sublease” theory, Met Master changed course and set forth a new theory, that Live Nation had a “duty of good faith” to hold its events to ensure that Blumenfeld maximized his percentage rent. Of course, this assertion is contrary to Pennsylvania law that a tenant has no obligation to maximize percentage rent pursuant to an implied duty, and this is particularly true where, as here, the tenant pays substantial fixed minimum rent. See Erie Plaza Partners, L.P., Supra (“Plaintiff further maintains that defendant has failed to apply its best efforts to drive sales over the “break point” [after which percentage rent would be owed]. Reviewing the lease and the amendment to determine the parties’ obligations demonstrates an absence of any language requiring Moran to use its best efforts to drive its gross receipts above the break even point denoted therein. ***The obligation to pay a substantial minimum annual base rent supports this courts interpretation that payment of percentage rent is not obligatory but conditional.***”).

38. Moreover, to harass Live Nation, Met Master sued Live Nation’s Regional President, Gordon, under a baseless theory that Gordon is not permitted to provide complimentary tickets. Of course, Met Master continued to make the same frivolous claims regarding Reverend Hatcher. Blumenfeld also sought in the Complaint to portray himself as a “Robin Hood-esque” figure devoted solely to helping the poor and driving community development, while not revealing that his Complaint made false and extortionate demands solely to save his collapsing real estate interests and to ensure that Blumenfeld could continue to enjoy a high-end standard of living, including his Porsche automobile and luxury homes.

39. Then, to put maximum pressure on Live Nation to bend to Met Master’s extortion, Blumenfeld went public with his allegations, likening Live Nation (his own tenant) to the “Death Star” in “Star Wars,” and attempting to leverage the fact that Live Nation was a public company, in order to obtain a cash windfall that he sought but was not entitled to.

40. All the while, Met Master continued to refuse to comply with its own obligations under the Lease.

41. To this day, Met Master has failed and refused to complete the Landlord's Work at the Met, despite multiple demands by Live Nation, and despite notice from Live Nation that Met Master was in default that Met Master failed to cure.

COUNT I
DECLARATORY JUDGMENT
LIVE NATION PARTIES v. MET MASTER

42. Live Nation Parties repeat and reallege all prior paragraphs as though the same were fully set forth herein.

43. The parties have a dispute and an actual controversy now exists based on the facts set forth above.

44. An actual controversy now exists between the parties, and Live Nation Parties are therefore entitled, pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, to a declaration that:

- a. Met Master is, and has been at all times material, in material breach of the Lease due to its failure to complete the Landlord's Work and other obligations under the Lease;
- b. Under Pennsylvania law, a party who has materially breached a contract may not complain if the other party refuses to perform his obligations under the contract; a party also may not insist upon performance of the contract when he himself is guilty of a material breach of the contract;
- c. Because Met Master is, and has at all relevant times been, in breach of the Lease due to its failure to complete the Landlord's Work and other obligations under the Lease, Met Master is now precluded under Pennsylvania law from recovering *any* damages against Live Nation Parties, or otherwise requiring Live Nation Parties to perform under the Lease.

WHEREFORE, Counterclaim Plaintiffs, Live Nation Entertainment, Inc. and Geoffrey S. Gordon, respectfully request that this Court enter judgment in their favor and against

Counterclaim Defendant Holy Ghost Met Master Tenant, LLC, declaring (1) Met Master is, and has been at all times material, in material breach of the Lease due to its failure to complete the Landlord's Work and other obligations under the Lease; (2) under Pennsylvania law, a party who has materially breached a contract may not complain if the other party refuses to perform his obligations under the contract; a party also may not insist upon performance of the contract when he himself is guilty of a material breach of the contract.; and (3) Because Met Master is, and has at all relevant times been, in breach of the Lease due to its failure to complete the Landlord's Work and other obligations under the Lease, Met Master is now precluded under Pennsylvania law from recovering *any* damages against Live Nation Parties, or otherwise requiring Live Nation Parties to perform under the Lease. Counterclaim Plaintiffs also respectfully request that this Court award the Counterclaim Plaintiffs reasonable attorney's fees and costs, and award any such other and further relief that this Court deems just and proper.

Respectfully submitted,



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COUNSEL LIVE NATION ENTERTAINMENT, INC. AND
GEOFFREY S. GORDON

Date: November 9, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the date below a true and correct copy of Live Nation Parties Answer, New Matter and Counterclaim was forwarded to the following by electronic mail and United States Mail:

David Braverman, Esquire
Braverman Kaskey, PC
One Liberty Place, 56th Floor
1650 Market Street
Philadelphia, PA 19103

By:



Andrew J. DeFalco, Esquire

Date: November 9, 2020

VERIFICATION

I, **Andrew J. DeFalco, Esquire**, hereby verify that I am authorized to make this Verification and that the facts and averments contained in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. The undersigned understands that the foregoing statements are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'A. DeFalco', is written over a horizontal line.

Andrew J. DeFalco, Esquire

Date: November 9, 2020