

## INTRODUCTION

This year's mock trial case involves the death of a concert attendee from a lightning strike during an outdoor concert. The Plaintiff is the spouse of the Decedent and the Personal Representative of the estate. Plaintiff is pursuing a wrongful death claim against the rock band, claiming the Defendant failed to cancel the concert due to the bad weather and failed to communicate weather conditions to concert goers. The Defendant claims, among other things, that the lightning strike was an unforeseen Act of God, and that the Defendant reasonably relied upon weather information provided to the band by other parties. The Defendant also claims that others are the sole and proximate cause for the death, including the Decedent, Plaintiff, the concert promoter, and the concert facility owner.

This case is a work of fiction. Any similarity or resemblance of any character to an actual person or entity is strictly unintentional and coincidental.

Students – Through participation, you will experience what it is like to prepare for and present a case before a judge. Working with your team and coaches, you will learn to evaluate information and respond quickly. As you prepare, you will sharpen public speaking and presentation skills. The greatest benefit is the opportunity to learn how the legal system works. By studying and understanding courtroom procedure, you should become more comfortable with federal and state laws as part of the legal system. Your interaction with some of Indiana's finest attorneys and judges will give you a glimpse of the different interpretations of trial procedure and different approaches of individuals in the legal arena.

Teacher Coach, Attorney Coach, or Judge – We strongly encourage you to focus on the goal of participation by students rather than stressing competition while preparing for the competition. Your contributions of time and talent are making many experiential educational opportunities available annually to many Indiana students. Your participation is an essential key element to the success of this program. You can be proud of the impact you have made on the lives of these students.

Good Luck and Have Fun!

## CASE BACKGROUND

The stage was set and ready for one of the Midwest's premier concerts. However, tragedy struck when one of the concert goers died as a result of a lightning strike at the outdoor concert. The Decedent and Plaintiff did not seek immediate shelter upon the first signs of thunder and lightning in the area. Plaintiff and Decedent headed for the amphitheater exit, but the Decedent was slowed by an injury. Decedent took shelter under a tree, one of the deadliest places to be in a lightning storm.

The Plaintiff claims that the Defendant Band did not notify the concert fans of an approaching storm. The Plaintiff also faults the Band for not delaying or canceling the concert. Did the Defendant have pertinent weather information to notify the audience and/or to delay or cancel the storm? Did Defendant reasonably rely upon the weather information it received from the manager of the venue and the concert promoter? Also at issue is whether the Defendant's negligence, if any, was the proximate cause of the Decedent's death, and whether the Plaintiff and Decedent, as well as non-parties were at fault. The non-parties are the Band's promoter who is alleged to have not communicated pertinent weather information as part of the chain of command that had been established, and the owner of the venue, who did not cancel or delay the show when a lightning storm was in the area, and allegedly did not have proper evacuation protocols in place.

### Plaintiff's Witnesses:

Val Orr - Plaintiff and Personal Representative of Doane Orr  
Max Doolittle - Venue Manager of Amphitheater of Wooded Hills  
Ezra/ Ezria "EZ" Money – Ex-Promoter for Dis-Chord Rock Band

### Defense Witnesses:

Mel O'Dee – Lead Singer and Band Leader for Dis-Chord Rock Band  
Pat Ton– Employee and Security Director for Dis-Chord  
Louden Clear - Lightning Safety Expert

### Exhibits:

1. Venue Diagram
2. Ambulance Record for Doane Orr
3. Toxicology Report of Doane Orr
4. Venue Contract
5. Curriculum Vitae of Louden Clear
6. Lightning Strikes Data
7. Weather Forecast as of August 19, 2014
8. Weather Forecast as of August 22, 2014
9. WeatherFirst Automated Text Messages

The Case Background is not to be used as evidence in the case, but rather is provided for background purposes only. This case is a work of fiction. The names and events described herein are intended to be fictional. Any similarity or resemblance of any character to an actual person or entity should be regarded as only fictional for purposes of this mock trial exercise.

STATE OF INDIANA                    )  
  ) SS                IN THE MARION CIRCUIT COURT  
MARION COUNTY                    )

VAL ORR, Personal Representative of                    )  
the Estate of DOANE ORR, Deceased                    )  
  )  
  ) Plaintiff,                    )  
  )                    )  
  ) v.                                    ) CAUSE NO.: 49001-1410-CT-0911  
  )                    )  
DIS-CHORD, INC.                    )                    )  
  )                    )  
  ) Defendant.                    )

COMPLAINT

Plaintiff, by counsel, files this Complaint against the Defendant, and states:

1. Plaintiff is a resident of Indianapolis, Marion County, Indiana. Plaintiff is the spouse of Doane Orr and the Personal Representative of the Estate of Doane Orr.
2. Defendant is an Illinois corporation, with its principal place of business in Chicago, Illinois.
3. Defendant is a rock band providing musical entertainment to paying customers under the name Dis-Chord.
4. Mel O'Dee is the lead singer and band leader of Dis-Chord.
5. On August 23, 2014, the Decedent, Doane Orr, then, 25 years of age, attended the Dis-Chord concert as a paying customer at the Amphitheater of Wooded Hills in Indianapolis, Indiana.
6. Plaintiff and Decedent Doane Orr were seated in the general admission lawn seating for said concert.
7. Defendant was the headline performer at said concert, which was promoted by EZ Money, doing business as EZ Tops Entertainment.
8. Defendant was not required to perform at said concert if the Defendant determined its performance would be impaired or prevented due to weather conditions.
9. The decision and authority to cancel said concert was the responsibility of Defendant.
10. EZ Money informed Defendant of unprecedented lightning strikes in Indianapolis, Indiana days before the concert was to be held.

11. Mel O'Dee, on behalf of Defendant, was provided timely information regarding thunderstorms approaching the location of said concert.

12. Defendant failed or refused to cancel said concert despite having knowledge of inclement weather for the area of said concert.

13. Defendant owed Plaintiff and Decedent Doane Orr the duty to provide a safe environment at said concert.

14. Defendant breached its duty of reasonable care to Plaintiff and Decedent Doane Orr.

15. Defendant failed to notify and protect concert attendees regarding the approaching hazardous weather conditions.

16. Defendant failed to timely evacuate the amphitheater for said concert when hazardous weather conditions were approaching.

17. Defendant failed to cancel or postpone said concert for the safety of the concert attendees when hazardous weather conditions were known to be approaching.

18. Defendant knew, or should have known, that it was likely that said hazardous weather conditions would cause harm to the concert attendees, including Decedent Doane Orr.

19. As a direct and proximate result of Defendant's conduct, Decedent Doane Orr was unable to evacuate the amphitheater timely and was struck by lightning, causing his/her death.

20. By reason of Doane Orr's death, Plaintiff has incurred funeral and burial expenses and has sustained pecuniary loss including pain and suffering, mental anguish, support, comfort, counsel, services and companionship.

WHEREFORE, Plaintiff prays for damages against Defendant, and all other just and proper relief.

/s/ Macon Justice  
Macon Justice, esq.  
MOORE JUSTICE, P.C.  
1000 Meridian Street  
Indianapolis, IN  
Attorney for Plaintiff

JURY DEMAND

Plaintiff respectfully requests trial by jury.

/s/ Macon Justice  
Macon Justice, esq.  
Attorney for Plaintiff

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  )  
                          Plaintiff,    )  
  )  
                          v.    ) CAUSE NO.: 49001-1410-CT-0911  
  )  
DISCHORD, INC.    )  
  )  
                          Defendant.    )

ANSWER TO COMPLAINT

Defendant hereby files its Answer to Plaintiff's Complaint, as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint.
2. Defendant admits the allegations of paragraph 2 of the Complaint.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. Defendant admits the allegations of paragraph 4 of the Complaint.
5. Defendant admits the allegations of paragraph 5 of the Complaint.
6. Defendant admits the allegations of paragraph 6 of the Complaint.
7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint.
8. Defendant admits the allegations of paragraph 8 of the Complaint.
9. Defendant admits that it could not have been compelled to perform at said concert but denies all other allegations of paragraph 9 of the Complaint.
10. Defendant denies the allegations of paragraph 10 of the Complaint.
11. Defendant denies the allegations of paragraph 11 of the Complaint.
12. Defendant denies the allegations of paragraph 12 of the Complaint.

13. Defendant denies the allegations of paragraph 13 of the Complaint.
14. Defendant denies the allegations of paragraph 14 of the Complaint.
15. Defendant denies the allegations of paragraph 15 of the Complaint.
16. Defendant denies the allegations of paragraph 16 of the Complaint.
17. Defendant denies the allegations of paragraph 17 of the Complaint.
18. Defendant denies the allegations of paragraph 18 of the Complaint.
19. Defendant denies the allegations of paragraph 19 of the Complaint.
20. Defendant denies the allegations of paragraph 20 of the Complaint.
21. Defendant denies the allegations of paragraph 21 of the Complaint.

WHEREFORE, Defendant prays for judgment in its favor, that Plaintiff take nothing; that judgment be entered for Defendant; and all other just and proper relief.

#### AFFIRMATIVE DEFENSES

##### First Defense

The sole proximate cause of the injuries and damages were the result of Plaintiff and Decedent Doane Orr's ("Decedent") own negligence, and for that reason, Plaintiff is not entitled to recover.

##### Second Defense

Plaintiff's claims should be barred or proportionately diminished on account of Plaintiff and Decedent's own contributory negligence or fault, pursuant to the Indiana Comparative Fault Act.

##### Third Defense

Plaintiff and Decedent failed to exercise reasonable care for Decedent's safety.

##### Fourth Defense

Plaintiff and Decedent assumed and/or incurred any risk and for that reason, Plaintiff is not entitled to recover.

Fifth Defense

The Plaintiff and the Decedent failed to mitigate damages.

Sixth Defense

The Plaintiff's damages and Decedent's death were caused, in whole or in part by non-parties Amphitheater of Wooded Hills and EZ Tops Entertainment.

Seventh Defense

Decedent's death resulted from a lightning strike that was a true accident and an Act of God.

WHEREFORE, the Defendant prays that Plaintiff take nothing; that judgment be entered in favor of Defendant; and for such other and further relief as is just and proper.

/s/ Shirley Wiede-Wynn  
Howe Dewey Wynn, LLP  
26 West Main Street  
Carmel, IN  
Attorney for Defendant

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  )  
DISCHORD, INC.                    )  
  )  
  Defendant.                    )

STIPULATIONS

Note: No witness may contradict or deny knowledge of the facts contained in the stipulations.

1. All exhibits included in these Case Materials are authentic and accurate in all respects; no objection to the authenticity of these exhibits will be entertained. Unless stated otherwise herein, the admissibility of the exhibits on other grounds may be challenged. Stipulated facts may be offered as evidence, without objection, except relevancy objections may be permitted.
2. All witness statements were signed under oath by each witness.
3. Issues of liability and damages will be tried separately (bifurcated) for the purposes of the trial. This trial shall be solely limited to liability issues.
4. When Doane Orr was struck by lightning, it interrupted the cardiovascular rhythms and stopped the heart. The lightning strike also caused internal burns where the lightning hit and went out of the body, causing damage to vital organs, the liver, kidneys, and lungs.
5. At 8:28 p.m. on August 23, 2014, Doane Orr was dead on arrival (D.O.A) to the Emergency Room at Rolling Meadows Hospital in Indianapolis. The cause of death was determined to be cardiac arrest and complications from being struck by lightning.
6. The September 4, 2014 toxicology report shows that Doane Orr had a .14 % blood alcohol content (BAC) at the time of death. A .14% BAC causes gross motor impairment, lack of physical control, and major loss of balance. It also impairs reflexes and reaction time. Judgment and perception are impaired.



7. In Indiana, a person is considered to be over the limit for driving under the influence if the BAC is at least .08%.
8. Postmortem blood alcohol concentrations (BACs) tend to be less reliable and because postmortem blood is not sterile, postmortem blood can have a much higher glucose concentration of seven to ten times that of ante mortem blood, and postmortem diffusion of alcohol from the gut can falsely elevate the BAC.
9. The sample collection for Doane Orr's blood specimen was conducted appropriately and without error.
10. The chain of custody for the blood sample from the time of collection and processing the sample at the 2CJ Laboratory was conducted appropriately and without error.
11. Exhibit 1 is a fair and accurate representation of the layout of the Amphitheater of Wooded Hills as it existed on August 23, 2014 and may be used by any witness for illustrative purposes.
12. The Ambulance Record of Doane Orr (Exhibit 2) was prepared by Perry Meddick and was based upon his personal knowledge, and was prepared at or about the time of the events stated therein. The Ambulance Record is kept in the course of regularly conducted business of the Area Ambulance Service, and it is the regular practice of Area Ambulance Service to make such records. The Ambulance Record (Exhibit 2) does not need to be introduced through the custodian of the record.
13. The Toxicology Report of Doane Orr (Exhibit 3) was prepared by Cody Blue and was based upon his personal knowledge, and was prepared at or about the time of the events stated therein. The Toxicology Report is kept in the course of regularly conducted business of 2CJ Labs, and it is the regular practice of 2CJ Labs to make such records. The Toxicology Report (Exhibit 3) does not need to be introduced through the custodian of the record.
14. Exhibits 6, 7, and 8 were prepared and are maintained by the National Weather Service, a component of the National Oceanic and Atmospheric Administration (NOAA), which is an operating unit of the U.S Department of Commerce. The documents set forth historical weather data and forecasts which are matters the agency has a duty to report as imposed by law. Exhibits 6, 7, and 8 do not need to be introduced through the custodian of the record.
15. Exhibit 9 is a compilation of text alert messages prepared by WeatherFirst based upon information obtained through the National Weather Service ("Compilation"), and was prepared at or about the time of the events stated therein. The Compilation is kept in the course of regularly conducted business of WeatherFirst, and it is the regular practice of WeatherFirst to make such records. The Compilation does not need to be introduced through the custodian of the record.

