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I. INTRODUCTION

Music festivals, like the Astroworld Festivals that Travis Scott dreamed up as a hometown-tribute to Houston, are designed for excitement, inspiration, and emotional release. Like any other adrenaline-inducing diversion, music festivals must balance exhilaration with safety and security—but that balance is not the job of performing artists, even those involved in promoting and marketing performances. Performers are not expected to render special protection to the audience, nor to safeguard them from the rest of the crowd. Which only makes sense: Performing artists, even those who engage in certain promotional activities, have no inherent expertise or specialized knowledge in concert safety measures, venue security protocols, or site-design. Consequently, Texas appellate precedent rejects imposing a general tort duty on performers or promoters to protect concertgoers from dangers, including those arising from others in the crowd. *Pooser v. Cox Radio, Inc.*, No. 04-08-00270-CV, 2009 WL 200449, at *2 (Tex. App.—San Antonio Jan. 28, 2009, no pet.); *Barefield v. City of Houston*, 846 S.W.2d 399, 403 (Tex. App.—Houston [14th Dist.] 1992, writ denied). But by lumping Mr. Scott and his touring and production company, XX Global, into undifferentiated allegations against multiple defendants, claiming damages for tragic injuries they sustained in the crowd while watching him perform, Plaintiffs’ and Intervenors’ (collectively, “Plaintiffs”) claims contravene the accepted bounds of tort liability and seek recompense from the wrong source.

Plaintiffs’ tort claims against Mr. Scott and XX Global (collectively, the “Scott Defendants”) all fail as a matter of law. Their primary liability theory—encompassing eight claims—sounds in negligence, but, against the Scott Defendants, those claims lack the fundamental elements of a negligence theory: duty, breach, and causation.

At the threshold, Texas law disclaims any generalized duty of reasonable care to protect others, whether from harms inflicted by third parties or risks from dangerous premises. A duty—

the essential ingredient of any tort claim—must be justified by some special relationship between plaintiff and defendant, or defendant’s specialized control over the third-party or dangerous condition (employer-employee or landowner-tenant). Here, no such special relationship exists, and the evidence thus negates any cognizable duty borne by the Scott Defendants.

First, precedent confirms that neither performers nor concert-promoters inherently owe a specialized duty to protect audience members from harm—whether posed by others in the crowd or some condition of the venue. Second, the evidence—including the Scott Defendants’ contractual agreements with other defendants, allocating responsibility over festival operations—demonstrates that the Scott Defendants were not responsible for venue security or operations, or the site layout. That precludes any premises-liability theory of negligence duty. Finally, Plaintiffs allege that all Defendants voluntarily assumed a duty to protect them (i.e., a “negligent undertaking”), but that theory requires an affirmative promise that a defendant will provide protective services to plaintiffs. Plaintiffs do not identify any such representations attributable to the Scott Defendants specifically. Without a specific source of duty, Plaintiffs’ negligence theories fail at the start.

But even if the Court were to accept a new view of Texas law and impose a novel performer or promoter duty on the Scott Defendants to protect all audience members, even from harms they could not control, Plaintiffs’ negligence theories still fail as a matter of law for lack of breach. The evidence confirms that the Scott Defendants acted diligently to protect against every reasonably apprehensible danger, as due care requires. When, during festival planning, concerns arose about the risk of a stampede occurring in the festival site, the Scott Defendants supported festival organizers’ efforts to eliminate that risk by agreeing to remove certain rides and other attractions

at the site. Then, when the Scott Defendants were told to end the show after Mr. Scott's guest performer finished performing, they did just that—ending the show as directed.

Given the evidence demonstrating that the Scott Defendants exercised reasonable care as a matter of law—from planning through performance—Plaintiffs' remaining claims necessarily fail. Two of their claims—gross negligence and intentional infliction of emotional distress—require an egregiously culpable state of mind: either reckless and conscious disregard of extreme risk, or intent to harm. Considering all the evidence of the Scott Defendants' response to any risks that came to their attention before or during the festival, no reasonable factfinder could conclude that they intended to harm Plaintiffs, or recklessly disregarded safety concerns. Nor does the evidence support a conclusion that the Scott Defendants' conduct meets the high "extreme and outrageous" requirement for their intentional tort theory. Their conduct was not even unreasonable, much less "atrocious."

Finally, every single tort claim Plaintiffs level against the Scott Defendants fails for lack of causation. The elements of proximate causation include (1) but-for causation, and (2) a "substantial factor" contribution to harm. Here, the evidence negates a but-for connection between any allegedly tortious conduct by the Scott Defendants (relating to site layout, stopping the concert, or promotional activities) and the injuries Plaintiffs suffered. Even if another performer had played on Stage 1 before Mr. Scott, or the concert had ended ten minutes earlier, or the content of the promotional video had been different, no evidence supports an inference that Plaintiffs' injuries would not still have occurred. And the Scott Defendants' promotion of the concert is far too attenuated in space and time to constitute a substantial factor in causing Plaintiffs' injuries months later.

No one disputes that tragedy struck the Astroworld Festival. But promoting and performing at a concert do not equate to the power to control a crowd or to design a venue safely. Basic tort principles prevent imposing liability on the Scott Defendants for a tragedy arising from forces legally controlled by others. Those principles bar Plaintiffs' tort claims as a matter of law, warranting summary judgment for the Scott Defendants.

II. SUMMARY JUDGMENT EVIDENCE

The summary judgment evidence on which the Scott Defendants rely is set forth in the Appendix hereto, and all evidence, including the Declaration of Tracy N. LeRoy and exhibits thereto, are incorporated by reference in this Motion.

III. BACKGROUND

A. The Genesis of the Astroworld Music Festivals

Growing up in Houston, visiting the now-closed AstroWorld amusement park ("AstroWorld") was a formative experience for Mr. Scott.² Inspired by memories of AstroWorld, Mr. Scott conceived of a festival that would recreate the AstroWorld experience for his hometown.³ After AstroWorld closed, Mr. Scott explained it "crushed a lot of us," so "the whole idea" behind the festival "was to just kind of bring back that feeling," "that imagination," "that dream" to Houston.⁴

² Exhibit 1 (Deposition of Jacques Bermon Webster II, Vol. 3, 10/6/23 ("Scott 3")) at 137:3–11 ("Q. At the time that you were growing up, was Astroworld part of the fabric of the City of Houston? A. Yes. Q. And was it a place where people of all ages but especially people who are kind of coming of age would be able to go, enjoy themselves, meet other people and have a good time? A. Yes, that's where you find yourself.").

³ Exhibit 2 (Deposition of Jacques Bermon Webster II, Vol. 2, 10/5/23 ("Scott 2")) at 14:6–9.

⁴ Exhibit 1 (Scott 3) at 137:12–23.

In 2018, Mr. Scott collaborated with his tour promotor, Live Nation, to bring the first Astroworld festival to Houston.⁵ The festival took place at NRG Park, across from the original AstroWorld site.⁶ Although he could not bring back AstroWorld, Mr. Scott wanted to “create the experience” by incorporating rides, games, concessions, and musical performances into the festival.⁷ In 2019, Mr. Scott brought a second Astroworld festival to Houston (“Astroworld 2019”), with Live Nation again acting as the festival promoter.⁸ And after a one-year hiatus due to the COVID-19 pandemic, the third Astroworld festival at NRG Park was scheduled for November 5 and 6, 2021 (“Astroworld 2021”).⁹

B. The Scott Defendants’ Limited Responsibilities for Astroworld 2021

In 2019, Mr. Scott, through his touring and production company, XX Global, entered into a contract with Live Nation to promote his concerts for a specified term (the “Tour Agreement”).¹⁰ The Tour Agreement delineated the parties’ respective commitments regarding operational and creative control of Mr. Scott’s shows during the contract period.¹¹ Under the Tour Agreement, Mr. Scott had “creative control over the productions and presentations” of his performances at the

⁵ Exhibit 2 (Scott 2) at 19:17–20:5; Exhibit 4 (Deposition of Brad Wavra, Vol. 1, 7/28/23 (“Wavra 1”)) (Live Nation’s festival director for Astroworld 2021 and tour promoter) at 107:14–108:2.

⁶ See Exhibit 1 (Scott 3) at 13:10–17.

⁷ Exhibit 1 (Scott 3) at 138:4–11, 139:11–140:14.

⁸ Exhibit 4 (Wavra 1) at 107:14–108:2.

⁹ Exhibit 5 (TS-000000383, 2021 Co-Promotion Agreement between XX Global and Live Nation (“Co-Promotion Agreement”)); Exhibit 6 (LN_AW000000509, Scoremore License Agreement with NRG Park (“NRG Park License Agreement”)).

¹⁰ Exhibit 7 (CJTS_000017052, 2019 Tour Agreement between XX Global and Live Nation (“Tour Agreement”)).

¹¹ See Exhibit 7 (Tour Agreement).

tour events,¹² and Live Nation had the “exclusive right to promote and present” all of Mr. Scott’s live concert performances during the term, including all Astroworld festivals.¹³

For Astroworld 2021, Mr. Scott, again through XX Global, and Live Nation entered into an agreement which specified the parties’ responsibilities for the promotion of the festival (the “Co-Promotion Agreement”).¹⁴ Under the Co-Promotion Agreement, and consistent with the Tour Agreement, Mr. Scott’s responsibilities relating to Astroworld 2021 were limited: curating the talent lineup, marketing the festival, Mr. Scott’s personal security, engaging in creative matters, and preparing for Mr. Scott’s headlining performance.¹⁵ As the festival organizers understood, Mr. Scott and his team were neither responsible for nor involved in the approval of venue security,

¹² Exhibit 7 (Tour Agreement) ¶ 6(e).

¹³ Exhibit 7 (Tour Agreement) ¶ 3(a).

¹⁴ Exhibit 5 (Co-Promotion Agreement). Although the Co-Promotion Agreement was not signed, Mr. Scott’s manager understood that the Co-Promotion Agreement governed the parties’ responsibilities for Astroworld 2021. See Exhibit 3 (Deposition of David Stromberg, Vol. 1, 9/6/23 (“Stromberg 1”) (Mr. Scott’s manager)) at 46:11–47:21 (acknowledging that despite being unexecuted, the Co-Promotion Agreement contained the substance of the agreement with respect to the parties’ responsibilities for Astroworld 2021, and that Mr. Stromberg’s understanding was that the 2021 Co-Promotion Agreement would govern). Live Nation had the same understanding. Sally Stacy—Live Nation’s Senior Vice President of Legal Affairs for U.S. Concerts—testified that despite being unsigned, Live Nation viewed the Co-Promotion Agreement as the operative agreement for Astroworld 2021. Exhibit 8 (Deposition of Sally Stacy, 3/6/24) at 78:13–25 (agreeing that “Live Nation’s position is that the Co-Promotion Agreement was in full force and effect, and both parties agreed to comply with it despite there not being an inked signature from Mr. Scott”). Even if the Co-Promotion Agreement did not govern the parties’ responsibilities for the festival because it was unsigned, the parties’ obligations were essentially the same under the Co-Promotion Agreement and the Tour Agreement. Compare Exhibit 5 (Co-Promotion Agreement), with Exhibit 7 (Tour Agreement).

¹⁵ See Exhibit 5 (Co-Promotion Agreement) ¶ 2.2; Exhibit 9 (Deposition of Jacques Bermon Webster II, Vol. 1, 9/18/23 (“Scott 1”)) at 169:10–170:4. As described by Mr. Scott’s manager, David Stromberg, Mr. Scott and his team were responsible for “Travis’ performance, the creative direction for his performance, putting on his show, booking the other artists, the festival aesthetic design, the merch, the flyer, the artwork, things like that.” Exhibit 3 (Stromberg 1) at 280:4–11.

safety, or site layout decisions.¹⁶ Mr. Scott and his team likewise were not responsible for or involved in entering into festival-related agreements or securing the venue license agreement or the required governmental licenses and permits for Astroworld 2021.¹⁷

C. The Scott Defendants' Involvement in Astroworld 2021

1. Astroworld 2021 Marketing

Live Nation, Scoremore,¹⁸ and Mr. Scott's team collaborated on certain advertising materials for the festival.¹⁹ Mr. Scott and his team worked on creative aspects of marketing materials and occasionally posted about the festival on social media.²⁰ For example, Mr. Scott's

¹⁶ See Exhibit 9 (Scott 1) at 169:7–9; Exhibit 3 (Stromberg 1) at 154:4–155:3 (Mr. Stromberg and Mr. Scott not responsible for developing or executing the festival security plan, emergency plan, event operations plan, developing the site plan, or ensuring the site plan provided adequate usable space for the festival attendees); Exhibit 10 (Deposition of Sascha Stone Gutfreund, 9/26/23 (“Gutfreund”)) at 322:9–16 (agreeing that neither Live Nation nor Scoremore “expect[ed] the Travis Scott team to provide site layout, crowd control, crowd flow, or crowd migration input”); Exhibit 3 (Stromberg 1) at 99:21–25, 183:7–13 (same), 155:10–156:4 (Mr. Scott's team not responsible for selecting the security companies that worked at the festival or where to deploy them), 156:17–157:25 (Mr. Scott's team not consulted on hiring key festival personnel or aware of decisions relating to bringing in additional security companies), 158:8–17, 290:15–291:4.