16. Prescription drug fraud occurs when a person forges or tampers with a prescription, prescribes or obtains drugs under fraudulent circumstances, uses a stolen prescription pad, steals another person's identity to seek prescription drugs or impersonates medical personnel. Prescription drug fraud is a Class D felony, punishable by six months to three years in prison and a maximum \$10,000 fine.

/s/ Macon Justice  
Macon Justice  
Attorney for Plaintiff

/s/ Shirley Wiede-Wynn  
Shirley Wiede-Wynn  
Attorney for Defendant

## JURY INSTRUCTIONS

### Instruction No. 1

When the death of one is caused by the wrongful act or omission of another, the Personal Representative of the Decedent may maintain an action against the Defendant, if the Decedent, had he or she lived, might have maintained an action against the defendant for an injury for the same act or omission.

### Instruction No. 2

In civil cases such as this one, the Plaintiff has the burden of proving the case by a preponderance of the evidence.

### Instruction No. 3

You must decide this case according to the Indiana law of comparative fault. You are required to apportion the fault on a percentage basis between Plaintiff Val Orr, Decedent Doane Orr, Defendant Dis-Chord, Inc., and the non-parties EZ Money d/b/a EZ Tops Entertainment and AWH, Inc. to determine whether the Plaintiff is entitled to recover damages. You may not apportion fault to any other person or entity. You will therefore determine the comparative fault issues in this case as follows:

First, you must determine if Plaintiff, Decedent, Defendant, and Non-parties EZ Tops Entertainment and AWH, Inc. were at fault and if that fault was the proximate cause of Doane Orr's death. You must then assign the percentage of fault for each. These percentages must total 100 percent.

Next, if the Defendant is not at fault or if Plaintiff and Decedent's fault are greater than 50 percent, then you must return your verdict for the Defendant and against the Plaintiff in this case; and no further deliberation is required.

However, if you find that the Plaintiff and Decedent's fault is 50 percent or less, then the court will hold a separate trial on the issue of damages that the Plaintiff is entitled to recover, if any, based upon the Defendant's percentage of fault that you have determined.

### Instruction No. 4

The term "fault" refers to conduct that makes a person responsible, in some degree, for a death or an injury. The type of fault at issue is negligence.

### Instruction No. 5

Negligence is the failure to use reasonable care. A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation or fails to do something a reasonably careful person would do in the same situation.

Instruction No. 6

Reasonable or ordinary care is the care a reasonably careful and ordinarily prudent person would use under the same or similar circumstances. Reasonable care does not require a person to foresee and guard against that which is unusual and not likely to occur.

Instruction No. 7

An act or omission is a proximate cause of an injury if the injury is a natural and probable consequence of the act or omission. To establish that an act was the proximate cause of damages, a party must show:

- (1) That damages would not have occurred but for another's negligence; and
- (2) That damages were reasonably foreseeable as the natural and probable consequence of the other's negligence.

Instruction No. 8

Contributory negligence is negligence on the part of the Plaintiff or the Decedent.

Instruction No. 9

Plaintiff and Decedent's fault, if any, is an issue in this case. If the Plaintiff and/or Decedent's fault proximately contributed to Doane Orr's death and Plaintiff's damages, then the Plaintiff either will receive no compensation or will receive only partial compensation for the injury. The Defendant has the burden of proving by a preponderance of the evidence that the Plaintiff was at fault.

Instruction No. 10

A corporation must act through its officers, employees, or agents. Any act or omission of an officer, employee, or agent acting within the scope of that person's authority is considered in law to be the act of the corporation.

Instruction No. 11

"Non-party" means a person who caused or contributed to cause the alleged injury or death but who has not been joined in the action as a defendant.

Instruction No. 12

A person incurs the risk, if he/she actually knew of a specific danger, understood the risk, and voluntarily exposed himself/herself to that danger.

Instruction No. 13

If you find that the Doane Orr's death was due directly and exclusively to natural causes, without human intervention, which could have been prevented by exercise of reasonable care and foresight, the occurrence is an Act of God for which the Defendant is not liable.

Instruction No. 14

Plaintiff and Decedent have a duty to mitigate damages, which means he/she must take reasonable actions to reduce his/her damages.

Instruction No. 15

An expert witness shall not be tendered to court prior to introduction of the opinions and conclusions of such expert witness.

1 Statement of Val Orr

2 My name is Val Orr. I am the spouse of the late Doane Orr. I am currently living with my in-laws  
3 at 7150 Hillcrest Road, Indianapolis, Indiana because the bank foreclosed on our house when I was  
4 unable to maintain the payments when Doane passed away. Doane died on August 23, 2014 due to  
5 injuries he/she suffered at the Dis-Chord rock concert in Indianapolis that was not canceled despite a  
6 lightning storm. Doane was only twenty-five at the time of his/her death and we had been married just  
7 one year. The day Doane died was our one year wedding anniversary. We were soul mates. I am  
8 devastated that Doane is no longer here to share our lives together. I miss him/her. I loved Doane.

9 Doane was a good person through and through. Doane was kind, thoughtful and generous.  
10 Even in Doane's death, Doane was giving. Doane was an organ donor. It gives me a sense of peace  
11 knowing that Doane was able to provide for others and that a senseless death has some purpose.  
12 People are alive today because of Doane, and Doane lives on through them. Doane Orr is listed on the  
13 Organ Donor Recognition Wall at Polking Meadows Hospital. The inscription reads "It is through their  
14 giving that life lives on." Every cloud has a silver lining. I try to focus on the positive to help me face  
15 each day.

16 Doane and I met in Chicago, Illinois in June of 2011. We had been accepted in the Teach for  
17 America program and had been assigned to the Detroit Public Schools. Our summer training for the  
18 program was in Chicago. We connected instantly. We shared a common interest in Teach for America's  
19 mission. Teach for America is a nonprofit organization whose mission is to eliminate educational  
20 inequity by enlisting high-achieving recent college graduates to teach for at least two years in low-  
21 income communities throughout the United States. We wanted to provide the students with an  
22 opportunity to reach their full potential. Poverty is not a destiny. It was great working with someone  
23 who was like-minded, intelligent, and passionate about making a difference in the lives we encounter.

24 Doane and I came from different backgrounds. Doane grew up in Indianapolis in an affluent,  
25 stable family, attended a private high school, and wanted for nothing. Yet, Doane was really grounded.  
26 Doane traveled to Haiti and Rwanda to help construct schools, dormitories, and homes. Doane was self-  
27 confident and a born leader. Doane was good at everything he/she did – school, sports, music. Doane  
28 received a B.A. in Political Science in May, 2011 from University of Notre Dame and then joined Teachers  
29 For America.

30 In contrast, I grew up in the Chicago projects. I never knew my father. My mother wasn't able  
31 to take care of me, so my grandmother raised me. We lived in a one bedroom apartment and stretched  
32 the budget every week to make ends meet. Crime, drugs, and poverty were all around me – across the

33 hall in our apartment building, on the street corner on my walk to school, and at the neighborhood  
34 grocery. I survived it by focusing on what I could control -- my education, my success, and my life. I was  
35 good in school, and teachers encouraged me to go to college and break the cycle. I was valedictorian of  
36 my high school, and I received a full scholarship to Loyola University Chicago. I graduated in 2011 with a  
37 B.A. in Education. I've always wanted to teach. Teachers made a difference in my life, and I wanted to  
38 pay it forward.

39         After our two year commitment with Teachers for America, Doane and I decided to continue  
40 teaching. We both secured teaching jobs in Indianapolis and we were married on August 23, 2013. Four  
41 months down the road we purchased a house. I couldn't believe how happy I was, how happy we were.  
42 We were doing what we enjoyed most. I was with the person that I loved completely and who loved  
43 me. Doane was the best part of my day, every day.

44         To celebrate our first year wedding anniversary, I decided to surprise Doane by buying tickets to  
45 the Dis-Chord rock concert scheduled for August 23, 2014 at the Amphitheater of Wooded Hills. I  
46 thought it was the perfect gift. When we were in Chicago for our summer training for Teachers for  
47 America, Dis-Chord, a Chicago-based band was just starting to make it big. Over the course of a few  
48 years, Dis-Chord had built a cult following into a fan base that filled arenas. For our first date, we went  
49 to a Dis-Chord concert in Chicago. First year anniversary . . . recreating our first date – how romantic is  
50 that? Now I wish we had stayed at home for a quiet celebration.

51         Doane loved Dis-Chord's music. What's not to like? The Band has solid vocals and a unique  
52 sound that combines classic-rock influences with crashing guitar riffs. Dis-Chord's songwriting is soulful.  
53 OD, or Mel O'Dee, is the Band's lead singer and songwriter. OD's typical lyrics discuss common topics  
54 like love, loss and all those things, but they also speak of poverty, discrimination and social injustices.  
55 Those songs stand out because they are a way of speaking out to the government and to society. It is a  
56 way of protest. Some of OD's songs carry a strong message. I once thought that the message was so  
57 powerful and that we could all learn from what OD had to say. But I've since learned that Dis-Chord  
58 knew about the lightning storm at the Concert well in advance of it arriving at the amphitheater but  
59 didn't do anything about it. They are a band of posers. The Band's anti-establishment lyrics don't stand  
60 for anything, except that they want to do what they want and when they want, as long as it is  
61 convenient for them. OD's social messages are just a way to sell music; it doesn't mean anything more  
62 than that.

63         Doane was thrilled when I told him/her that we were going to Dis-Chord's rock concert on our  
64 anniversary. It was a splurge for us, but Doane's smile was priceless. Money was tight because we had

65 bought our house eight months prior and we had run up our credit cards with the move, furnishing the  
66 house, and getting started with our new jobs. Because we were on a tight budget, I purchased lawn  
67 seating instead of the high-priced pavilion seating where there was shelter from the storm. The lawn  
68 seating tickets were \$49 each. As I recall, the pavilion seating ranged from \$200 to \$400 per ticket.  
69 Exhibit 1 shows the lawn seating in light green and the box seating and pavilion seating in brown and  
70 blue.

71 I also didn't purchase the premium parking pass for parking closer to the Amphitheater, which I  
72 think cost around \$50. I didn't think it was worth it at the time. We were young and healthy, and the  
73 extra walking to and from the concert was not a bother. I wonder now if I had paid the \$50 for the  
74 premium parking if Doane would have been safely in the car before the lightning struck the tree.

75 I had purchased the tickets for the show two months prior to the concert. The forecasts didn't  
76 go out that far, so how was I supposed to know it would storm the night of the concert. If I had known  
77 before I bought the tickets that a storm was possible, I would not have bought the tickets. I did watch  
78 the weather forecast the week of the show. I was hoping it wouldn't rain on our parade. We had a  
79 terrible storm on the Wednesday before the concert. The lightning seemed to crack through the whole  
80 night. It had been such a strong storm on Wednesday night that school was delayed the next morning  
81 due to power outages. But later in the day on Thursday, the stormy weather had settled down. The  
82 forecasts only predicted "slight" chance of storms, and they would be scattered, at most. Doane and I  
83 discussed the weather forecasts. We did not want to waste the tickets and flush \$100 down the drain,  
84 and the weather forecast for Saturday night was not calling for storms.

85 August 23<sup>rd</sup> was special, at least until shortly before the concert was to begin. We had a relaxing  
86 morning, just kicking back. In the afternoon, we walked the trails on the Monon Rail Trail. Although  
87 there were clouds in the sky, and the forecast called for a slight chance of storms, the day turned out to  
88 be perfect. We talked the whole way along the trail – recalling fond memories and talking about our  
89 future together. I will always have those memories. As evening approached, we put some steaks on the  
90 grill and had a nice dinner at home. Doane had purchased a bottle of wine for us to celebrate our  
91 anniversary. I decided to not drink any alcohol because I volunteered to be the designated driver.  
92 Doane drank the entire bottle before we left for the show because alcohol is so expensive at the  
93 Amphitheater. Doane was buzzed, but was not intoxicated.

94 We arrived at the Amphitheater around 6:30 p.m. We were there early enough to claim prime  
95 real estate for the lawn seating area. We were located almost even with the center of the stage. The  
96 dark gray area in the middle of the lawn seating as shown on Exhibit 1 is approximately where we staked



97 out our seats. We were back quite a distance but the lawn seating is sloped so we had a good view of  
98 the concert stage. It started out as a beautiful night. There's nothing quite like sitting under a starry sky  
99 on a warm summer night listening to your favorite band. We were euphoric and soaking it all up.

100         Around 7:15 p.m., as we were waiting for the concert to start, Doane bought a cocktail at one of  
101 the Amphitheater's vendors' tents. About 7:30 p.m. or so, Doane and I noticed the ominous clouds in  
102 the distance. We figured it was blowing in a different direction because no one from the Band or the  
103 Amphitheater made any announcement to warn us of a dangerous storm approaching. We didn't move  
104 toward shelter. We didn't want to lose our good seats. It seemed like the Amphitheater was packed to  
105 capacity.