¹⁷ See Exhibit 3 (Stromberg 1) at 155:10–156:4 (Mr. Scott and his team not responsible for or involved in selecting or hiring venue security, festival director, site operations director, or safety and risk director, or contracting with vendors); Exhibit 9 (Scott 1) at 178:16–179:3 (Mr. Scott had no “specific knowledge about required permits for Astroworld 2021); see also Exhibit 11 (Deposition of David Stromberg, 9/7/23 (“Stromberg 2”)) at 487:23–488:8; Exhibit 6 (NRG Park License Agreement) (the Scott Defendants not parties to NRG Park License Agreement).

¹⁸ Scoremore Holdings, LLC (“Scoremore”) is a subsidiary of Live Nation that co-promoted Astroworld 2021. Exhibit 10 (Gutfreund) at 26:13–27:3.

¹⁹ Exhibit 5 (Co-Promotion Agreement) ¶ 2.2.

²⁰ Plaintiffs' Petitions reference a May 5, 2021 tweet from Mr. Scott's Twitter account—posted six months before the festival—which states, “NAW AND WE STILL SNEAKING THE WILD ONES IN.!!!” Plaintiffs' First Am. Master Long Form Pet. (“Master Pet.”) ¶ 35; Treston Blount and Tamara Byrd's First Am. Pet. (“Blount Pet.”) ¶ 35; Dubiski First Am. Pet. (“Dubiski Pet.”) ¶ 39; Shahani Intervenor's Second Am. Pet. (“Shahani Pet.”) ¶ 39. Mr. Scott testified that he did not recall whether the post was in reference to Astroworld and that the post “could have been for anything.” Exhibit 9 (Scott 1) at 200:4–201:20 (“A. ... a lot of these adjectives seem maybe, like, out of context of what I mean and what my fans know it to mean. ... And, you know, the wild ones in this specific context is -- you know, my fans have always been like, you know, the outsiders, the -- you know, maybe not the most popular or even the popular. You know, we're just a

creative team produced a thirty-second long promotional video for Astroworld 2021.²¹ The video, which splices together clips (including prior Astroworld festival footage), illustrates excited fans in crowds (running, dancing, chanting, and one falling from a fence) and Mr. Scott performing.²² The video was ultimately approved for use and posted on the Astroworld Twitter account the day that Astroworld 2021 was announced, April 30, 2021—more than six months before the festival.²³ The same day, the post was re-tweeted from Mr. Scott’s Twitter account.²⁴

Plaintiffs do not allege that any Astroworld attendee actually saw the promotional video prior to Astroworld 2021, or that it had any impact on their conduct at the festival. Nor is there any evidence that it did.²⁵ To the contrary, Seyth Boardman, the Safety and Risk Director for Astroworld 2021, testified that the entry to the festival went smoothly, having “successfully opened up gates” without anyone “busting through without being searched or scanned or anything like that.”²⁶

community of people. We represent ourselves as one and, you know, it’s not – everyone knows I’m not sneaking people in but it’s just the idea that I’m going to make sure that everyone can at least try to see the show, at least, you know, have a opportunity to see me, you know, and if I can make that possible for them, I’ll try, you know. It’s just a communication thing that I have with engaging with my fans. It’s not really to anything specific or to a place or -- or an event, really.”). None of the Petitions allege that anyone who attended Astroworld 2021 even saw that social media post, let alone acted upon it six months later.

²¹ See Exhibit 3 (Stromberg 1) at 190:13–17.

²² <https://twitter.com/astroworldfest/status/1388228290385678336>; Exhibit 9 (Scott 1) at 197:21–24.

²³ Exhibit 3 (Stromberg 1) at 318:19–319:2, 191:7–13.

²⁴ See Exhibit 9 (Scott 1) at 197:5–13.

²⁵ See Exhibit 12 (Deposition of Terry Tran (“Tran”)) at 104:21–105:2, 278:12–14.

²⁶ Exhibit 36 (Deposition of Seyth Boardman, Vol. 2, 9/29/23 (“Seyth Boardman 2”)) at 482:24–484:16.

2. Astroworld 2021 Performance Lineup

In the course of planning the festival's talent lineup, David Stromberg, Mr. Scott's manager during Astroworld 2021, proposed an idea to Brad Wavra, Live Nation's festival director for Astroworld 2021 and tour promoter: that Mr. Scott be the sole performer on Stage 1²⁷ on the first day of the festival, following the performances on Stage 2.²⁸ Some of the individuals involved initially expressed concern about the risk of a stampede occurring during the transition of patrons from Stage 2 to Stage 1 at the conclusion of the final Stage 2 performance.²⁹

To address those concerns, festival organizers made abundant changes to the site map to increase the space available for patrons to flow between the stages.³⁰ These changes included removing certain games, rides, activations, and landscaping that may have impeded the flow of traffic between the stages,³¹ widening the pathway between the stages "extensively," reorienting the layout of Stage 2, moving the VIP area and creating exits at Stage 2, and opening up a path on Lantern Point "to create flow around the other side of VIP into the stage left side."³²

Although festival organizers considered adding a third stage, they determined that these other changes to the site obviated the need for it.³³ The plan for a third stage posed problems of

²⁷ The festival site had two stages: Stage 1 ("Stage 1," also referred to as the "Main Stage") and Stage 2 ("Stage 2"). Exhibit 14 (REG_ASTROWORLD_000262, Astroworld 2021 Event Site Plan, v. 1.38 ("Site Plan")).

²⁸ See Exhibit 3 (Stromberg 1) at 100:1–13; Exhibit 2 (Scott 2) at 60:9–19; see also Exhibit 10 (Gutfreund) at 92:11–14 ("A. Well, day one [Travis] really wanted to have that premier and ability to share his vision. He spent a lot of time and energy and he wanted to -- he wanted to be the first person to share it.").

²⁹ See Exhibit 15 (Deposition of Emily Ockenden, 8/2/23 ("Ockenden")) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6.

³⁰ Exhibit 16 (Deposition of Lucas Conder, 8/28/23 ("Conder")) at 265:20–266:5.

³¹ See Exhibit 17 (Deposition of Carol Haave, Vol. 2, 11/29/23 ("Haave 2")) at 15:12–17.

³² See Exhibit 36 (Seyth Boardman 2) at 617:21–618:6.

³³ See Exhibit 18 (Deposition of Carol Haave, Vol. 1, 8/11/23 ("Haave 1")) at 166:9–12; Exhibit 3 (Stromberg 1) at 108:6–11. Although Mr. Scott's team's preference was not to use a third stage

its own. Jeff Gaines, NRG Park's Senior Assistant General Manager, testified that the proposed plan for a third stage "didn't make a lot of sense" to him, because the stage's orientation would have caused sound to travel west, in violation of an agreement with the nearby Knollwood Village neighborhood.³⁴

After implementing the changes to create more space for patron flow, festival organizers informed Mr. Scott's team that their concerns had been addressed and that the Stage 1 plan was approved.³⁵ Festival organizers have acknowledged that their concerns were remediated.³⁶ For example, Scoremore co-founder and festival organizer, Sascha Gutfreund, testified that Mr. Scott was "willing to make other concessions to a place where the safety and security professionals felt comfortable with the plan" and that the concern "was alleviated."³⁷ And Mark Miller, NRG Park's General Manager testified, "If we hadn't resolved this issue, we couldn't have done the show."³⁸

unless another lot was rented, organizers acknowledged that Mr. Scott's team did not have unilateral authority to reject the use of a third stage. *See* Exhibit 10 (Gutfreund) at 456:6–24; *see also* Exhibit 1 (Scott 3) at 112:19–23 ("A. ... I can come up with the utmost creative thing ever. It's up to the venue, the head of security and everyone else to figure out the final say. I have no final say in what happens on November 5th.").

³⁴ Exhibit 19 (Deposition of Jeff Gaines, 4/24/23) at 230:7-231:16; *see also* Exhibit 20 (Deposition of Mark Miller, Vol. 2, 2/17/23 ("Miller 2")) at 259:2-15.

³⁵ *See* Exhibit 3 (Stromberg 1) at 101:7–13, 230:20–231:6.

³⁶ *See* Exhibit 21 (Deposition of Brent Silberstein, Vol. 1, 9/22/23 ("Silberstein 1")) at 80:22–81:5, 107:19–24; Exhibit 22 (Deposition of Brent Silberstein, Vol. 2, 11/8/23 ("Silberstein 2")) at 318:25–320:6 ("Q.... And you've testified that many others approved of that plan[t]hat there would be two stages and that Travis would be the only performer on Stage 1 the night of November 5th -- or the day of November 5th. A. Yes, ma'am. Q. And to be clear, the festival would not have opened without that plan having been approved, correct? A. That is correct. ... Q. You, for one, would not have given your approval, fair, if you did not believe it was safe? A. That is correct."); Exhibit 23 (Deposition of Brad Wavra, Vol. 2, 7/29/23 ("Wavra 2")) at 478:6–479:9.

³⁷ Exhibit 10 (Gutfreund) at 92:20–93:5.

³⁸ Exhibit 25 (Deposition of Mark Miller, Vol. 3, 4/5/23 ("Miller 3")) at 117:3-22; *see also* Exhibit 24 (Deposition of Mark Miller, Vol. 1, 1/24/23 ("Miller 1")) at 96:2-16.

Following these discussions, the organizers moved forward with the approved plan and site map, and no other concerns were raised to Mr. Scott or his team on this issue.³⁹ Ultimately, whether specifically due to the site changes that were made or otherwise, no stampede occurred during the transition of patrons between the stages at the festival.⁴⁰

D. Mr. Scott's Performance at Astroworld 2021⁴¹

1. Before Mr. Scott's Performance

Mr. Scott arrived at the festival site on November 5 between approximately 12:00 p.m. and 1:00 p.m.⁴² He spent the majority of the time before his performance alone in his trailer, which was located in the artist compound.⁴³ Approximately eight hours later, Mr. Scott arrived at the elevator lift under Stage 1 to prepare for the start of his performance.

2. During and After Mr. Scott's Performance

a. The Performers' On-Stage Perspective

Mr. Scott took Stage 1 for his headlining performance shortly after 9:00 p.m.⁴⁴ His performance was outdoors, and it was dark outside while he was performing.⁴⁵ On-stage lighting systems and spotlights pointed toward the stage, obscuring the performers' view of the crowd.⁴⁶

³⁹ See Exhibit 9 (Scott 1) at 73:3–6.

⁴⁰ Exhibit 27 (Deposition of Brad Wavra, Vol. 3, 9/21/23 (“Wavra 3”)) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Deposition of Shawna Boardman, 10/5/23 (“Shawna Boardman”)) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

⁴¹ Unless otherwise indicated, all times are stated in Central Standard Time.

⁴² Exhibit 1 (Scott 3) at 38:15–22.

⁴³ Exhibit 9 (Scott 1) at 96:7–9 (“A. ... I was in my dressing room mainly by myself the whole day, like, almost the whole day.”); Exhibit 14 (Site Plan).

⁴⁴ Exhibit 28 (Bilal Joseph 12/14/23 Deposition Exhibit 930) at 1; Exhibit 2 (Scott 2) at 302:20–22.

⁴⁵ Exhibit 9 (Scott 1) at 61:25–62:7.

⁴⁶ Exhibit 9 (Scott 1) at 271:6–19; Exhibit 29 (Deposition of Aubrey Drake Graham, 11/9/23 (“Drake”)) at 221:9–222:25, 94:7–10.

Aubrey Drake Graham (“Drake”), the guest performer during Mr. Scott’s Astroworld 2021 set, testified, “[t]here were really bright lights along the entire edge of the stage. . . . [W]hen you are outdoor, there is like floods and spots coming in on you, so . . . the crowd is essentially a blur to you at that point.”⁴⁷ When Mr. Scott was asked about his ability to see out into the crowd “with the lights on the stage,” he testified, “I can barely even see . . . past the front row.”⁴⁸ And Justin Hoffman, one of the sound technicians that worked at Astroworld 2021, testified, “If you’ve never been on stage, you have no idea how blind an artist really is. All they see is a white light. They don’t even know the crowd is out there, and you wouldn’t know that unless you do run out on stage like I do and have to fix something and see what the artist actually sees.”⁴⁹

While on-stage, Mr. Scott’s overall impression of the crowd was that it appeared no different from any other crowd for which he had performed in the past ten years; it looked like “a sea of people,” “jumping up and down.”⁵⁰

During his performance, Mr. Scott wore in-ear headphones (often referred to as “in-ears” in the music industry), which are a type of ear-plug equipped with a speaker that reduces external noise and enables performers to hear a pre-set mix of sound, typically a balance of the music and their vocals.⁵¹ The in-ears that Mr. Scott wore at Astroworld 2021 could also receive one-way communications spoken into a talk-back microphone,⁵² a type of microphone that typically allows production crewmembers to communicate with others via a specified channel. As Mr. Scott

⁴⁷ Exhibit 29 (Drake) at 133:22–134:5, 135:14–22.

⁴⁸ Exhibit 2 (Scott 2) at 35:10–16.

⁴⁹ Exhibit 30 (Deposition of Justin Hoffman, 2/22/24 (“Hoffman”)) at 63:9-23.

⁵⁰ Exhibit 1 (Scott 3) at 189:15–19, 189:21–190:3; Exhibit 31 (Houston Police Department Investigative Report (“HPD Report”)) at Page 5 of 14; *see also* Exhibit 9 (Scott 1) at 227:6-14.

⁵¹ *See* Exhibit 9 (Scott 1) at 158:16–17, 159:8–14; *see also* Exhibit 30 (Hoffman) at 18:9–19.

⁵² Exhibit 9 (Scott 1) at 159:15–160:1; Exhibit 32 (Deposition of Bilal Joseph, 12/14/23 (“Joseph”)) at 15:21–16:24.

testified, “the in-ears are loud, distorted, crazy,” such that he could “barely even hear [him]self,”⁵³ over the din of the festival as a whole, which “was so loud.”⁵⁴

b. Pauses in Mr. Scott’s Performance

On four occasions, Mr. Scott perceived discrete events occurring in the crowd during his performance. He paused his performance each time.⁵⁵ Mr. Scott testified that, during these pauses, he did not see “anybody get CPR,” “anybody unconscious,” or “people specifically going to the emergency tent.”⁵⁶ Mr. Hoffman, who worked backstage during Mr. Scott’s performance,⁵⁷ testified that he “did not see [Mr. Scott] try to rile the crowd up” during his performance.⁵⁸ To the contrary, Mr. Hoffman “observed that Mr. Scott tried to slow the show down and quiet things down.”⁵⁹

c. The Show Stop

At approximately 9:48 p.m., Executive Assistant Chief Larry Satterwhite (“Chief Satterwhite”)—the highest-ranking Houston Police Officer on site for the majority of the day and night at Astroworld 2021⁶⁰—and Police Commander Thomas Hardin instructed Mr. Boardman⁶¹

⁵³ Exhibit 9 (Scott 1) at 160:6–9.

⁵⁴ See Exhibit 9 (Scott 1) at 162:21.

⁵⁵ Exhibit 1 (Scott 3) at 51:14–15, 51:22–25, 54:7–11, 59:19–60:8, 64:24–65:3, 65:14–24; Exhibit 9 (Scott 1) at 157:1–15, 225:19–226:1.

⁵⁶ Exhibit 2 (Scott 2) at 34:24–35:9.

⁵⁷ Exhibit 30 (Hoffman) at 15:19–16:1.

⁵⁸ Exhibit 30 (Hoffman) at 104:22–105:4.

⁵⁹ Exhibit 30 (Hoffman) at 105:5–8.

⁶⁰ See Exhibit 33 (Deposition of Chief Larry Satterwhite, Vol. 1, 12/7/23 (“Satterwhite 1”)) at 273:16–20; Exhibit 34 (Deposition of Chief Larry Satterwhite, Vol. 2, 12/8/23 (“Satterwhite 2”)) at 90:13–24.

⁶¹ Exhibit 35 (LN_AW000001825, Astroworld 2021 Event Operations Plan, v. 1.1 (“EOP”)) at 1825, 1832, 1836. Seyth Boardman, of B3 Risk Solutions, was the Safety and Risk Director for Astroworld 2021 and author of the festival’s EOP. *Id.* Neither Mr. Scott nor his team were listed as having authority to stop the show in the EOP, nor does the EOP mention Mr. Scott’s or his

to shut down the show because three patrons were receiving CPR.⁶² Mr. Boardman testified that, at the time, he had already been heading to the backstage area with Michael Brown, who was the head of Mr. Scott's personal security.⁶³ Mr. Stromberg had directed Mr. Boardman and Mr. Brown to the backstage area to find Bilal "Bizzy" Joseph, Mr. Scott's autotune manager, after they had asked Mr. Stromberg how to get a message to Mr. Scott.⁶⁴

Several witnesses have described the environment backstage as "incredibly loud," "dark," "chaotic," and the area as filled with "a lot of people."⁶⁵ Mr. Boardman testified that once he and Mr. Brown arrived backstage at approximately 9:52 p.m., he told an individual who he believed was Mr. Joseph that the show "needed to shut down by 10:00," but that "it was important that Travis shut it down" and "do it right . . . do it properly."⁶⁶ Mr. Boardman explained that he was worried about shutting the show down "too abruptly" because "we could have riots, we could have stampeding of people, we could have a lot of different things happen."⁶⁷ Mr. Boardman also needed time to prepare for a safe egress, testifying that "there were certain things that needed to happen within the festival site for the crowd to exit the way we had them planned to be able to exit. And I knew that it would take a . . . little bit of time to do that."⁶⁸

team's names anywhere in connection with operational roles or responsibilities. *Id.* at LN_AW000001832-1837; *see also* Exhibit 36 (Seyth Boardman 2) at 657:23-658:8 (no safety or security role for Mr. Scott or Mr. Stromberg in the EOP).

⁶² *See* Exhibit 31 (HPD Report) at Page 27 of 32; Exhibit 13 (Deposition of Seyth Boardman, Vol. 1, 9/28/23 ("Seyth Boardman 1")) at 384:4-385:11.

⁶³ Exhibit 13 (Seyth Boardman 1) at 385:12-15.

⁶⁴ Exhibit 3 (Stromberg 1) at 389:3-6, 390:1-10, 391:12-25.

⁶⁵ Exhibit 32 (Satterwhite 2) at 35:19-21; Exhibit 37 (Deposition of Marty Wallgren ("Wallgren") (security consultant working with B3 Risk Solutions for Astroworld 2021)) at 355:13-14; Exhibit 33 (Satterwhite 1) at 87:25-88:8; Exhibit 4 (Wavra 1) at 208:10-209:1.

⁶⁶ Exhibit 13 (Seyth Boardman 1) at 102:21-103:9, 104:2-8.

⁶⁷ Exhibit 13 (Seyth Boardman 1) at 102:4-13.

⁶⁸ Exhibit 13 (Seyth Boardman 1) at 102:14-20.

Mr. Joseph testified that Mr. Brown and another individual, who he did not know at the time, asked him where Mr. Scott was in his performance set list.⁶⁹ According to Mr. Joseph, Mr. Brown told him to tell Mr. Scott to end the show “after Drake,” and he did as instructed.⁷⁰

At approximately 9:54 p.m., Mr. Scott heard a voice through his in-ears tell him to end the show after Drake.⁷¹ There has been conflicting testimony about what Mr. Joseph communicated to Mr. Scott. But there is no dispute that what Mr. Joseph recalls saying and what Mr. Scott heard are the same: end the show “after Drake.”⁷²

At approximately 10:00 p.m., Chief Satterwhite informed certain individuals backstage that the show needed to be shut down by 10:10 p.m.⁷³ Several individuals—including law enforcement and festival promoters—have testified that when bringing a show to an end, it is important to do so in a safe manner to avoid chaos and potential injuries. Chief Satterwhite testified to the dangers of abruptly ending a performance, explaining that had the police gone on-stage and pulled the plug on an artist, the reaction could have been “catastrophic” and potentially led to additional deaths.⁷⁴ Chief Satterwhite agreed that steps needed to be taken to safely end a show early so that matters would not be made “worse,” and the crowd could peacefully disperse without becoming panicked or upset.⁷⁵

⁶⁹ Exhibit 32 (Joseph) at 45:6–20.

⁷⁰ Exhibit 32 (Joseph) at 45:24–46:2.

⁷¹ Exhibit 9 (Scott 1) at 232:7–10, 162:15–18; Exhibit 2 (Scott 2) at 322:12–16; Exhibit 32 (Joseph) at 17:15–19.

⁷² Exhibit 32 (Joseph) at 45:24–46:2, 48:14–49:2; Exhibit 9 (Scott 1) at 232:7–10, 162:15–18; Exhibit 2 (Scott 2) at 322:12–16; Exhibit 2 (Joseph) at 17:15–19.

⁷³ Exhibit 31 (HPD Report, L. Satterwhite Statement) at Page 7 of 120; Exhibit 34 (Satterwhite 2) at 119:20–21.

⁷⁴ Exhibit 34 (Satterwhite 2) at 161:16–162:17.

⁷⁵ Exhibit 34 (Satterwhite 2) at 36:19–37:12.

Similarly, Mr. Wavra agreed that the decision concerning how to stop the show is a safety consideration.⁷⁶ Mr. Wavra testified, “Stopping the show abruptly, pulling the plug, turning off the power, whatever you want to call it, can lead to some very troublesome behavior if the crowd is unhappy or feels cheated.”⁷⁷ Instead, to “allow [the fans] to leave happy, elated and satisfied,” it was important for Mr. Scott to play the song he “always ends his shows with,” “Goosebumps.”⁷⁸ According to Mr. Wavra, the “result” of the conversation backstage, seemed to be: “Drake was at the bottom of the stairs, fans know he’s there, play fast, expedite Drake’s performance, cut it short, get to the end, [and] hit the fireworks button,” so the fans “would feel like they got a full show.”⁷⁹ Mr. Wavra testified that Mr. Scott did just that.⁸⁰

d. The End of Mr. Scott’s Performance

As instructed, Mr. Scott ended his performance after Drake: When Drake exited the stage, Mr. Scott “expedited his way through [‘]Goosebumps[’] quickly,” “left the stage immediately,” and the show ended at approximately 10:11 p.m., over thirty minutes before it was scheduled to end.⁸¹ After exiting the stage, Mr. Scott spent the following twenty or thirty minutes with his family.⁸² Unaware of the events that took place in the crowd, Mr. Scott, his team, and the

⁷⁶ Exhibit 27 (Wavra 3) at 293:13–22.

⁷⁷ Exhibit 27 (Wavra 3) at 292:4–9, Exhibit 27 (Wavra 3) at 293:13–294:10.

⁷⁸ Exhibit 27 (Wavra 3) at 292:4–293:11.

⁷⁹ Exhibit 27 (Wavra 3) at 292:4–293:11.

⁸⁰ Exhibit 27 (Wavra 3) at 293:13–294:10.

⁸¹ Exhibit 28 (Bilal Joseph 12/14/23 Deposition Exhibit 930) at 1; Exhibit 27 (Wavra 3) at 293:13–294:10; Exhibit 10 (Guttfreund) at 462:1–14. Marty Wallgren testified that based on Exhibit 930, Mr. Scott’s performance concluded thirty-one seconds after 10:10 p.m. Exhibit 37 (Wallgren) at 433:3–435:15.

⁸² Exhibit 1 (Scott 3) at 46:21–47:12.

production team thought it was “a successful[,] great show”; “[n]obody knew that anything tragic had happened,” and “[i]t was a shock to everyone.”⁸³

e. Events in the Crowd

It was later revealed that before 10:00 p.m., Madison Dubiski, who tragically lost her life, was receiving medical care. As of 9:38 p.m., medical professionals worked to restore Ms. Dubiski’s spontaneous circulation, as she was unresponsive, pulseless, and in cardiac arrest.⁸⁴ Ms. Dubiski had been transported from the crowd and was receiving CPR in a medical tent by 9:55 p.m.⁸⁵

Upon learning about the events that had unfolded in the crowd, including the death of Ms. Dubiski and nine other individuals, Mr. Scott was devastated. He testified, “[F]ans that were [at the festival] that I consider, you know, like family to me lost their life and, you know, it’s one of the worst days for not just me but for a lot of people, families, the city.”⁸⁶

E. Plaintiffs’ Lawsuits Following Astroworld 2021

In the wake of Astroworld 2021, Plaintiffs filed hundreds of lawsuits against over sixty defendants, including Mr. Scott and XX Global, asserting causes of action for negligence; negligence per se; gross negligence; negligent hiring, training, supervision, and retention; negligent activity; negligent undertaking; premises liability; respondeat superior; negligent

⁸³ Exhibit 3 (Stromberg 1) at 66:8–21; Exhibit 9 (Scott 1) at 18:16–19 (“A. ... I was going into this festival, you know, hoping to just put on the best show and when I got off stage, I thought it was that until, you know, later that night....”).