106         Later, about 7:45 p.m., we heard thunder and saw lightning in the distance. But, there was no  
107 rain. Not a drop. And still, no notice or warning from Dis-Chord to take cover. So, we didn't take it too  
108 seriously. Several people in the crowd started cheering. The lightning was like a light show for the  
109 whole concert. There were some people in the lawn seating who left when the lightning started. But  
110 most of the fans were like us - - waiting for Dis-Chord to come on stage for the 8:00 p.m. show.

111         Again, we thought that if there was a danger, surely Dis-Chord would warn us or cancel the  
112 show because it was an outdoor concert and people were exposed out in the open. Don't they have  
113 people assigned to watch the weather to prevent those risks? In fact, someone came out on the stage  
114 and made an announcement that the Band was going to be coming out on the stage soon. If Dis-Chord  
115 had made the decision to cancel the concert at that time, we would have been home safely that night,  
116 Doane would be still with me, and we would be going on year two of our marriage. There was plenty of  
117 time to get to our car safely between 7:45 pm and the time of the lightning strike.

118         The concert was supposed to start at 8:00 p.m., but Dis-Chord never came on stage. At about  
119 8:00 p.m., we realized that the lightning was getting closer to us, too close. It started to downpour. The  
120 storm forced fans to grab their belongings and scramble for the pavilion shelter or the exits. I heard  
121 someone, who I now recognize as Max Doolittle, yelling to the crowd, "Take cover, take cover!" But  
122 there was nowhere to go. I could see that the pavilion was packed full of fans, so there was no use trying  
123 to find a space under that shelter. Doane and I headed for the gate on the northwest side, which is  
124 where our car was parked.

125         The storm instantly grew in intensity. Vendor tents all along the perimeter were torn up, and  
126 one refreshment tent collapsed completely. Instant chaos broke loose. People ran in panic, some  
127 pushing and shoving. I'm not sure if Doane was pushed, or stumbled because of the slope and slippery  
128 grass or uneven ground, but somehow he/she fell to the ground and twisted his/her ankle. One second,

129 Doane was right by my side, the next second, Doane was on the ground. Doane tried to continue  
130 toward the gate, but he/she was limping and we were moving slowly. Too slowly. Doane leaned most  
131 of his/her weight on me as I tried valiantly to get him/her out of the storm to a safe place. I knew that  
132 due to the ankle injury, Doane couldn't make the distance where our car was parked. I spotted a tree  
133 near the gate on the Northwest side of the Amphitheater. I thought Doane could take shelter under the  
134 tree while I ran out to the car and drove it closer to the gate entrance. I thought the tree would provide  
135 Doane with some protection from the lightning. I thought if Doane was under it, the lightning would hit  
136 the tree instead of Doane because the tree is taller. I didn't know any better; we didn't have trees in the  
137 Chicago projects where I grew up. We also didn't know there was a First Aid Station at the  
138 Amphitheater. It was not well marked, and I later learned that it was located on the east side of the  
139 Amphitheater and was too far away.

140 Doane needed to get off his/her feet, so I helped Doane sit down on the ground under the tree. I  
141 thought sitting on the ground was also safe because Doane wouldn't be a tall object for lightning to  
142 strike. I left Doane under the tree while I ran to the car to bring it close to the gate. I made it to the car  
143 in only a few minutes, and was able to negotiate through the traffic to get to the gate around 8:10 p.m.  
144 I parked the car near the walkway outside the northwest gate of the Amphitheater. As I approached  
145 Doane, I saw lightning strike the tree. It was like holding a firecracker next to your head and having it go  
146 off. It was just a real loud pop, bang. I felt the earth move under my feet and the sky tumbling down. I  
147 saw Doane lying there, not breathing. It's an image that haunts me.

148 I did everything I could to get Doane to a safe place. But, I now wonder if I could have saved  
149 Doane's life. I didn't use CPR on Doane after the lightning strike. At the time, I did not have training in  
150 CPR and I didn't know what to do. I have since taken a class and I am now certified.

151 I called 9-1-1, and the EMTs were there within a few minutes. They immediately gave Doane  
152 CPR. As the EMTs were getting ready to transport Doane, I recall overhearing a person identifying  
153 himself/herself as Pat Ton, Dis-Chord's Security Director, saying "This will cost my job." The comment  
154 sticks in my memory because I thought, "you're worrying about losing a job when there's a person's life  
155 holding on by a thread?" Sadly, Doane passed away before he/she got to the hospital.

156 OD made some statements to the media after Doane's death. OD said "No comment due to an  
157 impending investigation" when asked why the concert was not canceled or the audience warned. But  
158 OD "extended sympathy to Doane's family for the tragic loss of life." OD claimed that he/she would  
159 dedicate Dis-Chord's next concert to Doane, but I heard that never happened. You know, it was just a  
160 ploy to look good in front of the cameras and Dis-Chord's fan base. You can't trust anything OD says.

161 Dis-Chord is responsible for Doane's death. Dis-Chord knew a severe storm was headed in the  
162 direction of the Amphitheater well before it hit and in time for people to evacuate safely. Dis-Chord  
163 chose not to cancel so that they didn't have to reschedule the concert and be out of money.

164 I recently settled lawsuits against the Amphitheater and the promoter for Dis-Chord, EZ Money.  
165 The amounts of the settlements are confidential under the terms of the Settlement Agreements.  
166 There's no money that can fill the emptiness in my heart.

167

168 I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief  
169 and knowledge.

170 Dated: October 20, 2014

/s/ Val Orr .

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Statement of Max Doolittle

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My name is Max Doolittle. I reside at 2010 Mahogany Run, Carmel, Indiana. I am the General Manager of the Amphitheater of Wooded Hills (“AWH”). I obtained a Bachelor’s Degree from Indiana University with a major in public administration in May, 1994. Upon my graduation from IU and prior to joining AWH, I worked at the Indianapolis Convention and Visitors Bureau. Through my position with the Convention Bureau, I developed a strong foundation in event planning and cultivated strong connections in the entertainment industry.

The Amphitheater is owned by AWH, Inc. a division of Chu Industries. The Amphitheater was built in 1998. It is an open-air entertainment venue, hosting live, high-profile concerts and outdoor music festivals. The amphitheater is situated on 225 acres and is located on the Northeast side of Indianapolis at 18090 N. Sherwood Forest Lane. Exhibit 1 is a fair representation of AWH’s facilities. There are two gates that concert attendees can enter and exit -- one on the northwest side and one on the southeast side. There are premium and remote parking lots for each gate entrance. For the Dis-Chord concert scheduled for August 23, 2014, the remote parking was free and premium parking was \$25. The Amphitheater has premium or reserved seating under a pavilion and general admission lawn seating. The ticket price for general admission was \$45 and the pavilion ticket prices ranged from \$120 to \$400, plus any applicable processing fees. There are seventy tiered rows under the pavilion with seating up to 4,250, and lawn seating for 9750 people. There are several dressing rooms available backstage at AWH, including three rooms designated for the headliner act. The dressing rooms are not sound proof, although the facility is constructed of solid concrete and it may provide some barrier to sound. AWH also has an office backstage for the promoter to use while at the facility. The Promoter’s Office has multiple existing telephone lines and a state-of-the-art weather monitoring system. A first aid facility is located near the southeast entrance of the Amphitheater. At every show we have one ambulance at either end of the Amphitheater and representatives from the Indianapolis Fire Department on hand.

I have been employed at AWH since its opening in 1998. I was AWH-struck, excuse the pun, when I landed a job at AWH. I was just a small town girl/guy, livin' in a lonely world. I took the midnight train goin' anywhere . . . and here I was - - at the largest outdoor concert venue in central Indiana. I didn’t stop believin’. And here I am now, 16 years later, the General Manager of this AWH-some venue, bringing in top headliners from around the country and world. I started working in the Box Office, advanced to Back Stage Manager, and then to Assistant General Manager. I have been General Manager for the past eight years. The most enjoyable part of the job is seeing the concerts. The job is

204 high paced and very challenging at times because you have to deal with people of all ages and  
205 backgrounds.

206 As General Manager, I am responsible generally for the day-to-day operations of the  
207 Amphitheater, and coordinate all staff in maintaining and operating the facility. I plan, supervise, and  
208 oversee event management, operations, and security. Those duties include implementing safety and  
209 emergency procedures, crowd control and crisis management procedures. I identify what acts should  
210 be secured to have a profitable concert season, and work with Marketing to promote the events. I also  
211 negotiate all contracts and agreements with the performers and/or promoters or agents. Once the acts  
212 have been secured, I work closely with promoters/agents and operations to coordinate and facilitate the  
213 event set-up and to assure compliance with the contract terms and our policies.

214 The potential for tragedy from lightning strikes at outdoor concert venues received national  
215 attention when twelve people were injured, four critically, at a June, 1998 Tibetan Freedom Concert in  
216 Washington, D.C. AWH, as a new facility at that time and on the cutting-edge of venue management,  
217 readily implemented proactive lightning-injury prevention plans and procedures available at the time.  
218 Of course, technology continues to make advances. Still, most people in the music industry would agree  
219 that AWH is set up well to handle a weather emergency. First, we use the National Weather Service  
220 (NWS), a reliable resource, to monitor the local weather. Before an event, we identify a specific person  
221 (a weather watcher) who is responsible for actively looking for threatening weather. Specific criteria for  
222 delaying or canceling an event are identified. The weather watcher is charged with notifying the chain  
223 of command of the weather conditions. That information is communicated ultimately to a specific  
224 person responsible for making the decision to evacuate the Amphitheater. This person must have  
225 unchallengeable authority to suspend the concert. Generally, the person who has the right to cancel the  
226 show is the performer. Our chain of command failed on the night of August 23<sup>rd</sup>.

227 The NWS has developed a program to help large outdoor venues, including concert venues, to  
228 better protect staff and patrons from the dangers of lightning. Venues are not obligated to follow the  
229 guidelines; it is a voluntary program only. We were already following several of the NWS criteria. For  
230 example, we have (1) continuous access to information of NWS warnings during our events, and (2) a  
231 public address system and use of our Jumbotrons to notify the audience if a lightning threat exists and if  
232 there are plans to delay the concert or cancel it and evacuate. None of those things matter though if  
233 credible information is not available, or if the decision maker doesn't heed the warnings.

234 In light of the tragic death of Doane Orr, I am considering ways we can improve our proactive  
235 lightning injury prevention plan to increase safety of the fans and our staff during hazardous weather

236 conditions. We are currently reviewing the NWSguidelines for additional recommendations to consider  
237 implementing, such as (1) install a real-time lightning detection system with a display unit on site, (2)  
238 broaden our public notification system to include text/email message alerts or social media, (3) provide  
239 or identify additional shelter or safe locations for emergency needs, (4) improve signage for safe and  
240 orderly evacuations, and (5) investigate lightning protection equipment that diverts strikes to the tallest  
241 object and away from performers, staff, and fans.

242 I negotiated the contract for Dis-Chord's performance. Sometimes the negotiations take place  
243 directly with the performers, but usually the promoter or agent negotiates the deal. Regardless, it is the  
244 policy at AWH to have the performer sign the contract because AWH wants to make sure the  
245 performer's feet are held to the fire. When a show is canceled there are substantial expenses that we,  
246 as a venue, still incur in preparing for an upcoming show – vendor contracts for lighting and acoustics,  
247 not to mention marketing and other operational expenses. Also, it is not good for the reputation of  
248 AWH, or any venue, if you have a performer cancel a show. Even in instances where there is good cause  
249 to cancel, such as vocal cord problems, over-exhaustion, or other health issues, the fans are unforgiving  
250 when they were revved up to enjoy their favorite band or performer. The same thing goes for not  
251 starting a show on time. Fans can become hostile if a show is not started on time, which can create  
252 unnecessary safety risks. We also want to make sure the artist understands that we prohibit  
253 pyrotechnics or mosh pits at shows in our venue for the safety of our stage crew, the performers, and  
254 the fans.

255 Mel O'Dee, "OD," signed the contract as the authorized representative for Dis-Chord. I signed  
256 the contract as the authorized representative for AWH. Exhibit 4 is a true and accurate copy of the  
257 contract between AWH and Dis-Chord for the concert on August 23, 2014. The contract was negotiated  
258 and drafted in September 2013. I was the primary drafter with substantial input from EZ Money, Dis-  
259 Chord's promoter. Mel O'Dee executed the contract on September 24<sup>th</sup> and I signed it on September  
260 28<sup>th</sup>. The Live Performance Agreement is kept in the course of the regularly conducted business of  
261 AWH, and it is the regular practice of AWH to make such records. I am AWH's custodian of the  
262 Agreement. I don't know whether OD read the contract. I heard that OD was in the habit of signing a  
263 performance contract without reading it when EZ Money negotiated the contract. OD probably knew  
264 that EZ would deliver a contract consistent with past practices. When we were negotiating the terms of  
265 the contract, I recall EZ saying that OD required certain provisions to be included and certain provisions  
266 to be excluded. I don't recall any specifics.