⁸⁴ Exhibit 38 (Deposition of Dr. Jesse Hall, 3/6/24 (“Hall”)) at 183:7–18, 189:9–12; Exhibit 39 (Hall Exhibit 2778) at M. Dubiski R000003–4.

⁸⁵ Exhibit 38 (Hall) at 185:2–18.

⁸⁶ Exhibit 9 (Scott 1) at 18:7–10; Exhibit 2 (Scott 2) at 41:12–20.

infliction of emotional distress; intentional infliction of emotional distress; violation of the Wrongful Death Act; and Survival Statute claims against all “Defendants,” generally.⁸⁷

Plaintiffs’ specific allegations as to Mr. Scott are almost entirely related to alleged misconduct at a handful of Mr. Scott’s performances that occurred years before Astroworld 2021,⁸⁸ and to Plaintiffs’ interpretation of Mr. Scott’s music, lyrics, performance style, professional branding and persona, and relationship with his fans.⁸⁹ None of these topics bears any relevant connection to the subject of the instant litigation—claims that are being asserted against him for the deaths and injuries that occurred during Astroworld 2021.

⁸⁷ Master Pet. ¶¶ 76–121; Blount Pet. ¶¶ 77–114; Dubiski Pet. ¶¶ 73–76; Shahani Pet. ¶¶ 73–76. Not all Plaintiffs have raised all of the claims contested in this Motion. While this Motion is intended to address the various claims brought in this MDL, as compiled and alleged in Plaintiffs’ First Amended Master Long Form Petition, to the extent it does not address every single claim brought by each individual Plaintiff or Intervenor, Mr. Scott and XX Global reserve the right to address any additional claims as necessary at a later time.

⁸⁸ One of Plaintiffs’ allegations concerning Mr. Scott’s past performances references an alleged statement about “rage.” Master Pet. ¶ 31; Blount Pet. ¶ 31; Dubiski Pet. ¶ 35; Shahani Pet. ¶ 35. Mr. Scott testified that he defines “raging,” as “an expression of . . . self-love and letting go of things. . . it’s all about just literally letting go of the stress, letting go of things that might disrupt you, things that might see you to a dark cloud and it’s just finding a way to shake those things off.” Exhibit 2 (Scott 2) at 24:22–25:7. In short, to “rage” is to “hav[e] a good time.” Exhibit 1 (Scott 3) at 161:14–17. Mr. Stromberg testified that “rage” is “a common euphemism in rock n’ roll . . . used by artists like Ozzy Osbourne, Rage Against the Machine, Kid Cudi. It just means bringing the crowd together as . . . a collective unity from whatever is going on in the world . . . they’re going to come together [to] share this experience that they call rage . . . as a crowd in the audience . . . enjoying music.” Exhibit 11 (Stromberg 2) at 521:1–10. Several Plaintiffs who attended Astroworld 2021 testified, “[R]aging in this particular context has nothing to do with anything in anger. It mainly is just enjoying yourself . . . Dancing, flailing your arms, jumping,” Exhibit 40 (Deposition of Plaintiff Justin Everidge, 10/11/23) at 183:19–23, and “[i]t’s just people kind of jumping up and down.” Exhibit 41 (Deposition of Plaintiff Nawash Shinwari, 4/12/23) at 83:17–19.

⁸⁹ Master Pet. ¶¶ 30–34; Blount Pet. ¶¶ 30–34; Dubiski Pet. ¶¶ 34–38; Shahani Pet. ¶¶ 34–38.

Plaintiffs' specific allegations with respect to XX Global are rote and merely jurisdictional, alleging that XX Global conducts business in Texas, is at home in the state, and may be served through its registered agent in California.⁹⁰

IV. LEGAL STANDARD

Summary judgment is proper when the movant establishes there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). A defendant is entitled to summary judgment when he disproves, as a matter of law, one of the essential elements of each of the plaintiff's causes of action. *In re A.L.H.C.*, 49 S.W.3d 911, 914–15 (Tex. App.—Dallas 2001, pet. denied).

V. ARGUMENT AND AUTHORITIES

Plaintiffs seek to impose tort liability on the Scott Defendants under a litany of theories, but fundamental legal flaws foreclose them all. Most of their claims sound in negligence, and thus share common elements: duty, breach, and proximate causation. Because the evidence negates each of those elements, all negligence-based claims against the Scott Defendants fail.

Plaintiffs also assert claims requiring aggravated state-of-mind and conduct more egregious than breach of ordinary care: gross negligence and intentional infliction of emotional distress. In addition to the flaws that inhere in their negligence claims—including lack of causation—these claims fail for lack of the requisite scienter: The evidence confirms that the Scott Defendants did not breach due care; they certainly did not intentionally, recklessly, or consciously disregard risk or cause harm. Finally, Plaintiffs' remaining subsidiary claims under the Wrongful

⁹⁰ Master Pet. ¶ 40; Blount Pet. ¶ 40; Dubiski Pet. ¶ 44; Shahani Pet. ¶ 44.

Death Statute and Survival Statute, as well as their request for punitive damages, cannot survive absent a viable tort claim.

The Court should grant summary judgment to the Scott Defendants.

A. All Negligence-Based Claims Fail

Plaintiffs allege eight claims sounding in negligence against the Scott Defendants: negligence; negligence per se; gross negligence; negligent hiring, training, supervision, and retention (“Negligent Hiring”); negligent activity; negligent undertaking; premises liability; and negligent infliction of emotional distress (collectively, “Negligence-Based Claims”).⁹¹

All these claims fail as a matter of law because Plaintiffs cannot establish two elements essential to all Negligence-Based Claims: (a) a legal duty owed to Plaintiffs from the Scott Defendants; and (b) conduct breaching reasonable care.

1. No Tort Duty Supports Plaintiffs’ Negligence-Based Claims

All Negligence-Based Claims against the Scott Defendants fail as a matter of law for lack of duty—that is, “a legally enforceable obligation to conform to a particular standard of conduct.” *Tax v. Houston Distrib. Co., Inc.*, No. 01-12-00616-CV, 2013 WL 1694877, at *2 (Tex. App.—Houston [1st Dist.] Apr. 18, 2013, no pet.) (citation omitted).

“The existence of a legal duty” is a “threshold . . . question[] of law that courts must decide” and is “prerequisite to all tort liability,” including every Negligence-Based Claim Plaintiffs assert.⁹² *Houston Area Safety Council, Inc. v. Mendez*, 671 S.W.3d 580, 582 (Tex. 2023);

⁹¹ Master Pet. ¶¶ 76–93, 99–105, 110–13; *see also* Blount Pet. ¶¶ 77–94, 100–06, 111–14; Dubiski Pet. ¶¶ 73–76; Shahani Pet. ¶¶ 73–76.

⁹² *Elephant Ins. Co., LLC v. Kenyon*, 644 S.W.3d 137, 144 (Tex. 2022) (common law negligence); *Lexington v. Treece*, No. 01-17-00228-CV, 2021 WL 2931354, at *6 (Tex. App.—Houston [1st Dist.] July 13, 2021, pet. denied) (citing *Smith v. Merritt*, 940 S.W.2d 602, 607 (Tex. 1997)) (negligence per se); *Hicks v. G4S Secure Sols.*, No. 01-21-00221-CV, 2022 WL 2919988, at *4 (Tex. App.—Houston [1st Dist.] July 26, 2022, pet. denied) (negligent hiring); *Taylor v. Louis*,

Lexington v. Treece, No. 01-17-00228-CV, 2021 WL 2931354, at *6 (Tex. App.—Houston [1st Dist.] July 13, 2021, pet. denied) (citing *Smith v. Merritt*, 940 S.W.2d 602, 607 (Tex. 1997)). “The nonexistence of a duty ends the inquiry into whether negligence liability may be imposed.” *Van Horn v. Chambers*, 970 S.W.2d 542, 544 (Tex. 1998).

Courts answer the threshold duty inquiry in two steps: (1) “courts look first to whether [they] have previously held that a duty does or does not exist under the same or similar circumstances”; and (2) when “a duty has not been recognized in particular circumstances, the question is whether one should be” created, considering the several interrelated *Phillips* factors, which balance risk against utility. *Houston Area*, 671 S.W.3d at 582–83; *Mission Petroleum Carriers, Inc. v. Solomon*, 106 S.W.3d 705, 710 (Tex. 2003).⁹³

Here, all Negligence-Based Claims against the Scott Defendants fail at step one: a “no-duty rule already exists that contemplates [this] particular case’s factual situation, the balance addressed in *Phillips* has been struck, . . . there is no need to apply the *Phillips* factors, and doing so is improper.” *HNMC, Inc. v. Chan*, 683 S.W.3d 373, 381 (Tex. 2024).⁹⁴

349 S.W.3d 729, 738 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (negligent activity); *Nall v. Plunkett*, 404 S.W.3d 552, 555 (Tex. 2013) (negligent undertaking); *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193, 202–03 (Tex. 2015) (premises liability).

⁹³ Specifically, the *Phillips* risk/utility test “weigh[s] the risk, foreseeability, and likelihood of injury . . . against the social utility of the actor’s conduct, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on the defendant.” *Houston Area*, 671 S.W.3d at 583.

⁹⁴ Plaintiffs’ negligence per se claims fails for the additional, independently sufficient reason that they do not plead any specific statutory violation. *Daugherty v. S. Pac. Transp. Co.*, 772 S.W.2d 81, 83 (Tex. 1989); *AEP Tex. Cent. Co. v. Arredondo*, 612 S.W.3d 289, 298 (Tex. 2020).

a. Texas Law Does Not Recognize a Tort Duty Between Performers/Promoters and Concert Audiences

Neither the promoter-audience relationship nor the performer-audience relationship between the Scott Defendants and Plaintiffs suffices, as a matter of law, to impose a tort duty on the Scott Defendants to protect audience members from other members of the crowd.

“Texas law generally imposes no duty to take action to prevent harm to others,” nor “to control the conduct of others,” nor to protect against dangerous property conditions, unless “certain special relationships or circumstances” exist. *Diamond Offshore Drilling, Inc. v. Black*, 652 S.W.3d 463, 473 (Tex. App.—Houston [14th Dist.] 2022, no pet.); *Local Pub. House, LLC v. Shockey*, No. 05-22-00374-CV, 2024 WL 445940, at *3 (Tex. App.—Dallas Feb. 6, 2024, no pet.); *Pagayon v. Exxon Mobil Corp.*, 536 S.W.3d 499, 504 (Tex. 2017) (“No general duty to control others exists, but a special relationship may sometimes give rise to a duty to aid or protect others.”); *Cadenhead v. Hatcher*, 13 S.W.3d 861, 863–64 (Tex. App.—Fort Worth 2000, no pet.) (“no duty to tenants or their invitees for dangerous conditions on the leased premises” not subject to “lessor’s control”); *LaFleur v. Astrodome-Astros Hall Stadium Corp.*, 751 S.W.2d 563, 565 (Tex. App.—Houston [1st Dist.] 1988, no writ) (“defendant would not be liable for failure to provide security when he did not control the premises”). The “special relationships” sufficient to create a duty “include those existing between employer and employee, parent and child, and independent contractor and contractee under special circumstances.” *Local Pub.*, 2024 WL 445940, at *2 (describing “exception” for “a landlord who retains control over the security and safety of the premises”).

But where a third party harms a plaintiff, a defendant cannot be held liable without evidence of such a special relationship—either “between [Defendant] and [third-party tortfeasor] that would require [Defendant] to control [tortfeasor] or a special relationship between [Defendant] and

[Plaintiff] such that [Defendant] had a duty to prevent harm to her.” *Id.* (affirming summary judgment for defendant due to lack of special relationship). In *Local Public*, for example, the manager of a bar owed no duty—as a matter of law—to plaintiff to prevent an inebriated, armed, and threatening patron from leaving the bar and shooting plaintiff. *Id.*

Applying those principles, Texas courts have rejected the existence of duty “under the same or similar circumstances” as the ones presented in the Negligence-Based Claims here, *Houston Area*, 671 S.W.3d at 583—specifically, those where plaintiffs seek to impose a duty on concert promoters to prevent injuries caused by the behavior of other audience members in the crowd.⁹⁵ *Pooser v. Cox Radio, Inc.*, is the key case: There, a plaintiff sued a concert promoter who “present[ed]” a concert where plaintiff was injured by a “mosh pit” in the venue’s standing-room-only section. No. 04-08-00270-CV, 2009 WL 200449, at *1 (Tex. App.—San Antonio Jan. 28, 2009, no pet.). Observing that Texas law imposes “no legal duty to control the conduct of others,” nor a “general duty to act reasonably toward others,” the court agreed that “promotion of an event does not equate to a right to control the security at that event.” *Id.* at *2. Therefore, absent evidence of a “special relationship between [promoter] and [venue]”—such as “control over the premises where the injury occurred”—the promoter had no duty to the plaintiff, including to “control security at the concert.” *Id.* And in *Pooser*, the evidence—including the promoter’s testimony and the contract with the venue—confirmed, as a matter of law, the absence of a duty: The promoter was “entitled to engage in promotional activity, [but] had no control over the premises where the injury occurred.” *Id.*; see also *Barefield v. City of Houston*, 846 S.W.2d 399, 403 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (concert producer that leased a venue had no duty to prevent injuries suffered outside the entrance, because outside area not subject to his control).