267 Prior to the August 23<sup>rd</sup> concert, I established the chain of command for monitoring weather  
268 conditions and communicating it to the person with the authority to determine whether to delay or  
269 cancel the concert. I was the designated weather watcher. I track the weather for all events to see if  
270 and when dangerous conditions are coming up, so we can make plans to adjust the concert schedule or  
271 cancel, if necessary. I routinely take the role of weather watcher because I have dependable staff  
272 handling other functions and I do little else the night of the concert. Without other distractions, I can  
273 focus only on the weather. On the morning of August 23<sup>rd</sup>, I woke up feeling a bit under the weather.  
274 My head was in a fog. I contemplated having the assistant manager take over the weather watcher role.  
275 But it was too important a task to shift to someone else. The safety of the fans, performers, and staff is  
276 a priority. There is also something to be said for the continuity of communications. EZ and I had an  
277 established dialog as to the weather conditions and patterns from earlier in the week.

278 When bad weather may be a concern, the main call to delay or cancel the show is with the  
279 performer. The performers are in control of the event and they get information from us on the longevity  
280 of the storm or anything else along those lines. For the August 23<sup>rd</sup> Dis-Chord concert, the chain of  
281 command was as follows: I would notify EZ Money of current weather conditions and threats, then EZ  
282 would notify Pat Ton, Dis-Chord's Security Director, and Pat would notify OD.

283 I could do little to cancel the concert on the day of the performance. AWH's hands were tied.  
284 The Live Performance Agreement specifically prohibited AWH from canceling the Dis-Chord concert. If  
285 we canceled, we were required to pay Dis-Chord the full performance fee. Of course, fans would want  
286 the show rescheduled and a sizable portion of our profit would evaporate into thin air. We would have  
287 potentially an additional performance fee, plus all of the vendors' fees, staff's wages, and other  
288 operating costs. Also, the Act of God clause under the Agreement would not protect AWH if Dis-Chord  
289 didn't agree that the storm was serious, or if we canceled and the storm blew over. The Live  
290 Performance Agreement placed the decision whether to cancel the concert in the sole discretion of Dis-  
291 Chord.

292 I had been providing updates to EZ Money earlier in the week of the concert. I indicated that a  
293 severe thunderstorm blew through Indianapolis on the night of August 20<sup>th</sup> and that we had a record  
294 high of lightning strikes. But I also noted that it appeared that the rest of the week and particularly the  
295 weekend would be much calmer and that forecasts were not suggesting any thunderstorm warnings. It  
296 would not have been prudent to make a decision at that time regarding cancellation of the concert.  
297 Forecasts, especially more than 48 hours out, are often too vague and unreliable to warrant a  
298 cancellation.

299 On Friday, August 22, the forecast was improved. The forecast did not call for any storms or  
300 even any rain for Saturday night. The weather forecast for Saturday night was “partly cloudy.” There  
301 was still no basis to cancel the show. I continued to monitor and report the weather conditions to EZ  
302 Money. By Saturday late afternoon, a storm with lightning was spotted northwest of Indianapolis. I told  
303 EZ Money that consideration should be given to delaying or canceling the show. EZ scoffed at my  
304 concerns.

305 Storm warnings were issued for the area by the NWS only a few hours before the show. The  
306 NWS also continued to push back the expiration of the warnings. So, from my perspective, the weather  
307 was not moving through quickly and could potentially still be a threat during the concert. I again  
308 updated EZ with the information. EZ told me that he/she would communicate the information to Dis-  
309 Chord. I wanted to delay the show until the weather was clear. In any event, I heard nothing back from  
310 EZ or Dis-Chord to delay or cancel the show. I don’t know what EZ communicated to Dis-Chord. I had  
311 suspicions that EZ was filtering the information I was communicating and making judgment calls about  
312 how much to tell Dis-Chord. It doesn’t really matter what EZ told Dis-Chord. I told Pat Ton before the  
313 show that Dis-Chord had full access to state-of-the-art Doppler radar monitor, which we had set up in  
314 the Promoter’s Office. The Promoter’s Office is located right next to the dressing rooms for the Band. I  
315 even showed Pat Ton where it was located and how to operate features on the system. I also had a  
316 Doppler radar monitor in my office.

317 At 7:37 p.m., twenty-three minutes prior to the start of the concert, I was alerted to an NWS  
318 thunderstorm advisory, indicating some intense lightning for east of Indianapolis. At that time, if the  
319 show had been canceled or even delayed, there would have been sufficient time to evacuate the fans to  
320 the safety of their vehicles. With urgency, I said to EZ, “Look, there’s REALLY bad weather out there.  
321 The NWS is calling for storms for the east side of Indy. I think Dis-Chord should cancel the show and  
322 reschedule for a later date. We have enough time now to get these people to safety.” EZ seemed upset  
323 and said that “the Band’s schedule was already too full.” EZ said he/she would talk to Dis-Chord, that is,  
324 Pat Ton about the deteriorating weather conditions. EZ came back in less than two minutes and said  
325 Dis-Chord would go on. EZ said “It’s only rain. We can play.”

326 EZ and Dis-Chord’s lack of concern for the storm assuaged my worries. So, I did not put together  
327 an evacuation plan for the crowd. I also did not direct my staff to make preparations for an evacuation.  
328 I went out on the stage about ten minutes later to get the crowd revved up for the show. I announced  
329 that the show was going to start soon, and the crowd roared. I made some general announcements. I  
330 also promoted upcoming shows at the Amphitheater that were not sold out because I had a captive



331 audience. At that time, I didn't make any announcements to the crowd about weather conditions or  
332 give directions for an evacuation if it became necessary.

333 It wasn't until I got on the stage that I actually heard the thunder and saw flashes of lightning in  
334 the distance. But there wasn't any rain. I saw some people leaving, but most of the fans stayed. I  
335 looked at my watch. It was just about 8:00 p.m., time for Dis-Chord to begin the show.

336 I was standing onstage when the storm blew in. The wind was strong, ripping down vendor  
337 tents and scattering debris. I yelled for people to take cover. I was concerned about umbrellas and tent  
338 poles becoming missiles and injuring people. Pandemonium broke loose. Fans were running to the  
339 pavilion to take cover and to the exits to reach their vehicles for safety. People were shoving and  
340 pushing. I saw that my security staff had their hands full. They were helping people to get to safety, and  
341 trying to make sure no one was trampled. I heard the thunder and saw that the lightning flashes were  
342 getting very close. Then I heard a large cracking sound and boom. I did not know what was going on for  
343 several minutes. I didn't know lightning struck one of the trees on the Amphitheater grounds and that  
344 one of the fans was under the tree and was injured. I later learned that the fan was Doane Orr, and that  
345 he/she died from complications from being struck by lightning. Tragic. Doane died under my watch. This  
346 will affect me forever. I can't tell you how sorry I am for Doane's family and friends.

347 Dis-Chord never asked to delay or cancel the show. If the Band had asked, I would have  
348 complied. Doane Orr's tragic death could have been prevented if Dis-Chord had been more concerned  
349 about concert goers that night. Dis-Chord later rescheduled the show in September. AWH did not pay  
350 Dis-Chord its Performance Fee for the August 23<sup>rd</sup> concert. Once the Band performed in September, the  
351 Performance Fee was paid by AWH. Dis-Chord dedicated the show to Doane Orr and survivor Val Orr.  
352 We held a moment of silence before the show. I asked OD later why Dis-Chord had not canceled or  
353 delayed the show. OD said that it wasn't up to the Band to make that call, it was my call. I told OD to go  
354 back and look at the contract. He/she gave me a blank look. No one seems to take responsibility for  
355 their actions anymore. AWH wasn't at fault, but we still settled with Val Orr. It was the right thing to  
356 do.

357  
358 I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief  
359 and knowledge.

360 Dated: October 20, 2014

/s/ Max Doolittle

361

Statement of Ezra/ Ezria Money

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363 My name is Ezra/ Ezria Money. Everyone calls me “EZ” I reside at 215 E Huron Street in  
364 Chicago, Illinois. I have a degree from Berklee College of Music in Boston, Massachusetts with a double  
365 major in Music Business and Performance. Berklee is probably most famous for its performance  
366 curriculum. John Mayer is an alumni. But the college also teaches students the ropes in the music  
367 industry. As part of my education I learned how to book local and national touring acts at Cafe 939, the  
368 college's performance venue. As an alumnus of Berklee, I have connections that open up doors in this  
369 competitive, dog eat dog industry. Ninety-nine Berklee alumni have received 229 Grammy Awards.

370 I am a concert promoter through my business EZ Tops Entertainment. I've worn nearly every  
371 hat in the music industry: radio disc jockey, music critic, rock 'n roll singer, bandleader, and record  
372 producer. I'm good at what I do. And it has been a lucrative career for me. Money don't get everything,  
373 it's true. But what it don't get, I can't use.

374 Promoters do just what the name suggests - we promote live shows. We are in charge of making  
375 sure the word gets out about that show. However, the duties go beyond promoting the show. A  
376 promoter also secures the venue for a show, called a “booking.” I work directly with the performers and  
377 with clubs and concert venues to arrange a booking. I also negotiate the contract with the venue on  
378 behalf of the performer. The job doesn't stop there. I also work with the performers to make sure all  
379 their needs are covered. I make sure everything is in place for the night of the show (tickets, sound/tech  
380 requirements, lighting) and then generally making sure the show runs smoothly. I even take care of  
381 arranging the incidentals, like hotels and transportation for the performers.

382 The start of the performance is not the end of my job. My job is to make sure things go off  
383 without a hitch. Often, I coordinate between artists, stage crew and venue staff to monitor the progress  
384 of the event. A positive experience will ensure that all persons involved in the show, from the venue to  
385 the artist, will want to hire me again because I have proven that I am up to the task.

386 I handled the negotiations for booking Dis-Chord's 2014 Summer Midwest Tour at various major  
387 cities throughout the Midwest, including the August 23, 2014 booking at the Amphitheater of Wooded  
388 Hills in Indianapolis. I have worked with Dis-Chord for its Midwest bookings ever since the Band formed.  
389 We are both based in Chicago. I was at the ground level when Dis-Chord was first making a name for  
390 itself. I helped Dis-Chord achieve national recognition. When the Band's original drummer wasn't  
391 working out, I connected them with a drummer I knew from Berklee, and then the Band really took off.

392 The lead singer of Dis-Chord, Mel O'Dee, (we all call him/her OD), trusted me with the  
393 negotiations of the venue contracts for the Band. I had always negotiated a favorable contract for the

394 Band. After negotiating many of the Band's performance contracts, I knew what OD expected. Certain  
395 terms needed to be in the contract. One clause that was a stickler for OD and Dis-Chord was the  
396 performance contract had to prohibit cancellation of the contract by the venue thirty days or less before  
397 the scheduled concert. If you have more than thirty days' notice, you can make adjustments to your  
398 schedule; perhaps extend the show at another venue where you are already booked. It also gives you  
399 time to cancel contracts for sound and tech people.

400 OD also always insisted that the venue be responsible for security. Dis-Chord had a Security  
401 Director, Pat Ton, who is OD's right hand. Pat Ton was great with handling security directly for the Band,  
402 but OD didn't want Pat stretched too thin by having to handle security at the venue too. Dis-Chord had  
403 a couple of shows in the past where security was a problem when the crowd got out of control. In the  
404 earlier days, Dis-Chord encouraged the audience to "feel the music." Mosh pits, stage diving, slam  
405 dancing and body surfing were not discouraged, and perhaps even encouraged, even though the safety  
406 of the fans was at risk. Most venues don't allow those types of activities now. Nevertheless, there are  
407 always safety issues at concerts, and Dis-Chord's performance agreements require the venue to handle  
408 security and safety issues.

409 I worked with Max Doolittle, the General Manager of AWH on the contract terms. While  
410 negotiating with AWH, I did not consult with Dis-Chord regarding the specific contract terms, other than  
411 the performance fee. Once the terms of the contract were hammered out, I forwarded the final  
412 contract to OD to review and sign it on behalf of Dis-Chord. I don't know whether OD or any member of  
413 Dis-Chord read the contract in its entirety. I do know that Dis-Chord did not ask for any clarifications or  
414 changes regarding the terms of the contract I negotiated on its behalf. OD signed the Live Performance  
415 Agreement, returned it to me, and I forwarded the executed copy to Doolittle. The contract  
416 negotiations and signing of the contract took place in September, 2013. Exhibit 4 is a true and accurate  
417 copy of the Live Performance Agreement between AWH and Dis-Chord for the August 23, 2014 concert.  
418 The Live Performance Agreement is kept in the course of the regularly conducted business of EZ Tops,  
419 and it is the regular practice of EZ Tops to make such records. I am the custodian of the Agreement.

420 If I do say so myself, I did a bang up job promoting Dis-Chord's 2014 Midwest Summer Tour. It  
421 was an ambitious schedule, with lots of money to line the 'ol pockets – for the Band and for me. (I had  
422 my eye on a 52' yacht to put on Lake Michigan.) Dis-Chord was a recognized name and every venue  
423 wanted to work the Band into their summer schedule. I booked 25 shows for the two month period of  
424 July and August. The shows were booked in twenty different Midwest cities; a few of the venues had  
425 back to back engagements. That's a pretty heavy schedule with little time between bookings and

426 traveling from one gig to the next. But, the life I love is makin' music with my friends and I can't wait to  
427 get on the road again. I would be at each of those shows, and knew it was going to be a wild ride on the  
428 gravy train.

429           One task that I handle prior to and during the show is to act as middle man for communications  
430 between the venue and the performer regarding weather conditions. For the Dis-Chord concert on  
431 August 23, 2014 at AWH, a chain of command was established for communicating weather conditions.  
432 Max Doolittle, the weather watcher, would communicate the weather conditions to me, and I would  
433 pass on information of hazardous conditions to Dis-Chord, through "the General," Dis-Chord's Security  
434 Officer, Pat Ton. The ultimate decision to cancel a concert rests with the performer as provided in the  
435 contract.