⁹⁵ Master Pet. ¶ 72; Blount Pet. ¶ 73.

Pooser and *Barefield* directly foreclose any duty of the Scott Defendants, as promoters, to protect Plaintiffs from other audience members or premises-based conditions. Here, too, the evidence confirms that the Scott Defendants, “although entitled to engage in promotional activity, had no control over the premises where the injury occurred.” *Pooser*, 2009 WL 200449, at *3. For instance, deposition testimony confirms that the Scott Defendants were not responsible for the development, execution, and approval of any festival security plan, any emergency plan, any crowd management plan, the event operations plan, or the site plan for Astroworld 2021.⁹⁶ Additionally, like the contract in *Pooser*, the terms of the Co-Promotion Agreement impose no responsibility on the Scott Defendants for providing venue security.⁹⁷ Accordingly, the Scott Defendants were not consulted on the selection of the individuals who were involved in developing, executing, and approving those festival site, operations, or security plans, including festival director Brent Silberstein, safety and risk director Seyth Boardman, and site operations director Emily Ockenden.⁹⁸ Indeed, festival organizers did not “expect the Travis Scott team to provide [input on] site layout, crowd control, crowd flow, or crowd migration.”⁹⁹ *See also infra* Section V.A.1.b. The Scott Defendants also did not select security contractors for the venue and played no role in “determining where to deploy them.”¹⁰⁰ In fact, the Scott Defendants were not aware of or consulted on many decisions related to venue security and site operations because, like in *Pooser*, they “didn’t have any business” making such decisions.¹⁰¹ As Mr. Stromberg explained,

⁹⁶ *See* Exhibit 9 (Scott 1) at 169:7–9; Exhibit 3 (Stromberg 1) at 99:21–25, 154:4–155:3, 156:17–157:25, 183:7–13.

⁹⁷ Exhibit 5 (Co-Promotion Agreement) ¶ 2.2.

⁹⁸ *See* Exhibit 9 (Scott 1) at 169:7–9; Exhibit 3 (Stromberg 1) at 156:17–157:25, 183:7–13.

⁹⁹ Exhibit 10 (Gutfreund) at 322:9–16.

¹⁰⁰ Exhibit 3 (Stromberg 1) at 155:10–156:4.

¹⁰¹ Exhibit 3 (Stromberg 1) 158:8–17.

the “only kind of consultation” they had on vendors related to “which carnival rides” Mr. Scott wanted to bring in, and “it wasn’t even really . . . vendor specific. It was just, which rides do you want at the festival?”¹⁰²

The fact that Mr. Scott was the headlining artist at Astroworld 2021¹⁰³ makes no difference to the duty analysis: If a promoter does not owe a duty to protect the audience from crowds or premises-conditions, then *a fortiori*, a performer (even the headliner) duty to protect the audience from crowds or premises-conditions. See *Pooser*, 2009 WL 200449, at *3; *Barefield*, 846 S.W.2d at 403. There is no genuine dispute that Mr. Scott has no degree of control akin to ownership or custody over the premises or its security, nor was he “under [any] legal duty to control the conduct of others” at the festival, as a matter of law. *Pooser*, 2009 WL 200449, at *1–2. That negates any performer-audience tort duty as a matter of law.¹⁰⁴

b. The Scott Defendants Owed No Special Duty under a Premises Liability Theory

The Scott Defendants owed no special duty to Plaintiffs under a premises-liability theory either. “[A] landowner’s premises-liability duty to invitees” represents another exception to the general rule of “no legal duty to protect another” from “assaultive conduct by a fellow patron.” *West v. SMG*, 318 S.W.3d 430, 439–40 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193, 202 (Tex. 2015). But this “exception applies [only] to a

¹⁰² Exhibit 3 (Stromberg 1) at 156:17–157:25.

¹⁰³ Exhibit 5 (Co-Promotion Agreement) ¶ 2.2(a), (b).

¹⁰⁴ Because existing authority negates any performer-audience duty of care at concerts, weighing the *Phillips* risk/utility factors would be improper here. *HNMC, Inc.*, 683 S.W.3d at 381. But risk-utility balancing cannot justify creating a new performer-audience duty of protection in any event. Imposing, as a matter of common law duty, the massive burden to essentially insure concertgoers against safety—despite artists’ obvious lack of knowledge and control over audience-members—would render the performing arts an impossibility for essentially all musicians. *Houston Area*, 671 S.W.3d at 583. Risk/utility balancing does not justify that result.

landlord who *retains control* over the security and safety of the premises, given that only “the party with the power to control expulsion is in the best position to protect against harm.” *West*, 318 S.W.3d at 438 (emphasis added); *Austin*, 465 S.W.3d at 216 (“Only an employer that has control over the premises where the employee is injured has a premises-liability duty to the employee.”).

The evidence confirms that the Scott Defendants had no ownership or control over the Astroworld 2021 festival site or over security or safety at the venue. The Co-Promotion Agreement circumscribed the Scott Defendants’ obligations to marketing, performing as the headlining artist, curating the performing talent lineup, providing Mr. Scott’s *personal* security, and approving creative matters.¹⁰⁵

The evidence further is undisputed that festival organizers neither expected nor invited the Scott Defendants to weigh in on selecting or hiring venue security; determining where venue security would be stationed at the festival; selecting or hiring the festival director, the site and operations director, or the director of risk and safety; developing, approving, or executing a festival security plan, an emergency plan, a crowd management plan, the event operations plan, or the site plan for Astroworld 2021; or securing the venue license agreement or required governmental licenses or permits.¹⁰⁶ *See also infra* Section V.D (no joint enterprise between the Scott Defendants and Live Nation or Scoremore entities). This absence of control or ownership negates any premises-liability duty as a matter of law.

¹⁰⁵ Exhibit 5 (Co-Promotion Agreement) ¶ 2.2.

¹⁰⁶ Exhibit 3 (Stromberg 1) at 99:21–25, 155:10–156:4, 156:17–157:25, 158:8–17, 290:15–291:4; Exhibit 11 (Stromberg 2) at 487:23–488:8; Exhibit 9 (Scott 1) at 178:16–179:3; Exhibit 6 (NRG Park License Agreement).

c. The Scott Defendants Did Not Assume Any Duty to Plaintiffs

Plaintiffs cannot fill the gap left by the absence of any common-law duty with their “negligent undertaking” theory that the Scott Defendants voluntarily assumed a tort duty to them. *See Nall v. Plunkett*, 404 S.W.3d 552, 555 (Tex. 2013).

Despite the general rule against a “duty to take action [to] prevent . . . harm to others absent certain special relationships or circumstances,” Texas “courts have recognized . . . that a duty to use reasonable care may arise when a person undertakes to provide services to another, either gratuitously or for compensation,” but only (a) if he “knows or should know” those services are “necessary for the protection of the other’s person or things”; and (b) “either (1) the failure to exercise reasonable care increases the risk of physical harm or (2) harm results because of the other’s reliance on the undertaking.” *Elephant Ins. Co., LLC v. Kenyon*, 644 S.W.3d 137, 151 (Tex. 2022); *Kuentz v. Cole Sys. Group, Inc.*, 541 S.W.3d 208, 213 (Tex. App.—Houston [14th Dist.] 2017, no pet.). “The critical inquiry concerning the duty element of a negligent-undertaking theory is whether a defendant acted in a way that requires the imposition of a duty where one otherwise would not exist.” *Elephant Ins.*, 644 S.W.3d at 151. In other words, assumption of duty requires evidence that a defendant engaged in “an affirmative course of action necessary for the protection of the [plaintiff’s] person or property,” “omission[s],” such as “not giving a safety warning,” or “failure[s] to act” cannot give rise to an assumed duty as a matter of law. *Id.* at 152 & n.80 (collecting cases).

Here, Plaintiffs do not allege any affirmative conduct on the part of the Scott Defendants that assumed a duty. Nor does the evidence support a claim that any Plaintiff “detrimentally relied on [some] promises” from the Scott Defendants. *Id.* at 152.

2. The Scott Defendants Acted with Reasonable Care

All Plaintiffs' Negligence-Based Claims fail for the additional reason that they cannot establish any breach of duty.¹⁰⁷

Under Texas law, “the standard of care is what a reasonable person like [defendant] would have done under the same or similar circumstances—to protect against unreasonable risk of harm”—whether the duty arises from common law, premises liability, or is voluntarily assumed. *Union Pac. R.R. Co. v. Nami*, 498 S.W.3d 890, 896 (Tex. 2016); *Austin*, 465 S.W.3d at 203 (“[A] landowner’s premises-liability duties, like its negligence duties, are limited to a duty to exercise ordinary, reasonable care.”); *In re First Reserve Mgmt., L.P.*, 671 S.W.3d 653, 660 (Tex. 2023) (same for negligent undertaking). Therefore, to satisfy the element of “breach of duty, the plaintiff must show either that the defendant did something an ordinarily prudent person exercising ordinary care would not have done under the particular circumstances or that the defendant failed to do something that an ordinarily prudent person would have done in the exercise of ordinary care.” *Douglas v. Aguilar*, 599 S.W.3d 105, 108 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

Under this standard, a defendant cannot “breach[] its duty of reasonable care toward any third party” to prevent danger to the third party absent “existence of reason to anticipate injury and failure to perform the duty arising on account of that anticipation.” *Peek v. Oshman’s Sporting Goods, Inc.*, 768 S.W.2d 841, 847–48 (Tex. App.—San Antonio 1989, writ denied). In other words, as a matter of law, a defendant’s conduct cannot breach a negligence duty of care unless the “danger” was “known or reasonably apprehensible” to the defendant. *Harris Hosp. v. Pope*, 520 S.W.2d 813, 818 (Tex. App.—Fort Worth 1975, writ ref’d n.r.e.); *Peek*, 768 S.W.2d at 847

¹⁰⁷ See *supra* note 94 (collecting authority stating breach is an element of all eight negligence-based claims).

(same); *Smith v. Doyle*, No. A14-93-00316-CV, 1994 WL 88855, at *1, *3–4 (Tex. App.—Houston [14th Dist.] Mar. 10, 1994, no writ) (no breach unless “reasonably anticipated”). In *Smith*, for example, a dog owner complied with his duty of care, as a matter of law, in entrusting the dog to his young nephew by taking “reasonable steps” to prevent any “reasonably anticipated consequences” posed by the dog’s escape. *Id.* The owner had no basis to reasonably apprehend a risk that his dog would escape his house and chase another boy, who then ran into the street and was struck by a car, nor any risk of “negligent conduct on the part of [his nephew].” *Id.* That reasonable conduct based on the reasonably available information negated any breach of duty. *Id.*

Conversely, a defendant who acts with “diligence and lack of notice” of any risk and responds reasonably upon learning of the risk of danger, discharges its duty of care as a matter of law. *Hodges v. Kleinwood Church of Christ*, No. 01-98-00384-CV, 2000 WL 994337, at *3 (Tex. App.—Houston [1st Dist.] July 20, 2000, pet. denied) (not designated for publication) (summary judgment for defendant). When considering a defendant’s diligence, “conformity with [industry] custom may evidence freedom from negligence.” *Air Control Eng’g, Inc. v. Hogan*, 477 S.W.2d 941, 946 (Tex. App.—Dallas 1972, no writ) (collecting cases). *Hodges* illustrates that the scope of a defendant’s duty of care extends only to preventing **reasonably apprehensible** dangers. There, a parishioner sued a church for injuries inflicted by “improper counseling” by its minister, leading to an exploitative “six-month sexual relationship” between the parishioner and the minister. *Hodges*, 2000 WL 994337, at *1. The evidence showed that, despite a reasonably diligent “preacher selection” process, the church had no reason to suspect “incompetence or sexual misconduct by [the minister], either before his hiring or during his employment.” *Id.* at *1, 3. And when “the church was notified,” it terminated the minister promptly. *Id.* at *3. That

“uncontroverted evidence of [the church’s] diligence and lack of notice” entitled it to summary judgment on breach. *Id.*

The Scott Defendants Acted with Due Care. The evidence here likewise confirms that the Scott Defendants acted diligently and without any notice of risk or danger to the audience at the festival. Plaintiffs allege that all Defendants, without differentiation, engaged in a litany of acts and omissions that amounted to a breach of their duty of care.¹⁰⁸ The allegedly breaching conduct generally falls into the following categories: festival site operations; venue safety or security; site planning; crowd flow or management; medical support; provision of safety equipment, qualified personnel, and services related to the same; and a catch-all failure to use ordinary, reasonable care.¹⁰⁹ But when it comes to the Scott Defendants specifically, the evidence shows their conduct complied with reasonable care whenever they encountered concerns about site operations, planning, safety, security, or the like (even if they lacked a tort duty to do so).

Start with the “Stage 1” issue: When Mr. Scott’s manager proposed to festival organizers that Mr. Scott be the sole performer on Stage 1 on the first night of the festival, concerns arose about the risk of a stampede between the two stages.¹¹⁰ Those concerns were then diligently and thoroughly addressed by festival organizers. *Hodges*, 2000 WL 994337, at *1 (diligent investigation of reasonably apprehensible danger precludes breach). Several changes were made to the site plan to increase available space for patron flow between the stages, including: festival fixtures and landscaping were removed, the pathway between the stages was widened “extensively,” Stage 2 was reoriented, and additional exits from Stage 2 were created.¹¹¹ Adding

¹⁰⁸ Master Pet. ¶ 79; Blount Pet. ¶ 80; Dubiski Pet. ¶ 74; Shahani Pet. ¶ 74.

¹⁰⁹ Master Pet. ¶ 79; Blount Pet. ¶ 80; Dubiski Pet. ¶ 74; Shahani Pet. ¶ 74.

¹¹⁰ Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6.

¹¹¹ See Exhibit 17 (Haave 2) at 15:12–17; Exhibit 36 (Seyth Boardman 2) at 617:21–618:6.

a third stage was also considered, but ultimately deemed unnecessary in light of the foregoing changes.¹¹² The Scott Defendants supported this diligent remediation process, and trusted those responsible for safety: The Scott Defendants were “willing to make other concessions to [get to] a place where the safety and security professionals felt comfortable with the plan.”¹¹³ And it was only after all of these changes to the site plan had been made, and after festival organizers’ concerns about the stampede risk were resolved, that this plan was approved and went forward.¹¹⁴ The care taken to address any safety concerns stemming from the idea of having Mr. Scott as the sole performer on Stage 1 on the first night of the festival succeeded in mitigating the risk: The evidence confirms that the risk identified—a stampede between Stage 2 to Stage 1 ahead of Mr. Scott’s performance—never occurred,¹¹⁵ Plaintiffs do not allege that they were injured in moving from Stage 2 to Stage 1,¹¹⁶ nor is there any evidence that any attendees were injured during that transition.¹¹⁷ No other concerns were raised with Mr. Scott or his team on this issue.¹¹⁸

Next, consider the reasonableness of the Scott Defendants’ response upon first receiving any alleged notice of risk. *See Peek*, 768 S.W.2d at 847–48 (reasonableness of conduct evaluated upon notice of risk). At approximately 9:54 p.m. on the first night of the festival, when Mr. Joseph

¹¹² Exhibit 18 (Haave 1) at 166:9–12; Exhibit 3 (Stromberg 1) at 108:6–11.

¹¹³ Exhibit 10 (Gutfreund) at 92:20–93:5.

¹¹⁴ *See* Exhibit 3 (Stromberg 1) at 101:7–13, 230:20–231:6; Exhibit 25 (Miller 3) at 117:3–22; *see also* Exhibit 24 (Miller 1) at 96:2–16.

¹¹⁵ Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6; Exhibit 27 (Wavra 3) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Shawna Boardman) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

¹¹⁶ Master Pet. ¶ 72.

¹¹⁷ Exhibit 27 (Wavra 3) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Shawna Boardman) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

¹¹⁸ Exhibit 9 (Scott 1) at 73:3–6.

(Mr. Scott’s autotune manager, who was backstage during Mr. Scott’s performance) was directed to tell Mr. Scott to end the show “after Drake,” Mr. Joseph promptly did so.¹¹⁹ And Mr. Scott exercised due care to follow those instructions, acting reasonably based upon what he knew at the time. He knew he had been asked to finish the show after Drake’s performance. And he did so: as soon as Drake left the stage after his guest performance, Mr. Scott moved quickly through his closing song, “Goosebumps,” and the show ended at approximately 10:11 p.m.¹²⁰ As Chief Satterwhite, Mr. Boardman, and Mr. Wavra testified, abruptly ending the show posed a safety risk—it could have led to riots, panic, chaos, injuries, and deaths.¹²¹ Thus, due care also required taking the time to end the show properly, so that the crowd would feel satisfied and leave peacefully, and so there would be enough time to prepare the festival site for patrons to exit safely.¹²² The Scott Defendants followed the direction to end the show “after Drake,” and their conduct complied with due care as a matter of law. *Hodges*, 2000 WL 994337, at *3.

No vicarious liability. Plaintiffs cannot establish breach under a vicarious liability theory either because none of the Scott Defendants’ employees engaged in unreasonable conduct.

“Under the common-law doctrine of respondeat superior, or vicarious liability, liability for one person’s fault may be imputed to another who is himself entirely without fault solely because of the relationship between them.” *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 130 (Tex. 2018). “Respondeat superior thus constitutes [another] exception to the general rule that a

¹¹⁹ Exhibit 32 (Joseph) at 17:15–19; 45:24–46:2.

¹²⁰ Exhibit 28 (Bilal Joseph 12/14/23 Deposition Exhibit 930) at 1; Exhibit 37 (Wallgren) at 433:3–435:15; Exhibit 27 (Wavra 3) at 294:1–10.

¹²¹ Exhibit 34 (Satterwhite 2) at 36:19–37:12, 161:16–162:17; Exhibit 13 (Seyth Boardman 1) at 102:4–103:9, 104:2–8; Exhibit 27 (Wavra 3) at 292:4–293:11, 293:13–294:10.

¹²² Exhibit 34 (Satterwhite 2) at 36:19–37:12, 161:16–162:17; Exhibit 13 (Seyth Boardman 1) at 102:4–103:9, 104:2–8; Exhibit 27 (Wavra 3) at 292:4–293:11, 293:13–294:10.

person has no duty to control another’s conduct.” *Id.* The “employer-employee relationship [is] one implicating the doctrine”: “[T]o prove an employer’s vicarious liability for a worker’s negligence, the plaintiff must show that, at the time of the negligent conduct, the worker (1) was an employee and (2) was acting in the course and scope of his employment.” *Id.*

Here, even assuming both factors are satisfied, no actor plausibly standing in an employer-employee relationship to the Scott Defendants engaged in any negligent conduct. *See supra* Section V.A.2 (describing negligence standard of care).

Mr. Joseph’s conduct was not negligent. When he was told to communicate to Mr. Scott to end the show “after Drake,” Mr. Joseph promptly complied, conveying that message to Mr. Scott.¹²³ Due care required no more.

Mr. Stromberg likewise acted with reasonable prudence. Mr. Stromberg proposed to festival organizers that Mr. Scott be the only performer on Stage 1 on the opening night of the festival.¹²⁴ This plan went forward only after festival organizers approved it, following extensive adjustments made to the site plan to address the risk of a stampede between Stage 2 and Stage 1.¹²⁵

In the absence of any negligent conduct on the part of Mr. Joseph or Mr. Stromberg, Plaintiffs’ vicarious liability theory fails as a matter of law.

¹²³ Exhibit 32 (Joseph) at 45:24–46:2; Exhibit 9 (Scott 1) at 232:7–10, 162:15–18; Exhibit 2 (Scott 2) at 322:12–16.

¹²⁴ *See* Exhibit 3 (Stromberg 1) at 100:1–13; *see also* Exhibit 10 (Gutfreund) at 92:11–14.

¹²⁵ *See* Exhibit 17 (Haave 2) at 15:12–17; Exhibit 36 (Seyth Boardman 2) at 617:21–618:6; Exhibit 18 (Haave 1) at 166:9–12; Exhibit 3 (Stromberg 1) at 108:6–11; Exhibit 10 (Gutfreund) at 92:20–93:5; *see* Exhibit 3 (Stromberg 1) at 101:7–13, 230:20–231:6; Exhibit 25 (Miller 3) at 117:3–22; *see also* Exhibit 24 (Miller 1) at 96:2–16.

B. No Aggravated Scienter to Support Gross-Negligence and Intentional Tort Claims

In addition to their Negligence-Based Claims, Plaintiffs assert claims requiring an aggravated state of mind: Gross Negligence and Intentional Infliction of Emotional Distress (“IIED”). Both of those claims fail against the Scott Defendants, as a matter of law, because the evidence confirms they acted without the requisite recklessly indifferent or intentional scienter. *Air Control Eng’g, Inc. v. Hogan*, 477 S.W.2d 941, 946 (Tex. App.—Dallas 1972, no writ) (gross negligence is “conduct that constitutes reckless indifference or actions that are without the bounds of reason”); *Deaver v. Desai*, 483 S.W.3d 668, 676–77 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citations omitted) (IIED requires “the defendant acted intentionally or recklessly”).

1. No Basis for Gross Negligence Claim Against the Scott Defendants

Plaintiffs’ Gross Negligence Claim fails as a matter of law. First, that claim fails for all the reasons the ordinary Negligence-Based Claims fail—lack of duty, breach, and proximate causation. *Gardner v. Majors*, No. 10-21-00306-CV, 2023 WL 3097749, at *6 (Tex. App.—Waco Apr. 26, 2023, no pet.) (“Gross negligence presumes a negligent act or omission.”).

A gross negligence claim also includes “two additional components,” that each bear on defendants’ “state of mind.” *Id.* The standard requires an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Marsillo v. Dunnick, 683 S.W.3d 387, 392–93 (Tex. 2024). “Under the first, objective element, an extreme risk is ‘not a remote possibility of injury or even a high probability of minor harm, but rather the likelihood of serious injury to the plaintiff.’” *Id.* (citation omitted). “Under the second,

subjective element, actual awareness means the defendant knew about the peril, but its acts or omissions demonstrated that it did not care.” *Id.* (alterations omitted). “Because of this requirement of conscious indifference, gross negligence can never be the result of momentary thoughtlessness, inadvertence, or error of judgment.” *Wal-Mart Stores, Inc. v. Alexander*, 868 S.W.2d 322, 326 (Tex. 1993).

Here, the evidence confirms that the Scott Defendants lacked a grossly negligent state of mind. First, the evidence negates any subjective actual awareness of peril that was ***consciously and recklessly disregarded***. To the contrary, the Scott Defendants, cooperating with festival organizers and safety experts, acted to affirmatively ***mitigate*** any stampede risk arising from Mr. Scott being the only Stage 1 performer on November 5—the only risk related to this plan of which they were made aware.¹²⁶ And the evidence confirms that they went into the festival with the subjective understanding that the festival organizers’ concerns about crowd safety had been addressed and that a safe transition from Stage 2 to Stage 1 could be achieved.¹²⁷ In addition to the reasonable precautions the Scott Defendants took to mitigate risks of which they were made aware before Astroworld 2021 had even begun, they never recklessly disregarded a risk during the concert. Once Mr. Joseph was instructed to tell Mr. Scott to end the show after his guest performer, Drake, Mr. Joseph promptly communicated with Mr. Scott on stage, telling him to finish the show “after Drake.”¹²⁸ Mr. Scott followed Mr. Joseph’s instructions, ending the show after Drake exited

¹²⁶ Exhibit 10 (Gutfreund) at 92:20–93:5; Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6; Exhibit 9 (Scott 1) at 73:3–6.

¹²⁷ Exhibit 3 (Stromberg 1) at 101:7–13; Exhibit 23 (Wavra 2) at 478:6–479:9.

¹²⁸ Exhibit 32 (Joseph) at 17:15–19, 45:24–46:2; Exhibit 9 (Scott 1) at 232:7–10; Exhibit 2 (Scott 2) at 322:12–16.

the stage.¹²⁹ Thus, there is no evidence that the Scott Defendants engaged in any conduct that would satisfy the element of conscious indifference to risk of harm.