436           I often would weigh in on the decision to delay or cancel a show. Of course, safety is a priority,  
437 but there are other considerations also. Mother Nature can be as unpredictable as she is generous.  
438 When dealing with weather, it's difficult to forecast rain at all, let alone a thunderstorm. If a storm  
439 doesn't gain steam or it shifts and misses an area, no one thinks, "Well, it was good that we were  
440 cautious." No, instead, the mindset is, "we could've gone forward with the concert, and wouldn't be in  
441 this jam trying to figure out now how we're going to work in this show for another date." If a concert is  
442 cancelled, trying to reschedule it is costly. Also, it is sometimes difficult to find a date to reschedule that  
443 works for both the venue and the performer, especially when the schedule is busy, with little room for  
444 changes, like Dis-Chord's 2014 Midwest Summer Tour.

445           For the AWH Dis-Chord concert, prior to and on the day of the concert, I obtained frequent  
446 weather updates and storm information from Max. I believe Max relied upon the National Weather  
447 Service (NWS) for monitoring weather conditions. Max began communicating with me on Wednesday  
448 or Thursday before the Saturday night show at AWH. Max reported a record number of lightning strikes  
449 in Indianapolis for Wednesday, August 20<sup>th</sup>. However, Max also indicated that the weather front would  
450 be through the area before the Saturday concert and that forecasts were indicating no threat of a  
451 thunderstorm. I did not pass on this weather report to Dis-Chord because the timing of the August 20<sup>th</sup>  
452 storms was pretty remote for an August 23<sup>rd</sup> concert and also because the forecasts were not  
453 anticipating a storm for Saturday evening. No news is good news. I didn't want to bother Dis-Chord  
454 with information that wouldn't change the current plan for the concert. On Friday, August 22<sup>nd</sup>, I  
455 received further information from Max that there had been a severe thunderstorm warning for  
456 Indianapolis. I passed this information on to the General, and OD told me that "we should all keep an  
457 eye on it." That thunderstorm warning expired later that evening.

458 On the day of the concert at AWH, I arrived early to the venue to make sure the set-up was  
459 smooth. I checked on the Sound Techs, the Backstage Manager, the Ticket Office, and Security.  
460 Everything was in order. The set up at AWH was top-of-the-line. AWH even had a Promoter's Office for  
461 me to use. The Office contained a Doppler radar to monitor the weather conditions. It was state-of-the-  
462 art. I used the Doppler radar the night of the concert to track the storm that eventually came through.

463 On August 23<sup>rd</sup> around 4 pm, Max alerted me to some bad weather that had popped up out of  
464 nowhere about sixty miles northwest of Indianapolis. The NWS, according to Max, reported that  
465 lightning was observed. Despite extensive preparations made in advance of large concerts in outdoor  
466 venues, promoters, like concert-goers, are ultimately at the mercy of Mother Nature. There is no way to  
467 predict unexpected weather. It appeared that the storm was isolated and would pass through before  
468 the concert. I don't recall anyone asking or even suggesting the band delay or cancel the concert. I  
469 think we all thought it would blow over.

470 I continued to monitor the Doppler radar that was in the Promoter's Office. I do recall that the  
471 General stopped by several times prior to the concert and looked at the screen on the Doppler radar.  
472 Doolittle continued to provide updates from the NWS of the worsening weather conditions. It was still a  
473 bit sketchy whether the weather would become a real and serious threat. The forecasts around 5:30 and  
474 6:30 p.m. were only advisories, which would expire well before the show. I shared this information with  
475 the General to communicate with OD. I told the General that "if it was my call, I would play, come rain  
476 or shine, as long as there wasn't any serious threat." The NWS said the storm advisories would expire  
477 well before the show. I preferred to go on with the show as scheduled and only stop if weather  
478 conditions worsened. There just wasn't any room in the schedule to reschedule the concert. We were  
479 nearing the end of the tour and there were essentially no extra days to reschedule an Indianapolis  
480 concert. We would also incur additional expenses for set-up, hotel and transportation.

481 Doolittle notified me that the NWS had issued a warning at 7:37 p.m. for intense lightning for  
482 east of Indianapolis. I shared this information with Pat Ton. Whether Pat shared it with OD, I don't  
483 know. At that point, I was concerned. The weather had shifted and lightning had been reported. It was  
484 more than just dealing with rain. Dis-Chord had final say on whether to play, delay, or cancel the  
485 concert. I went to OD's dressing room to discuss the weather one on one with OD, but I couldn't get  
486 through the General. I peaked in through the door and got a glimpse of OD. He/She looked strung out,  
487 like he/she was on drugs. The General told me that OD did not want to see me and that I should  
488 communicate all information through him/her (the General). There was no change in the decision to

489 move forward with the concert as planned. I was concerned that OD was not able to exercise good  
490 judgment, if he/she was impaired because of substance abuse.

491 OD had prior problems with substance abuse. OD became addicted to painkillers in late 2012  
492 or early 2013 after a serious car accident. He/She even OD'd, but fortunately was discovered by one of  
493 the other band members before it was too late. He/She checked into rehab at least twice that I know.

494 Doolittle came by my office and said he/she was going to make an announcement to the crowd.  
495 I thought maybe he/she was going to delay the show. I followed him/her to see what he/she was going  
496 to say in case I needed to report back to Dis-Chord, who was still in the dressing rooms where they had  
497 been all night, getting ready for the show. I looked out at the eager crowd, and then scanned the  
498 horizon. Sure, there was some lightning in the distance, but it seemed to be a few miles away, and I  
499 thought it seemed like it was moving away from us. Then, the weather seemed to shift suddenly. The  
500 skies opened up, the thunder roared, and lightning lit up the sky like the 4<sup>th</sup> of July. Except there wasn't  
501 any celebration.

502 Later that evening, after we learned of the tragic death of Doane Orr, OD asked me why AWH  
503 had not canceled the show earlier in the evening, especially when lightning was a potential threat. OD  
504 acted like it was AWH's decision to delay or cancel due to the weather. It wasn't the time or the place  
505 for me to correct any misunderstandings. I figured I was on thin ice. Sometimes it's just best to be a yes  
506 man/ma'am person and coddle these super egos. Musical performers, especially headliners, never want  
507 to take the blame for a show gone wrong. OD was no different.

508 Dis-Chord received some bad publicity from the media about not canceling the August 23<sup>rd</sup> show  
509 due to the hazardous weather. OD wanted to cancel the remaining shows, but I thought that would  
510 anger fans. I suggested that we return to Indianapolis and dedicate a concert to Doane Orr. Still, there  
511 was some backlash from the fans and sales dropped for future bookings. Some fans at the next couple  
512 of stops on the Summer Midwest Tour chanted "Dis-Chord Abhorred. The Thunder Roared, And Dis-  
513 Chord Ignored."

514 Dis-Chord needed a scapegoat. OD blamed me for not communicating the bad weather. That's  
515 false. I did communicate all threats of bad weather to Pat. The minute I start withholding information  
516 from the decision maker is the minute that I don't have a job in this industry. OD also criticized me for  
517 vague terms in the Performance Agreement as to the decision-making responsibility to cancel the show.  
518 If OD read the contract and had questions, he/she should have said so. It's only a two-page document.  
519 Neither Dis-Chord nor AWH asked for any clarification on the authority to cancel when bad weather  
520 risked the safety of the fans.

521 I was fired as Dis-Chord's promoter for the remaining shows on the tour, and OD told me I  
522 would never book another tour for Dis-Chord. Pat should have been the one that lost his/her job. Dis-  
523 Chord and I are currently in litigation regarding my fees for concerts I promoted for Dis-Chord, including  
524 the concert at AWH. There is a lot of bad blood between us now.

525 I also was sued by Val Orr. That litigation has settled. As part of the settlement, I agreed to  
526 testify on behalf of Val Orr. It was part of our settlement agreement, because my residence is in  
527 Chicago, Illinois, Indiana's subpoena powers could not reach me to bring me into court to testify. Time is  
528 money, plus I don't really care to deal with OD until our litigation issues are resolved. I am not at liberty  
529 to disclose any financial details about the settlement with Val Orr, other than that I denied liability, but  
530 settled the matter to have some finality.

531 I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief  
532 and knowledge.

533 Dated: October 20, 2014

/s/ EZ Money .

534

535

Statement of Mel O'Dee

536 My name is Mel O'Dee. I am the lead singer for the rock band, Dis-Chord. The band is a  
537 corporate entity, Dis-Chord, Inc., with its principal place of business in Chicago, Illinois. I currently reside  
538 at the Trump Towers in Chicago, Illinois. My given name at birth was Melvin/Melanie O'Donnell. I grew  
539 up in Ireland and came over to the States in 2008, wanting to make it as a songwriter and performer. I  
540 landed in New York. Early on, other performers in the New York music scene nicknamed me O.D. It  
541 stuck. When my music career was taking off, my agent suggested that I consider a stage name. It was  
542 an easy transformation from O.D. to O'Dee. So, I changed my legal name to O'Dee.

543 I struggled, at first, in the music scene, until I met Pat Ton. Pat was a bouncer in one of the bars  
544 where I played sets now and then. Pat was a favorite among the performers because everyone knew  
545 they could trust Pat with anything that needed to be resolved. Pat had a lot of connections in the music  
546 industry and elsewhere; some solid, and some I preferred not to know about. Pat introduced me to  
547 some very talented musicians who were looking for a songwriter and lead singer. That was me.

548 Pat had a connection with a recording studio in Chicago who owed him/her a favor. So, we  
549 formed a band and moved to Chicago to cut a demo record. The Windy City has been good to us and we  
550 never left.

551 We named our band Dis-Chord. The name fits on several levels. The lyrics I write are intended  
552 to get people thinking, whether it's about love, loss, or social issues. Some of the songs I write challenge  
553 the mainstream way of thinking. It's intended to be thought-provoking on issues we may disagree. Our  
554 harmonies can be purposely acrimonious to create that uncomfortable feeling of discord. Occasionally,  
555 our Band, like any other band, has internal conflicts. It probably doesn't help that I follow John Fogerty's  
556 advice that "you can't please everyone, so you got to please yourself" or that I have a fiery temper.  
557 Despite these occasional conflicts, the Band has stayed together and we all get along well.

558 We did replace our original drummer early on. It wasn't so much about conflict as it was about  
559 musical styles, and it just wasn't the right fit for the Band. That's where EZ Money comes into the  
560 picture. I met EZ at one of our local performances in Chicago. EZ is a promoter. I'm sure EZ had ulterior  
561 motives at the time, but he/she did help us out by using his/her connections and finding a drummer that  
562 was the missing link to Dis-Chord. The Band took off. Our music was better than ever. EZ also helped  
563 promote the Band. EZ gave us good advice. First, don't play in the same city or venue too often; spread  
564 out your shows every 6-8 weeks. This gives you proper time to promote the show. Second, turn every  
565 show into an EVENT to get some good buzz going. Third, don't let others take control of your show.



566 By 2011, we were performing to sold out crowds. In 2012, we signed with a record label,  
567 produced our first record, "Purposefully," and won a Grammy for New Artist of the Year. It's not been  
568 the same since. The paychecks were pouring in, but the fans' applause was the most gratifying paycheck  
569 for us.

570 Our next CD, "Our Fate," was released in mid-2014. The best inspiration for songwriting is to  
571 write about what you know and experience. The lyrics run true, which is probably why our music is  
572 described as "soulful." The Band, and I, had experienced some troubles after rising to the top. The  
573 crowds at the shows were enjoying our unique blend of classic rock and jammin' guitar riffs. Mosh pits,  
574 body surfing, and stage diving were part of the rock concert culture. It is a way people "feel the music."  
575 Those activities were just as much a part of concerts as "the wave" at a sports event. So, yes, we had  
576 them at our concerts, but we weren't doing anything different than any other rock band. Unfortunately,  
577 a couple of fans were hurt, nothing serious, in a mosh pit. We talked about stopping the practice, but  
578 before any decision was made, our hands were forced. Six people were injured, three seriously, after a  
579 mosh pit broke out at the Flot Fest Music Festival in Chicago in September, 2013. After that, most  
580 venues wrote in clauses to preclude such activities, including Dis-Chord's contract with the  
581 Amphitheater of Wooded Hills in Indianapolis scheduled for August 23, 2014.

582 Another fateful event was my car accident in December 2012. I hit a patch of ice when I was  
583 driving, careened off the road, and slammed into a telephone pole. I sustained head injuries, broken  
584 ribs, and a punctured lung. I was in the hospital for 3 ½ weeks. The accident left me in a state of  
585 constant, agonizing pain. I was prescribed a potent painkiller containing an opium-derived oxycodone.  
586 It became addictive. I made poor judgments and had several volatile run-ins with photographers,  
587 reporters, and the law. I pled guilty to prescription drug fraud in Indiana in March, 2013. I did not have  
588 to serve any time, provided that I would enter a rehab program. Because the rehab was court-ordered, I  
589 had not committed to it fully. I subsequently relapsed, and OD'd a month later. As fate would have it,  
590 one of the Band members stopped by my pad on the way to a party and found me unconscious. This  
591 time, I checked myself into a rehab program. It was then that I knew I had turned the corner. I've been  
592 clean since that time. EZ's suggestion that I was using drugs on the night of the AWH concert is absurd.