Second, no evidence demonstrates that the Scott Defendants ever had objective notice of an extreme risk of harm. When festival organizers raised concerns that a proposal to reserve Stage 1 for Mr. Scott's performance might implicate the risk of a stampede between Stage 2 and Stage 1, the organizers set to work adjusting the site map.¹³⁰ By removing certain features, like games and rides, and altering pathways and stage orientation, the festival organizers enlarged the space available for crowd flow.¹³¹ After the festival organizers had implemented these reasonable precautions, they unanimously approved the plan for Mr. Scott to be the sole Stage 1 performer on the first night of the festival, demonstrating that there was no *objective* extreme risk of harm.¹³² And this effort successfully eliminated the risks of a stampede between the stages: The evidence

¹²⁹ Exhibit 32 (Bilal Joseph 12/14/23 Deposition Exhibit 930) at 1; Exhibit 37 (Wallgren) at 433:3–435:15; Exhibit 27 (Wavra 3) at 293:13–294:10.

¹³⁰ See Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6; Exhibit 16 (Conder) at 265:20–266:5; Exhibit 17 (Haave 2) at 15:12–17; Exhibit 36 (Seyth Boardman 2) at 617:21–618:6; Exhibit 18 (Haave 1) at 166:9–12; Exhibit 3 (Stromberg 1) at 108:6–11.

¹³¹ See Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6; Exhibit 16 (Conder) at 265:20–266:5; Exhibit 17 (Haave 2) at 15:12–17; Exhibit 36 (Seyth Boardman 2) at 617:21–618:6; Exhibit 18 (Haave 1) at 166:9–12; Exhibit 3 (Stromberg 1) at 108:6–11.

¹³² See Exhibit 22 (Silberstein 2) at 318:25–320:6; Exhibit 23 (Wavra 2) at 478:6–479:9; Exhibit 10 (Gutfreund) at 92:20–93:5; Exhibit 25 (Miller 3) at 117:3-22; *see also* Exhibit 24 (Miller 1) at 96:2-16.

confirms that this risk never materialized,¹³³ no attendees were injured during that transition,¹³⁴ and Plaintiffs do not allege that they were injured in moving from Stage 2 to Stage 1.¹³⁵

2. No Basis for Intentional Infliction of Emotional Distress Claim Against the Scott Defendants

The IIED claim fails as a matter of law for similar reasons: The evidence confirms that the Scott Defendants lacked the requisite scienter. The evidence also negates the existence of the requisite extreme and outrageous conduct.

IIED has four elements: “(1) the defendant acted intentionally or recklessly; (2) its conduct was extreme and outrageous; (3) its actions caused the plaintiff emotional distress; and (4) the emotional distress was severe.” *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017).

First, as explained above, the evidence confirms the Scott Defendants never acted “recklessly,” much less “intentionally.” *Id.*; see generally *Marsillo v. Dunnick*, 683 S.W.3d 387, 393 (Tex. 2024) (explaining scienter spectrum from gross negligence, to wanton and willful, to intentional (at highest end)). Plaintiffs’ Petitions do not even allege intentional conduct, outside of a single, conclusory statement unsupported by factual allegations. Master Pet. ¶ 107 (alleging Defendants’ conduct was “intentional and/or reckless”); cf. *Tidwell v. Roberson*, No. 14-16-00170-CV, 2017 WL 3612043, at *4 (Tex. App.—Houston [14th Dist.] Aug. 22, 2017, pet. denied) (“[C]onclusory statements of intent do not give rise to a material issue of fact on the appellees’

¹³³ Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6; Exhibit 27 (Wavra 3) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Shawna Boardman) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

¹³⁴ Exhibit 27 (Wavra 3) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Shawna Boardman) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

¹³⁵ Master Pet. ¶ 72.

claim.”). And any allegation of recklessness fails for reasons explained above. *See supra* Section V.A.2, B.1.

Second, the Scott Defendants never engaged in “extreme and outrageous conduct” as a matter of law. *See supra* Section V.A.2, B.1. The Texas Supreme Court “has set a high standard for ‘extreme and outrageous’ conduct, holding that this element is only satisfied if the conduct is ‘so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’” *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017) (citation omitted). Again, the evidence confirms that the Scott Defendants exercised reasonable care—that alone suffices to negate extreme outrageousness. *Tex. Farm Bureau Mut. Ins. Cos. v. Sears*, 84 S.W.3d 604, 611–12 (Tex. 2002). But even “*negligent*” conduct is “not extreme and outrageous,” as “hold[ing] that it is would be tantamount to imposing liability for negligent infliction of emotional distress, a cause of action that Texas does not recognize.” *Id.* at 612.¹³⁶

C. All Tort Claims Fail for Lack of Proximate Causation

All of Plaintiffs’ claims fail as a matter of law for the additional reason that they cannot establish proximate causation. “In any cause of action, whether grounded in tort, contract, or a hybrid of the two, causation is the essential element necessary to attribute fault for one’s injuries to another.” *Cunningham v. Blue Cross Blue Shield of Tex.*, No. 2-06-363-CV, 2008 WL 467399, at *5 (Tex. App.—Fort Worth Feb. 21, 2008, pet. denied) (proximate causation is an element of

¹³⁶ For that reason, Plaintiffs’ negligent infliction of emotional distress claims also fail as a matter of law. *Shaheen v. Motion Indus., Inc.*, 880 S.W.2d 88, 91 (Tex. App.—Corpus Christi—Edinburg 1994, writ denied) (holding trial court “properly granted summary judgment” on plaintiff’s negligent infliction of emotional distress cause of action because it is “not a viable cause of action”); *Hicks v. G4S Secure Sols.*, No. 01-21-00221-CV, 2022 WL 2919988, at *5 (Tex. App.—Houston [1st Dist.] July 26, 2022, pet. denied) (same).

negligence and intentional infliction of emotional distress); *Loeser v. Sans One, Inc.*, 187 S.W.3d 685, 686 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (“Recovery under all of [plaintiff’s] causes of action” under “various theories of negligence” would “require[] evidence that some negligence by [defendants] proximately caused his injuries.”). “[A] lack of proximate cause may be established as a matter of law if the evidence is without material dispute and the circumstances are such that reasonable minds could not arrive at a different conclusion.” *Phillips v. Tex. Dep’t of Criminal Justice*, 366 S.W.3d 312, 316 (Tex. App.—El Paso 2012, no pet.).

“Proximate cause has two elements: cause in fact and foreseeability.” *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 551 (Tex. 2005). The foreseeability aspect requires “the actor [to] have reasonably anticipated the dangers that his negligent conduct created for others.” *Ratray v. City of Brownsville*, 662 S.W.3d 860, 874 (Tex. 2023).

And to establish the cause in fact element, plaintiffs must satisfy two additional factors: (1) that “the act or omission was a **substantial factor** in bringing about the injury”; and (2) “without it, the harm would not have occurred”—that is, “but for” causation. *Id.*; *Nixon v. Mr. Prop. Mgmt. Co., Inc.*, 690 S.W.2d 546, 549 (Tex. 1985) (“but for” test); *Loeser*, 187 S.W.3d at 686 (“[T]he test for cause in fact is whether Loeser’s injury would not have occurred without negligence by Gross or Sans One.”).

Substantial factor causation fails “where the defendant’s negligence does no more than furnish a condition which makes the injuries possible,” or where “the conduct of the defendant [is] too attenuated from the resulting injuries to the plaintiff to be a substantial factor in bringing about the harm.” *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 799 (Tex. 2004).

Here, all of the Scott Defendants' allegedly tortious acts fail the Texas test for cause in fact. First, none of the allegedly negligent acts satisfy the but-for causation aspect of cause in fact. *Loeser* is instructive: There, a bar patron sued for injuries to his leg after he was forcibly removed from a stage inside and expelled from the premises. 187 S.W.3d at 687. Although the “evidence support[ed] an inference that Loeser was injured during the altercation” at the bar, he adduced no evidence that the “injury resulted from any . . . lack of reasonable care.” *Id.* In other words, no but-for causal connection linked his injury to any negligent conduct by defendants, entitling defendants to summary judgment. *Id.* Similarly, no but-for causal connection between Plaintiffs' alleged injuries and the Scott Defendants' conduct exists here.

Stage 1. The risk perceived in having Mr. Scott be the first performer on Stage 1 only concerned dangerous crowd-flow conditions as attendees moved from Stage 2 to Stage 1 to see Mr. Scott.¹³⁷ But, likely due to the preemptive protective measures implemented by festival organizers to widen the pathway between the stages, that risk never materialized, and no attendees were injured during that transition.¹³⁸

Concert cut off. Nor is there evidence linking any Plaintiffs' injuries to the approximately ten minute-period between 10:00 p.m.—when Plaintiffs claim Mr. Boardman asked that Mr. Scott end his performance—and when the show ultimately ended (about ten minutes later). By 10:00 p.m., Ms. Dubiski, for example, had already been removed from the crowd and was receiving treatment in the medical tent.¹³⁹ The evidence suggests that her tragic death occurred before 10:00

¹³⁷ Exhibit 15 (Ockenden) at 433:10–14; Exhibit 3 (Stromberg 1) at 100:16–101:6.

¹³⁸ Exhibit 27 (Wavra 3) at 19:18–22; Exhibit 36 (Seyth Boardman 2) at 622:8–14; Exhibit 22 (Silberstein 2) at 150:23–151:4; Exhibit 26 (Shawna Boardman) at 318:23–319:1; Exhibit 10 (Gutfreund) at 97:14–15.

¹³⁹ Exhibit 38 (Hall) at 183:7–18, 185:2–18.

p.m.¹⁴⁰ Thus, any alleged delay in concluding Mr. Scott’s performance after 10:00 p.m. was not a but-for cause of Ms. Dubiski’s death. *Loeser*, 187 S.W.3d at 687. The same timeline bars remaining Plaintiffs from establishing but-for causation.

Promotional video. Finally, any attempt to causally link the thirty-second promotional video produced by Mr. Scott’s team to Plaintiffs’ alleged injuries likewise fails. Plaintiffs do not allege that any Astroworld attendee actually saw the promotional video prior to Astroworld 2021, much less that it had any impact on their conduct at the festival. Nor can they: There is no evidence that any attendee who saw the promotional video actually engaged in any misconduct or gained unauthorized entry into the festival.¹⁴¹ Mr. Boardman testified that entry to the festival went smoothly, having “successfully opened up gates” without anyone “busting through without being searched or scanned or anything like that.”¹⁴² Even if Plaintiffs could show that an attendee who viewed the video gained entry into the festival illegally, there is no evidence that such entry had any measurable impact on capacity. As a result, Plaintiffs cannot establish a but-for causal connection between their alleged injuries and the promotional video.

In addition to lack of but-for causation, the promotional video also could not constitute a “substantial factor” in causing any injuries. Texas courts have repeatedly “addressed attenuation of the causal connection between conduct and liability” and rejected claims where “the initial act of negligence was not the active and efficient cause of plaintiffs’ injuries.” *IHS Cedars*, 143 S.W.3d at 799 (collecting cases). “While acknowledging that a defendant’s negligence may expose another to an increased risk of harm by placing him in a particular place at a given time, we

¹⁴⁰ Exhibit 38 (Hall) at 189:9–12; Exhibit 39 (Hall Exhibit 2778) at M. Dubiski R000003–4.

¹⁴¹ See Exhibit 12 (Tran) at 104:21-105:2; 278:12-14.

¹⁴² Exhibit 36 (Seyth Boardman 2) at 482:24–484:16.

recognized that the ‘happenstance of place and time’ may be too attenuated for liability to be imposed under the common law.” *Id.*

Accordingly, in *IHS Cedars*, the causal connection between a doctor’s “negligent care, treatment, and discharge” followed by a plaintiff’s “injuries in [a] car accident . . . some twenty-eight hours after [the] discharge” was “too attenuated” as a matter of law “to constitute the cause in fact of her injuries.” *Id.* While the negligent discharge may have “provided [plaintiff] with the opportunity to leave the hospital and spend time with [a reckless driver],” it was too “philosophical . . . to argue that [it] caused [plaintiff] to be injured in [the driver’s] car wreck twenty-eight hours later.” *Id.*

Here, too, the causal connection between the promotional video and any injuries is too temporally attenuated as a matter of law to satisfy substantial causation under Texas law. The promotional video was posted to the Astroworld Twitter account the day that Astroworld 2021 was announced, April 30, 2021—more than **six months** before the festival.¹⁴³ As in *IHS Cedars*, attempting to link the video to the actions of festival attendees nearly half a year later is far “too philosophical” to establish a causal connection to Plaintiffs’ alleged injuries. 143 S.W.3d at 799. Because all of Plaintiffs’ claims fail to establish proximate causation, the Scott Defendants are entitled to judgment as a matter of law.

D. No Joint Enterprise Between the Scott Defendants and Any Live Nation or Scoremore Entities

Any attempt to impose tort liability on the Scott Defendants under a “joint enterprise” theory fails. The evidence negates the existence of any joint enterprise between the Scott Defendants and any Live Nation or Scoremore entities.