593 Because of my car accident and the drug issues, I needed a hiatus from the stress of performing.  
594 Out there in the spotlight, you're a million miles away. Every ounce of energy, you try to give away as  
595 the sweat pours out your body, like the music that you play. Instead of performing, I focused on  
596 creating quality music for our next album. It was a time of introspection and, quite frankly, tranquility.  
597 I never felt better. The "Our Fate" CD was the best music I had written. We released a few singles by

598 mid-2013, and it was all the rave with the critics and our fans. Yet, we were concerned about a slump in  
599 sales because we had been out of the limelight for a good part of 2013. The reality was that our  
600 popularity had escalated so far out of control that touring was no longer necessary. But we had not  
601 realized that at the time. EZ suggested a Midwest Summer Tour for 2014 to get fans excited about the  
602 new CD. We were going to take the country by storm. We planned the tour to begin with the Midwest  
603 because that's where our fan base began. We would perform in venues across other parts of the  
604 country later in 2014.

605 I hired EZ to handle the Midwest Summer Tour. EZ had pitched the idea for the tour and also  
606 had great connections with the venues in the Midwest. Plus, I trusted EZ, at least back then anyway. EZ  
607 negotiated all of the contracts with the venues for the tour on behalf of Dis-Chord. I was glad not to be  
608 involved with the back and forth negotiations and the mundane details. EZ knew what was important to  
609 the Band. The safety of the fans was one of my main priorities, especially after the injuries from the  
610 mosh pits at one of our shows. Dis-Chord did not want to take any risks. Dis-Chord wanted the venues  
611 to be fully responsible for security issues, crowd control and safety. It's their venue, so they should be  
612 handling any safety or security issues that arise. The venue has contacts with local agencies to hire  
613 additional security or to work with local police, fire and EMT personnel, if necessary. The venue also  
614 knows their facility better than anyone to develop evacuation plans, and they are in the best position to  
615 make announcements or disseminate alert messages or communications, as needed.

616 Dis-Chord's Security Director is Pat Ton, who everyone refers to as "The General." Pat has been  
617 with the Band from the beginning. Pat only oversees the venue's handling of crowd safety and security  
618 at the venues. Pat was not to be consumed with the hands-on detail for the venue's safety and security  
619 needs. Pat mostly looks out for the Band and our safety needs. Pat is incredibly loyal to us. Pat would  
620 do anything to protect the Band.

621 For the AWH concert, EZ negotiated all of the terms without input from the Band except  
622 confirming the concert date and consulting with the Band on the performance fee. That was the same  
623 routine as past contracts that EZ negotiated for Dis-Chord. Most terms of the performance agreements  
624 were pretty standard. After EZ finalized the terms of the Agreement with AWH, he/she forwarded it to  
625 me. I then read and signed the contract and returned it to EZ. Exhibit 4 is a true and accurate copy of  
626 the Live Performance Agreement. My signature is shown on the Agreement as the authorized  
627 representative of Dis-Chord, Inc. The document was prepared in September 2013 when it was  
628 negotiated. The Live Performance Agreement is kept in the course of the regularly conducted business

629 of Dis-Chord, and it is the regular practice of Dis-Chord to make such records. I am the custodian of the  
630 Agreement.

631 I did not ask for clarification of the contract terms because I believed I understood the terms.  
632 Turns out, when lawyers get involved, there are more interpretations than there are lawyers. It was,  
633 and is, my interpretation of the Live Performance Agreement that AWH was responsible for determining  
634 if the show would be canceled or delayed due to weather conditions. AWH required Dis-Chord to begin  
635 on time. This is the only provision in the entire agreement that is emphasized through an all-caps font.  
636 Paragraph 12 gives AWH the authority to reschedule a concert if weather conditions prevent the concert  
637 from happening. Moreover, Paragraph 8 of the Live Performance Agreement provides that Dis-Chord  
638 could not be compelled to play. Dis-Chord did not have the authority to delay or cancel if the conditions  
639 were dangerous for the fans. Dis-Chord could only delay or cancel the concert for weather conditions if  
640 it affected the Band's safety and its equipment. Dis-Chord was invited to come into AWH's facility to  
641 play. It's not our place, and not our responsibility to evacuate fans in case of danger. Rather, the  
642 contract assigns the responsibility for the fans' safety squarely on the shoulders of AWH. AWH was  
643 responsible for overseeing all aspects of the safety and security at the venue. Paragraph 10 of the  
644 contract provides that AWH had discretion concerning security issues.

645 EZ set up an aggressive schedule for the 2014 Summer Midwest Tour. With our input, EZ had  
646 scheduled twenty-five shows in twenty cities over the two month period of July and August; many of  
647 them were large outdoor venues. When you are playing in an outdoor venue, the Midwest summer  
648 heat and humidity can wear you down. There was little time to rest between driving to the next show,  
649 making sure the equipment was set up properly, talking to local radio stations and media to promote  
650 the CD and tour, and rehearsing. By the time we arrived in Indianapolis for the August 23<sup>rd</sup> concert at  
651 AWH, we had been on the road for fifty-four days, and had played twenty shows. The tour was at an  
652 end. We were tired and exhausted. When you're ridin' sixteen hours, and there's nothin' much to do,  
653 you don't feel much like ridin', you just wish the trip was through. But, here you are, on the road again,  
654 up on the stage, playin' star again.

655 The Band arrived in Indianapolis at AWH on August 23<sup>rd</sup> in the early afternoon. AWH's  
656 amphitheater is a large outdoor venue. It is one of my favorite places to play. The acoustics are  
657 surprisingly good for an outdoor venue, and all the seating is good whether you are in the higher-priced  
658 pavilion seats or the general admission lawn seats. I don't know how much AWH was charging for the  
659 tickets to our show. It was a sold out concert. It had to be a lucrative deal for AWH. When the Band  
660 arrived, we checked on our equipment and the general set up. The stage crew had arrived early and

661 everything was set up. AWH's facilities were relatively new compared to other outdoor venues we had  
662 been playing. AWH set us up with several dressing rooms and had an office for the promoter, EZ, right  
663 next to our dressing rooms. The Band did a few rehearsals and then we relaxed and rested in our  
664 dressing rooms. By then it was about 2 or 2:30 in the afternoon. When the Band went into the dressing  
665 room to relax before the 8 p.m. show, the weather was of no concern. There was no thunder, lightning,  
666 or even rain.

667 The weather is inescapable when you are booked at an outdoor venue. Prior to our arrival,  
668 earlier in the week, Doolittle, AWH's Manager established a chain of command to communicate weather  
669 concerns. Doolittle would monitor the weather, and communicate to EZ any concerns, needs, or  
670 decisions to delay or cancel our concert. EZ would in turn notify the Band through Pat, who oversees  
671 security and safety issues for the Band. Everyone agreed to this protocol.

672 The weather communication and decision-making protocol established by Doolittle failed. It  
673 was not the Band's obligation to cancel or delay the show, but even if it had been, the Band did not  
674 receive pertinent weather information. I can't speak for information that passed between Doolittle and  
675 EZ, but I can tell you that EZ did not communicate to Dis-Chord the extent and seriousness of the  
676 weather conditions leading up to the lightning strike on the evening of August 23<sup>rd</sup>. EZ diluted the  
677 seriousness of information that was shared with the Band, through Pat. I have since learned that  
678 sometimes EZ didn't even relay the information he/she received from Doolittle. I do not know whether  
679 EZ purposely prevented the Band from having necessary information to make an informed decision to  
680 cancel. Regardless, Dis-Chord did not receive critical information concerning the weather. Dis-Chord  
681 knew only about the rain, not the lightning or thunder, on the day of the concert, or days leading up to  
682 the concert. Dis-Chord was not provided with information regarding the record high lightning strikes  
683 just a few days prior to the concert. No weather communications were shared with Dis-Chord regarding  
684 the lightning strikes in the Crawfordsville area that were moving southeast at 4 pm on August 23<sup>rd</sup>. And  
685 no communications were received from EZ after 7:15 p.m. on August 23<sup>rd</sup>.

686 On Friday, August 22<sup>nd</sup>, the night before the show, EZ did communicate that there were  
687 thunderstorms in the Indianapolis area. I wanted all of us to keep an eye on it. We were hesitant about  
688 a cancellation and upsetting our fans. We care about our fans. That particular thunderstorm warning  
689 expired later that evening, and appeared not to be a threat. The only other weather communications  
690 that Dis-Chord received from EZ were the forecasts around 5:30 and 6:30 pm on August 23<sup>rd</sup>. EZ merely  
691 claimed that advisories had been issued but that the forecast predicted those storms would be through  
692 the area well before the concert.

693 EZ kept pushing for the Band to keep the existing tour schedule. EZ did not want to reschedule.  
694 EZ said there wasn't any room to reschedule the concert and that we would also incur additional  
695 expenses to reschedule. EZ said "I just want to be done with it." Of course, EZ echoed what we all felt.  
696 All of us preferred to go on with the show as scheduled and only stop if weather conditions worsened.  
697 The weather conditions did in fact worsen, but Dis-Chord was not provided with such critical  
698 information.

699 I, and all of the band members of Dis-Chord, stayed in our dressing rooms until the time the  
700 concert was to begin around 8 p.m. For the hours prior to the show, I prefer to take the time to  
701 concentrate on the lyrics and aspects of the performance. In our dressing rooms, we could not hear any  
702 thunder or see any lightning. The dressing rooms are apparently sound proofed so when there are  
703 multiple acts for a concert, each performer is not distracted by what is happening on stage. Just as we  
704 were about to go on stage at 8:00 p.m., Pat told the Band that a strong thunderstorm was blowing  
705 through the area and that we should stay in the dressing rooms. I assumed the fans had been  
706 evacuated by AWH before the storm hit.

707 It was not the Band's call to cancel or delay the concert. However, if I had been given timely and  
708 critical information about the weather conditions for August 23<sup>rd</sup>, I would have been able to assess the  
709 circumstances, and, if asked, able to make a decision with the safety of the fans at the forefront of my  
710 decision-making. My judgment was not impaired in any way on August 23<sup>rd</sup>.

711 The Band was distraught when we learned of Doane Orr's death at our concert. Our thoughts  
712 and deepest sympathies are with Val Orr, and Doane's family and friends. The loss of life is so tragic.  
713 Dis-Chord scheduled a make-up concert for AWH in September. The Band dedicated that concert to  
714 Doane Orr and we held a moment of silence to respect him/her.

715 When we returned for the rescheduled concert at AWH, I asked Doolittle why he/she did not  
716 cancel, or at least delay, the August 23<sup>rd</sup> show. Doolittle gave me an odd look and told me that it was  
717 Dis-Chord's responsibility. I'm sure I looked shocked with Doolittle's response. Had he/she not read  
718 their own contract?

719 Dis-Chord fired EZ shortly after the August 23<sup>rd</sup> concert and told EZ his/her services were not  
720 needed for the remainder of the tour. We fired EZ because critical information was withheld from the  
721 Band which led to the death of one of our fans. We told EZ that we would never work with him/her  
722 again. Dis-Chord withheld the remaining payments from EZ for the remainder of the tour, including the  
723 AWH concert. EZ has initiated spurious litigation to pursue the remaining payments from the tour.

724 I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief  
725 and knowledge.

726 Dated: October 20, 2014

/s/ Mel O'Dee

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Statement of Pat Ton

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My name is Pat Ton. I grew up in Hawaii but I now live at 1633 Bandito Drive, Evanston, Illinois. I'm a 2001 graduate of Hawaii Pacific University with a degree in security management. I have extensive training in security or related fields. I have a military background – Army. I've served in combat and Intel positions in Afghanistan.

I am currently an employee and the Security Director of Dis-Chord, Inc., which is the business entity for the rock band Dis-Chord. I answer to every member of the band, but I generally work directly with Mel O'Dee (OD), the leader of the Band. I have been with the Band since 2008, when the Band first formed and moved from New York to Chicago. The Band members of Dis-Chord have treated me well. We're like family. We've got each other's back. I am particularly loyal to OD. When we were in New York, I had some gambling issues and I owed the Mafia in a big way. OD was just starting a music career and didn't have much money at the time. Still, he/she helped me out of that jam by coordinating a group of people to come up with the cash that I needed to pay off the Mafia. In return, OD guaranteed each person a share of the royalties from the first CD released by the Band. Three things came out of that situation: (1) I got the Mafia off my back and I never gambled again, (2) all of the people that helped out financially made the best investment of their lives, and (3) I gained a friend forever. If OD ever needed my help, I hope he/she knows I would be there for him/her.

Prior to working with Dis-Chord, I have held several security positions. In New York, when I met OD, I was working as a bouncer at a bar. You don't have to be necessarily big and bulky to be effective in security. It's all about attitude. You show people you mean business. My attitude comes through loud and clear, so much so that I've earned the name "The General," by everyone in the Band.

As the Security Director for Dis-Chord, I coordinate all security needs for the Band and oversee the safety of the Band's performers and fans at all Dis-Chord events. The Security Director is also responsible for any communication between the Band and the chain of command as designated by the venue for safety and security issues. The concert venue is generally responsible for the specific security and safety detail, including crowd ingress and egress, security in and around the venue, and basically making sure the event is safe for the patrons. While I do not directly engage in the specifics of security and safety issues which are the responsibility of the venue, I do oversee the security and safety plans and execution to make sure that the members of Dis-Chord are safe. The hardest part of the job is keeping the fans under control so everyone can enjoy the concert and have a great experience.