¹⁴³ Exhibit 3 (Stromberg 1) at 191:7–13.

Like respondeat superior, *see supra* Section V.A.2, “[j]oint enterprise liability” is a form of “vicarious liability,” not an independent claim or cause of action; thus, “the imposition of liability under this theory is dependent upon the primary liability of a wrongdoer who is a part of the joint enterprise.” *Allred v. Freestone Cnty. Fair Ass’n, Inc.*, No. 07-20-00168-CV, 2022 WL 1153152, at *11 (Tex. App.—Amarillo Apr. 18, 2022, no pet.).

Imposing joint enterprise liability requires four elements: “(1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.” *Id.*

Here, no joint enterprise existed between the Scott Defendants and any Live Nation or Scoremore Entities, as confirmed by their express agreement. For example, under the heading “INDEPENDENT CONTRACTOR,” the Co-Promotion Agreement between the Scott Defendants and Live Nation provides: “The relationship created by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be deemed or construed as creating any partnership, joint venture, employment relationship, agency or other relationship between the parties.”¹⁴⁴ That express disclaimer of, among other things, “joint venture” and “agency or other relationship” includes the “closely related” concept of “joint enterprise” relationship. *Blackburn v. Columbia Med. Ctr. of Arlington Subsidiary, L.P.*, 58 S.W.3d 263, 272–73 (Tex. App.—Fort Worth 2001, pet. denied). And as the Texas Supreme Court has explained, this express contractual rejection of agency liability, like joint enterprise, should be given full effect, “absent evidence that the contract is a mere sham or subterfuge.” *Farlow v. Harris Methodist Fort Worth Hosp.*, 284 S.W.3d 903, 911 (Tex. App.—Fort Worth 2009, pet. denied). No such evidence exists here.

¹⁴⁴ Exhibit 5 (Co-Promotion Agreement) ¶ 7.

To the contrary, the evidence confirms no joint enterprise relationship exists. Specifically, joint enterprise liability fails against the Scott Defendants on the fourth factor, “equal right of control,” meaning “that each member of the joint venture must have an authoritative voice, or must have some voice and right to be heard.” *Triplex Commc’ns, Inc. v. Riley*, 900 S.W.2d 716, 719 (Tex. 1995). *Triplex Communications* exemplifies the issue: There, the Texas Supreme Court rejected joint enterprise liability, as a matter of law, between a radio promoter and a nightclub for “personal injuries resulting from [the] nightclub’s violations of Texas’ Dram Shop Act” under the theory that the radio promoter negligently promoted a “Ladies Night” event. *Id.* at 717. The radio promoter did not have an equal authoritative voice to “control the business relationship,” because: the nightclub “maintained absolute control over the provision of all drinks”; “decided who was admitted and ejected”; and “controlled how much liquor was served and to whom it was served, and were best positioned to monitor the amount of liquor that patrons consumed.” *Id.* “There was no evidence that [the promoter] had a contractual right of control, or exercised any right of control”; “at most,” it “could make suggestions that the [nightclub] could adopt or reject.” *Id.* at 719.

The evidence here confirms that the Scott Defendants, like the radio promoter in *Triplex Communications*, lacked sufficiently “authoritative” control to constitute an “equal right” for joint enterprise purposes. Like the contract in *Triplex Communications*, the Co-Promotion Agreement between the Scott Defendants and Live Nation reserves the respective responsibilities of each contracting party to that party.¹⁴⁵ And although the contract provided that the counterparties’ responsibilities were “subject to the approval of” one another, the evidence confirms that the Scott Defendants never “exercised any right of control” beyond responsibilities expressly assigned to

¹⁴⁵ Exhibit 5 (Co-Promotion Agreement) ¶ 2.3(m).

XX Global.¹⁴⁶ Further, festival organizers did not “expect the Travis Scott team to provide site layout, crowd control, crowd flow, or crowd migration input.”¹⁴⁷ See also *supra* Section V.A.1.a–b (detailing the Scott Defendants’ limited responsibilities and scope of control). Evidence of the parties’ conduct therefore corroborates that the Scott Defendants had no equal right of control.

E. Plaintiffs Cannot Maintain Subsidiary Causes-of-Action Under the Wrongful Death Act or Survival Statute Without a Predicate Tort Violation

“A person is liable for damages arising from an injury that causes an individual’s death if the injury was caused by the person’s or his agent’s or servant’s wrongful act, neglect, carelessness, unskillfulness, or default.” Tex. Civ. Prac. & Rem. Code § 71.002(b). The Wrongful Death Act (the “Act”) is for the “exclusive benefit of the surviving spouse, children, and parents of the deceased.” *Id.* § 71.004(a). And the Act is applicable “only if the individual injured would have been entitled to bring an action for the injury if the individual had lived.” *Id.* § 71.003(a).

A “survival action” is a “cause of action for personal injury to the health, reputation, or person of an injured person [that] does not abate because of the death of the injured person.” Tex. Civ. Prac. & Rem. Code § 71.021(a). The personal injury action “survives to and in favor of the heirs, legal representatives, and estate of the injured person” and against “the liable person and the person’s legal representatives.” *Id.* § 71.021(b). “The survival action . . . ‘is wholly derivative of the decedent’s rights.’” *Gantt v. Harris Cnty.*, 674 S.W.3d 553, 560 (Tex. App.—Houston [1st Dist.] 2023, no pet.) (quoting *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 345 (Tex. 1992)). “To recover damages sustained by the decedent, appellee had to plead (1) the elements of the decedent’s cause of action and (2) the elements of the survival mechanism under the Survival Statute.” *Coffey v. Johnson*, 142 S.W.3d 414, 417 (Tex. App.—Eastland 2004, no pet.).

¹⁴⁶ Exhibit 3 (Stromberg 1) at 99:21-25, 155:10-156:4.

¹⁴⁷ Exhibit 10 (Gutfreund) at 322:9–16.

Plaintiffs' Wrongful Death Act and Survival Statute claims fail because the predicate claims underlying them fail. The undisputed facts demonstrate that the Scott Defendants committed no "wrongful act, neglect, carelessness, unskillfulness, or default" and that Plaintiffs would have no cause of action against the Scott Defendants had they lived. *See supra* Section V.A–D. As a result, Plaintiffs' Wrongful Death Act and Survival Statute claims against the Scott Defendants fail, and summary judgment should be granted.

F. Plaintiffs Are Not Entitled to Punitive or Exemplary Damages

"[E]xemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud; (2) malice; or (3) gross negligence." Tex. Civ. Prac. & Rem. Code § 41.003(a). The claimant cannot meet this burden of proof with "evidence of ordinary negligence, bad faith, or a deceptive trade practice." *Id.* § 41.003(b). "If the claimant relies on a statute establishing a cause of action and authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state." *Id.* § 41.003(c).

Plaintiffs are not entitled to punitive damages because there is no evidence—much less clear and convincing evidence—of gross negligence, fraud, or malice on the part of the Scott Defendants. *See supra* Section V.B (discussing absence of state of mind). Indeed, they cannot even establish ordinary negligence. *Id.* § 41.003(b); *see supra* Section V.A. Plaintiffs' request for punitive damages fails as a matter of law.

CONCLUSION AND PRAYER

For the foregoing reasons, Mr. Scott and XX Global respectfully request that the Court grant this Traditional Motion for Summary Judgment as to any and all claims raised by any and

all of the Plaintiffs and Intervenors in all of the consolidated cases who have sued Mr. Scott and XX Global. Mr. Scott and XX Global further request that the Court grant any additional relief to which they may be justly entitled.

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**Appendix of Evidence in Support of Travis Scott and XX Global’s Traditional Motion for
Summary Judgment**

Exhibit No.	Description
<u>Exhibit 1:</u>	Excerpts from the October 6, 2023 deposition of Jacques Bermon Webster II, Vol. 3
<u>Exhibit 2:</u>	Excerpts from the October 5, 2023 deposition of Jacques Bermon Webster II, Vol. 2
<u>Exhibit 3:</u>	Excerpts from the September 6, 2023 deposition of David Stromberg, Vol. 1
<u>Exhibit 4:</u>	Excerpts from the July 28, 2023 deposition of Brad Wavra, Vol. 1
<u>Exhibit 5:</u>	2021 Co-Promotion Agreement between XX Global and Live Nation [CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER, SUBMITTED IN CAMERA]
<u>Exhibit 6:</u>	Scoremore License Agreement with NRG Park [CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER, SUBMITTED IN CAMERA]
<u>Exhibit 7:</u>	2019 Tour Agreement between XX Global and Live Nation [CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER, SUBMITTED IN CAMERA]
<u>Exhibit 8:</u>	Excerpts from the March 6, 2024 deposition of Sally Stacy
<u>Exhibit 9:</u>	Excerpts from the September 18, 2023 deposition of Jacques Bermon Webster II, Vol. 1
<u>Exhibit 10:</u>	Excerpts from the September 26, 2023 deposition of Sascha Stone Gutfreund
<u>Exhibit 11:</u>	Excerpts from the September 7, 2023 deposition of David Stromberg, Vol. 2
<u>Exhibit 12:</u>	Excerpts from the October 30, 2023 deposition of Terry Tran
<u>Exhibit 13:</u>	Excerpts from the September 28, 2023 deposition of Seyth Boardman, Vol. 1
<u>Exhibit 14:</u>	Astroworld 2021 Event Site Plan, v. 1.38
<u>Exhibit 15:</u>	Excerpts from the August 2, 2023 deposition of Emily Ockenden
<u>Exhibit 16:</u>	Excerpts from the August 28, 2023 deposition of Lucas Conder
<u>Exhibit 17:</u>	Excerpts from the November 29, 2023 deposition of Carol Haave, Vol. 2
<u>Exhibit 18:</u>	Excerpts from the August 11, 2023 deposition of Carol Haave, Vol. 1
<u>Exhibit 19:</u>	Excerpts from the April 24, 2023 deposition of Jeff Gaines
<u>Exhibit 20:</u>	Excerpts from the February 17, 2023 deposition of Mark Miller, Vol. 2
<u>Exhibit 21:</u>	Excerpts from the September 22, 2023 deposition of Brent Silberstein, Vol. 1

Exhibit No.	Description
<u>Exhibit 22:</u>	Excerpts from the November 8, 2023 deposition of Brent Silberstein, Vol. 2
<u>Exhibit 23:</u>	Excerpts from the July 29, 2023 deposition of Brad Wavra, Vol. 2
<u>Exhibit 24:</u>	Excerpts from the January 24, 2023 deposition of Mark Miller, Vol. 1
<u>Exhibit 25:</u>	Excerpts from the April 5, 2023 deposition of Mark Miller, Vol. 3
<u>Exhibit 26:</u>	Excerpts from the October 5, 2023 deposition of Shawna Boardman
<u>Exhibit 27:</u>	Excerpts from the September 21, 2023 deposition of Brad Wavra, Vol. 3
<u>Exhibit 28:</u>	Travis Scott Setlist (From Apple Livestream), marked as Deposition Exhibit 930
<u>Exhibit 29:</u>	Excerpts from the November 9, 2023 deposition of Aubrey Drake Graham
<u>Exhibit 30:</u>	Excerpts from the February 22, 2024 deposition of Justin Hoffman
<u>Exhibit 31:</u>	Excerpts from Houston Police Department Investigative Report
<u>Exhibit 32:</u>	Excerpts from the December 14, 2023 deposition of Bilal Joseph
<u>Exhibit 33:</u>	Excerpts from the December 7, 2023 deposition of Chief Larry Satterwhite, Vol. 1
<u>Exhibit 34:</u>	Excerpts from the December 8, 2023 deposition of Chief Larry Satterwhite, Vol. 2
<u>Exhibit 35:</u>	Astroworld 2021 Event Operations Plan, v. 1.1 [CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER, SUBMITTED IN CAMERA]
<u>Exhibit 36:</u>	Excerpts from the September 29, 2023 deposition of Seyth Boardman, Vol. 2
<u>Exhibit 37:</u>	Excerpts from the February 15, 2024 deposition of Marty Wallgren
<u>Exhibit 38:</u>	Excerpts from the March 6, 2024 deposition of Dr. Jesse Hall
<u>Exhibit 39:</u>	Medical Report, marked as Deposition Exhibit 2778 [SUBMITTED IN CAMERA]
<u>Exhibit 40:</u>	Excerpts from the October 11, 2023 deposition of Justin Everidge
<u>Exhibit 41:</u>	Excerpts from the April 12, 2023 deposition of Nawash Shinwari

Dated: March 25, 2024

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Certificate of Service

I hereby certify that on this 25th day of March, 2024, the foregoing was served by email and/or by electronic filing service on all counsel of record.

/s/ R. Paul Yetter

R. Paul Yetter

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