759 Dis-Chord did have a few incidents when fans were injured in a mosh pit. None of the injuries  
760 were serious. Subsequently, the Band stopped the practice all together. Other than that, I know of no  
761 other prior instances when someone was injured at one of Dis-Chord's concerts.

762 Dis-Chord was scheduled for a Concert tour in 2014 to promote its latest CD. The Tour was  
763 promoted by EZMoney. The schedule for the tour was rigorous – concert after concert, shoved into a  
764 two month period in some of the hottest months of a Midwest summer.

765 One of the concert venues was the Amphitheater of Wooded Hills in Indianapolis. It is Central  
766 Indiana's largest outdoor concert venue. The concert was scheduled for 20:00 on Saturday, August 23<sup>rd</sup>.  
767 Dis-Chord was the Headliner. There was no opening act scheduled. Dis-Chord was scheduled to  
768 perform for an hour and one half. AWH's facility is one of the better outdoor venues. The stage is large  
769 which allows the band some freedom to spread out their set-up, and there is ample seating under the  
770 pavilion, so that not just a select few can purchase seats there, protected from the weather. Backstage,  
771 AWH has several dressing rooms for the headliner. The rooms are soundproof and provide a great  
772 respite for band members who have been traveling long hours. The Promoter's Office is located  
773 immediately adjacent to the dressing rooms. The Promoter's Office is equipped with several computers,  
774 telephone lines, and a Doppler radar monitor.

775 Prior to each stop along the tour, we coordinated with the venue manager to determine who at  
776 the venue would be the point person for crowd control, evacuation plans, announcements and  
777 monitoring the weather. Earlier in the week of August 17<sup>th</sup>, I was included in the discussion between  
778 Max Doolittle, AWH's General Manager, EZMoney, OD and myself regarding the chain of command to  
779 monitor the weather conditions to make a determination to delay or cancel a concert, if necessary.  
780 Doolittle established a chain of command for all relevant weather communications. Doolittle would be  
781 assigned the task of the weather watcher, who monitors all of the weather conditions and shares the  
782 information to the next person up the chain. That next person in the chain was EZ. In retrospect,  
783 Doolittle should have put someone else in that position because EZ let his/her own agenda cloud his/her  
784 judgment on sharing pertinent weather information. EZ then was supposed to communicate those  
785 weather alerts to me, and I would communicate it to OD. It didn't work as planned. The weak link was  
786 EZ.

787 We subsequently learned that EZ filtered and diluted information received from Doolittle  
788 regarding critical weather warnings, advisories, and conditions. EZ did not bother to share information  
789 as to the deluge of lightning strikes on August 20<sup>th</sup>. That would have been helpful to know. EZ did not  
790 bother to share information that there was a severe thunderstorm every night of the week from August



791 20<sup>th</sup> to the day of the concert. EZ did not bother to tell us that, on the day of the concert, lightning was  
792 observed near Crawfordsville at 16:00 and was traveling southeast toward Indianapolis. That would  
793 have been REALLY helpful to know.

794 Only twice did EZ inform me as to certain weather conditions for the AWH concert. At 17:45, EZ  
795 advised that there was a storm advisory only, and that it was scheduled to expire in a half hour, well  
796 before the concert. An hour later, EZ told me that the advisory was extended but again would be  
797 expired well before the concert time. Every statement that EZ communicated about the weather to me,  
798 I dutifully repeated to OD. However, the information communicated by EZ did not set off any red flags.  
799 There was no report of thunder, no report of lightning, no report of strong storms. Dis-Chord knew  
800 weather was coming but wasn't specifically told it was a severe thunderstorm. Doolittle's chain of  
801 command was established so that Dis-Chord could rely upon others to alert the Band about dangerous  
802 weather.

803 EZ did attempt to speak with OD directly a few hours prior to the concert. I was a bull dog and  
804 didn't let EZ have access to OD. Mel O'Dee doesn't like to be disturbed before a concert. Creative  
805 people have a great deal of physical energy, but they need quiet and rest. A few hours before every  
806 show, OD prepares mentally for the concert. It actually takes a lot of concentration. OD was in a car  
807 accident in 2012 and suffered a brain injury. Those injuries caused some memory loss. OD now has to  
808 relearn his/her own songs before every show. We never disclosed his/her memory loss outside of our  
809 inner circle. In any event, only a few people are permitted to interrupt OD's concentration and only for  
810 extremely important circumstances. The other reason that I didn't let EZ in to see OD is because EZ  
811 annoys OD. EZ is a blabbermouth and talks constantly.

812 I have subsequently learned that a weather alert was issued at 19:37 on August 23<sup>rd</sup>. The  
813 Weather Alert as shown on Exhibit 9 reports intense lightning east of Indianapolis. This information was  
814 not communicated to me at the time. I do not know whether EZ Money attempted to locate me to  
815 share this critical weather information. I was not located near Dis-Chord's dressing rooms at the time.  
816 My attention at that time was distracted by security concerns near the stage. I was concerned about  
817 fans storming the dressing room, causing injury to themselves or to one of the Band members. It turned  
818 out to be a false alarm. The commotion was the result of a fight that had broken out among a group of  
819 girls over a boy who was with them. The distraction took me away from my post temporarily, but when  
820 I returned to Dis-Chord's dressing rooms, I did not see EZ until after the storm hit.

821           Once the storm hit, it was chaotic. I checked with the Band in the dressing rooms and satisfied  
822 myself that they were safe. I then went to check on what was happening outside. People were running  
823 frantically and pushing and shoving anyone who got in the way.

824           When we first arrived at AWH, I raised my concerns with Doolittle that the venue lacked clear  
825 signage for evacuations, in case of an emergency. Doolittle responded that AWH's evacuation plan  
826 entailed Doolittle announcing to the crowd directions for an orderly evacuation. Doolittle assured me  
827 that AWH had it all under control. "Control" was the last word I would use to describe AWH's actual  
828 approach to the lightning storm. And the announcement for an orderly evacuation? Doolittle's only  
829 announcement was "Take cover, take cover." Hardly an orderly plan! AWH also didn't use the  
830 Jumbotrons that it had at its disposal to notify patrons. AWH's plan for an orderly evacuation was much  
831 like its plan for communicating serious weather conditions to determine whether to delay or cancel the  
832 concert. The plans were fine, the execution was deplorable.

833           As a person trained in safety and security, there were other things that I noted where AWH fell  
834 short of what I consider to be reasonable measures. AWH's security personnel and other staff were not  
835 adequately trained to assist people in evacuating the Amphitheater. AWH did not have adequate or  
836 identifiable shelters for emergencies. AWH did not use social media, tweets, or text messages to notify  
837 concert goers of the storm or where to go in an evacuation. AWH's First Aid station was poorly  
838 identified. If these standards had been met, it is possible that Doane Orr would be alive today.

839           If I had witnessed Val and Doane Orr taking cover under a tree, I would have tried to steer them  
840 clear of putting themselves in such a dangerous position. I thought it was common knowledge, but  
841 maybe it's something you learn in the military - - never, I mean never, take cover under a tree when  
842 there is lightning or thunder present. Lightning tends to strike tall objects and the electrical charge will  
843 carry through the tree and through the ground. Also never lay down on the ground. If you do so, you're  
844 putting yourself more in danger because you've now increased the surface area of your body that a  
845 ground charge can strike. If these basic principles are not generally known, it needs to be taught in  
846 schools, just like what to do if there is a tornado warning.

847           A few minutes after the storm began, I heard a call on the 2 way radio between the AWH  
848 security and information they were getting from the EMTs located at the Amphitheater. They were  
849 describing a lightning victim under a tree near the northwest gate. I went to check on the victim to see  
850 if there was anything I could do. When I arrived the EMTs were placing the victim in the ambulance. I  
851 commented "good job." The EMTs were quick to respond and in such situations, timing is everything.  
852 Unfortunately, they could not save the victim, which I later learned was Doane Orr.

853 EZ claims that I looked at the Doppler radar monitor that was located in the AWH office  
854 reserved for the promoter. I did no such thing. Only one time did I step inside the Promoter's Office at  
855 AWH. As I was walking by the office, I noticed that EZ was using one of the computers for online  
856 gambling. It was something that was familiar to me from my past. I stepped inside the office to remind  
857 EZ that he/ she was on the job. In the military, you learn that everyone has a job to do, and each person  
858 is dependent upon the others doing their job. I'm surprised that EZ didn't remember that incident  
859 correctly. At the time, he/ she was miffed that I called him/ her out.

860 EZ also questioned whether OD was able to make a rational and reasonable decision concerning  
861 the delay or cancellation of the concert. Sure, OD had an addiction to pain killers after the car accident.  
862 OD went through rehab and cleaned up his/ her drug addiction. I can tell you unequivocally, that OD was  
863 not using drugs at the concert. OD's disheveled look was the result of the grueling schedule of the tour  
864 and OD attempting to concentrate due to the memory loss from the accident. OD's judgment was not  
865 impaired under any circumstance.

866 In any event, no one, not EZ and not Doolittle, ever asked OD to cancel or delay the August 23<sup>rd</sup>  
867 show. Dis-Chord was totally in the dark as to the severity of hazardous weather approaching the  
868 Amphitheater near the time of the concert.

869

870 I affirm under penalty of perjury that the foregoing is true and correct to the best of my belief  
871 and knowledge.

872 Dated: October 20, 2014

/s/ Pat Ton .

873

874

Statement of Louden Clear

875 My name is Louden Clear. I reside at 1211 Pavinia Road, Silver Springs, Maryland. I am a  
876 Certified Consulting Meteorologist. I started a consulting business on September 1, 2014. I consult with  
877 corporate clients and organizations for litigation, insurance and research, and also provide training and  
878 seminars regarding meteorology. In addition, because of the global interest in the UN Summit on  
879 Climate Change held on September 23rd, I recently appeared on network shows such as the Today Show  
880 and the CBS Early Show to discuss weather and climate issues. I have also appeared as a lightning expert  
881 on The Weather Channel. Prior to my consulting and expert witness career, I was a Lightning Safety  
882 Specialist with the National Weather Service (NWS). The NWS is a component of the National Oceanic  
883 and Atmospheric Administration (NOAA), which is an operating unit of the U.S. Department of  
884 Commerce. The NOAA's mission is to understand and predict changes in climate, weather, oceans and  
885 coasts, and to share that knowledge and information. I was a national spokesperson for the NOAA on  
886 issues related to lightning and lightning safety. I spoke to many service groups, and in particular, schools  
887 and classrooms on lightning safety. Exhibit 5 is a true and accurate copy of my curriculum vitae.

888 I was retained by Dis-Chord, Inc. as its expert witness in this litigation. In my position as a  
889 Certified Consulting Meteorologist, I testified as an expert witness in one other case. In that case, I also  
890 was an expert for the defense. When I was in academia, I also had occasion to consult as an expert  
891 witness in six cases. Five cases were for the defense and one was for the plaintiff's case. The fee for my  
892 expertise in lightning safety for this trial is a flat fee of \$18,000.

893 My interest in hazardous and severe weather conditions started when I was a child. Growing up  
894 in Oklahoma, talk of tornadoes was commonplace. I remember wanting to learn more as a child, and  
895 making a water vortex using a two liter Coke bottle to simulate a "tornado." I came to respect the  
896 awesome power of nature as I grew older, witnessing family and friends' homes and lives destroyed by  
897 Oklahoma tornadoes. A person's whole life can be scattered in the rubble in the aftermath of a severe  
898 storm. Even more heart-wrenching is when a life is taken by severe weather because most deaths and  
899 injuries can be prevented if proper safety precautions are taken. I have spent a considerable amount of  
900 my research also on human behavior during severe weather. Understanding public perceptions and  
901 reactions to weather conditions can help us educate others to heed the warnings that nature provides.

902 Based upon my knowledge of severe weather conditions, the State of Indiana adopted my  
903 recommendations for increased safety education in schools throughout the State of Indiana. I developed  
904 a Severe Weather Awareness Week program to educate students on safe practices in all types of severe

905 and hazardous weather. In recognition of my service to the State, the Governor of Indiana awarded me  
906 the "Sagamore of the Wabash."

907         Before we can discuss why people need to exercise extreme caution during thunderstorms, I  
908 think it is important to understand some basic science behind lightning strikes. The two primary types  
909 of lightning are cloud-to-ground and in cloud. I will focus on cloud-to-ground lightning because that is  
910 the source of lightning casualties. Lightning is essentially a large electric spark, similar to that received  
911 from touching a doorknob after walking across a carpeted room in dry weather. Yet the charge is much  
912 greater, which allows it to cross the thick insulating air barrier between the cloud and ground.

913         Every time you bring heat and humidity together, we're going to have thunderstorms. Lightning  
914 is the result of water and ice moving around inside a cloud. The rising air in a thunderstorm causes  
915 frozen precipitation to form within the cloud. Small ice crystals are forced up toward the top of the  
916 clouds by warm air currents, while heavier and denser pellets of snow and ice are suspended by the  
917 rising air or start falling toward the ground. Collisions occur between the ice crystals and the pellets.  
918 Just as rubbing a balloon can create static electricity, the particles in the cloud become charged. Positive  
919 charges move up, and negatives move down. The ground underneath the cloud becomes charged  
920 oppositely of the charges directly overhead. Once a significant charge separation has built up, a  
921 conductive channel of air develops between the cloud and the ground. A small amount of charge, or  
922 step leader, starts moving toward the ground. When it nears the ground, an upward leader of opposite  
923 charge connects with the step leader. When the connection is made, a powerful discharge, or lightning,  
924 occurs between the cloud and the ground. Any object near this intense electrical field will have an  
925 opposite charge induced in it, be it a television tower, a tree, a person, a fence, or even a blade of  
926 grass. The channel of air through which lightning passes can be heated to 50,000° F, which is hotter than  
927 the sun.

928         One myth that gives people a false sense of security is that if it's not raining, or there are no  
929 clouds overhead, you are safe from lightning. The fact is that lightning is evident in all thunderstorms.  
930 Lightning often strikes more than three miles from the center of the thunderstorm. Furthermore,  
931 lightning can strike ten to fifteen miles away from the rain of a thunderstorm. Sometimes people refer  
932 to this as "out of the blue."

933         There are five types of lightning strikes. The first type is a direct strike. Lightning strikes you  
934 directly and you become part of the main lightning discharge channel. Most direct strikes occur to  
935 people in open areas. Direct strikes are not as common as other ways people are struck by lightning,  
936 but they are potentially the most deadly. The second type of lightning strike is a side flash. A side flash

937 occurs when lightning strikes a taller object near the victim and a portion of the current jumps from the  
938 taller object to the victim. The person essentially acts as a short circuit for some of the energy in the  
939 lightning discharge. The third type of lightning strike is a ground current. When lightning strikes a tree  
940 or other object, much of the energy travels outward from the strike, in and along the ground surface.  
941 Anyone outside when a lightning strike occurs is a potential victim of ground current. Typically, the  
942 lightning enters the body at the contact point closest to the lightning strike, travels through the  
943 cardiovascular and/or nervous system, and exits the body at the contact point farthest from the  
944 lightning. Because a ground current charges large areas, it is the cause of the most lightning strike  
945 deaths and injuries. A fourth way lightning can strike is through conduction. Lightning can travel long  
946 distances in wires or other metal surfaces. Metal does not attract lightning but it provides a path for the  
947 lightning to follow. Whether inside or outside, anyone connected to metal wires, plumbing or metal  
948 surfaces that extend outside is at risk. The final way that lightning can strike is through streamers.  
949 Upward streamers develop as an opposite-charged, downward-moving leader approaches the ground.  
950 Only one of the streamers usually makes contact with the downward leader as it approaches the ground  
951 and provides a path for the return strike. When the main channel discharges, so do all the other  
952 streamers in the area. If a person is part of one of these streamers, the person could be killed or injured  
953 during the streamer discharge.

954         There are three factors that predispose an object to a lightning strike. I like to think of it as  
955 nature's "TIP" : tall, isolated, and pointy. If people keep this "TIP" in mind, perhaps the next time a  
956 storm occurs, they will not seek shelter under a tree to stay dry during a thunderstorm. Being under a  
957 tree is the second leading cause of lightning casualties. This "TIP" also busts the myth that lightning  
958 never strikes the same place twice. Lightning often strikes the same place repeatedly, especially if it is a  
959 tall, isolated, pointy object. The Empire State Building is hit by lightning nearly one hundred times a  
960 year. But remember that lightning strike casualties can result from a ground current too. So, it is not  
961 advisable to lie flat on the ground. Lying flat increases your chances of being struck by a potentially  
962 deadly ground current. Thus, if you are caught outside in a thunderstorm, you should keep moving  
963 toward safe shelter.

964         The single most dangerous place during a storm is outdoors. Large outdoor venues are  
965 particularly at risk because of the open area and large crowds. NOAA has a tool kit that provides  
966 direction for large-venue lightning safety. The plan should include the use of a reliable weather-  
967 monitoring system to determine whether to cancel or postpone activity before the event begins, and  
968 continuous monitoring of the weather during the event. It is also important to have a plan to direct

969 attendees to the nearest safe location, and a means to ensure a safe and orderly evacuation from the  
970 event, including announcements, signage, and assistance from the venue's staff. There should also be  
971 some consideration for the time it takes to notify and move all individuals so they can be wholly within a  
972 safe area by the time the leading edge of the storm is within 5 nautical miles of the outdoor activity. I  
973 place these responsibilities squarely on the shoulders of the venue. The Amphitheater of Wooded Hills  
974 had the some appropriate plans in place for lightning safety for a large venue. Unfortunately, in this  
975 instance it was not executed according to its plan. AWH had identified the people with the authority to  
976 monitor the weather and determine whether to cancel the concert. Weather conditions were  
977 monitored, but due to a breakdown in communications, a decision to notify concert attendees and to  
978 cancel the concert was not made timely. AWH did not make announcements or have appropriate  
979 signage or staff to ensure a safe and orderly evacuation.

980 In the United States, lightning strikes occur approximately 30 million times each year. Although  
981 the odds of being struck by lightning in the United States are one in one million, there are 51 lightning  
982 fatalities per year, on average, in the United States over a thirty year period. For every one fatality, nine  
983 others are injured. One in every ten people struck by lightning dies from their injuries. Lightning kills  
984 more people each year in the United States than hurricanes, volcanoes, and earthquakes combined.  
985 Serious lightning injuries involve primarily cardiac arrest and neurologic injury. However, persons struck  
986 by lightning have a better chance of survival than persons who experience cardiopulmonary arrest from  
987 other causes. Thus, it is imperative that resuscitation for persons struck by lightning be instituted  
988 immediately. As part of the NOAA's goal of educating the public regarding weather safety, I usually  
989 include a discussion about CPR in my talks to schools and groups. I ask people who know CPR to raise  
990 their hand. I tell everyone in the group that "These people are your new best friends." Then I ask people  
991 who don't know CPR to raise their hands. I tell the group that "These people will do you no good."

992 Almost all lightning deaths have occurred outdoors. In recent years, fatal activities have  
993 included, boating, golfing, fishing, standing under a tree, riding on a lawnmower, playing sports, and  
994 watching a storm. The vast majority of lightning victims were going to a safe place at the time of the  
995 storm, but waited too long before seeking safe shelter. There is no safe place outdoors when a  
996 thunderstorm is nearby. Unfortunately, most people don't heed nature's natural warning system. If you  
997 hear thunder, you are in danger and it's time to come inside. You don't want to wait. If you see  
998 lightning, it's time to seek shelter. If you're at an outdoor concert or sporting event, the kids have a  
999 soccer game, little league or something like that, the parking lot is full of shelters, and that's your car.

1000 The best exercise of caution is to follow the simple rule, “when thunder roars, go indoors.” I would like  
1001 to see this expression become as popular as “Stop, Drop and Roll.”

1002 The week of August 17, 2014 was a week of unprecedented storms for the Indianapolis area.  
1003 Exhibit 6 shows the NWS records for lightning strikes in the Indianapolis area comparing the periods of  
1004 June through September for the years 2012 through 2014. Indianapolis hit an all-time record high of  
1005 lightning strikes for the area on August 20, 2014. Interestingly, not a single person was struck by  
1006 lightning on that day.

1007 It is my understanding that the Dis-Chord Concert was scheduled for eight o'clock Saturday  
1008 evening, August 23, 2014. Throughout the week, as well as the day and evening of the Dis-Chord  
1009 concert, the NWS issued forecasts, notices, and warnings predicting thunderstorms. The NWS uses three  
1010 terms for storm activity: Watch, Advisory, and Warning. A “Watch” indicates that conditions are  
1011 favorable for the particular weather event in and near the Watch area, and may pose a risk to life and  
1012 property. Advisories are issued when events are expected to remain below the Warning criteria, but still  
1013 cause significant inconvenience or nuisance conditions. A “Warning” indicates that a particular weather  
1014 event is imminent or occurring. Warnings are issued for significant weather events and measures  
1015 should be taken to safeguard life and property immediately.

1016 I admit that the NWS forecast from August 19, 2014 did not accurately predict the severity of  
1017 storms that would occur later in the week or even the next day. The August 22, 2014 forecast  
1018 referenced storms, but did not predict the severity. We got it wrong. Weather forecasting is complex  
1019 and not always accurate because the weather can be chaotic and unpredictable. The Earth's atmosphere  
1020 is a complicated system that is affected by many factors and can react in different ways. Meteorological  
1021 technology continues to improve, but for the foreseeable future, the weather forecast will be more  
1022 accurate the closer you are to the day in question. The 24-hour forecast is more dependable than the  
1023 three-day forecast. Forecasts can be a useful resource, but forecasts should never replace what is seen  
1024 and heard, or common sense. Exhibit 7 and Exhibit 8 are true and accurate copies of the NWS forecasts  
1025 for August 19<sup>th</sup> and August 22<sup>nd</sup>, respectively.

1026 The NWS provides alert and warning information through official dissemination sources,  
1027 including the NOAA and Weather.gov. The NWS does not provide direct email/SMS alerts to the general  
1028 public. Email and SMS weather alerts to the public are available through third-party sources. Often the  
1029 third-party source's email and SMS messages are verbatim of the warnings and watch alerts issued by  
1030 the NWS. Exhibit 9 is not an NWS document, but appears to parallel closely the Weather Alert notices  
1031 issued by the NWS for the relevant dates and times shown.



1032 I was not in Indianapolis in August of 2014. I did not witness firsthand the weather conditions  
1033 leading up to the death of Doane Orr. However, I have read the witness statements relating to the  
1034 weather conditions for, and leading up to, August 23, 2014, and I have reviewed all of the forecasts and  
1035 weather alerts provided in Exhibits 7, 8, and 9.

1036 If I had been at the concert, I would not have thrown caution to the wind. Exercising an  
1037 abundance of caution, it would have been my recommendation to postpone or cancel the concert  
1038 before the onset of any imminent thunderstorm. There was an unpredictable weather system over the  
1039 past several days that was producing unusual and excessive lightning. Every cloud-to-ground lightning  
1040 flash is dangerous and potentially deadly and should be taken seriously.

1041 Nevertheless, in my expert opinion, this storm and lightning strike was not a foreseeable danger  
1042 until it became too late to warn the concert attendees or to cancel the show. There were insufficient  
1043 indices prior to August 23, 2014 that severe weather conditions would be present in the Indianapolis  
1044 area that would necessitate cancellation of the concert scheduled for August 23, 2014. Weather  
1045 forecasts indicated a slight chance of storms or scattered storms. Even on August 23<sup>rd</sup>, prior to 7:15  
1046 p.m., it appeared from the weather alerts that the storms would be through the area prior to the  
1047 concert, having moved to the southeast. The thunderstorm advisory had expired at 7:15 p.m., and  
1048 weather forecasts and alerts at that time appeared to indicate that the storms had diminished and no  
1049 severe weather conditions were present.

1050 The WeatherFirst text messaging log shows that an alert advisory for thunderstorms and  
1051 lightning was issued at 7:37 p.m., twenty-three minutes prior to the start of the concert. Based upon  
1052 witness statements, that message was not received by Dis-Chord. Thus, there was no information  
1053 available at that time to notify concert attendees of an approaching storm. Subsequently, several  
1054 witnesses reported hearing thunder and seeing lightning flashes in the distance starting at  
1055 approximately 7:45 p.m. The lead singer of Dis-Chord, Mel O'Dee, was behind the stage and may not  
1056 have observed the lightning flashes first hand. There is some conflict as to what information was  
1057 communicated to Dis-Chord regarding cancellation of the concert once lightning was observed.

1058 The one fact we do know is that Val and Doane Orr, along with most concert attendees, heard  
1059 the thunder and saw the lightning and consequently were aware of the immediate threat of lightning  
1060 strikes. The Orrs did not move from their lawn seating until nearly twenty minutes had passed once the  
1061 thunder was heard and the lightning observed. The thunder was loud and clear. If you hear it, you  
1062 should fear it and when you see it, flee it.





PROVIDER INFORMATION			
Agency Name Area Ambulance Services		Date Report Filed 08/23/14	
Address of Agency 300 West Berry Street, Carmel, Indiana			
Name of Person Filing Report Perry Meddick		Title EMT	
DETAILS OF INCIDENT			
Incident Date 08/23/14	Incident Time 8:12	AM x PM	Weather Condition Thunderstorm /Lightning
Type of Incident Lightning Strike			
Incident Location Amphitheater of Wooded Hills			
Crew Member(s) (1) Perry Meddick (2) Darrel B. Moore			
Injured Patient(s) <input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No	Injured Staff <input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No	Other Injuries <input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No	*If yes, include PCR (Patient Care Report).
Patient Name Doane Orr	Date of Birth 08/20/1979	Name of Hospital Rolling Meadows Hospital	
STATUS AT TIME OF INCIDENT			
<input checked="" type="checkbox"/> Responding to 911 Call	<input type="checkbox"/> Enroute to Medical Facility with Patient	<input type="checkbox"/> Not on Assignment	
<input type="checkbox"/> Non-Emerg Transport	<input type="checkbox"/> Enroute to Medical Facility without Patient	<input type="checkbox"/> Other (Specify): _____	
<input type="checkbox"/> On Scene	<input type="checkbox"/> Responding for Non-Emerg Transport		
Oriented to person, place, time? NO	Coherent Speech? NO	Auditory or Visual Hallucinations? N/A	
SUMMARY OF INCIDENT			
<p>EMT crew dispatched to Amphitheater to respond to 9-1-1 call of a lightning strike victim. Patient was located under a tree, lying flat on the ground unresponsive with impaired vitals. Spouse, Val Orr, stated that patient was too drunk to make it to their car when the thunderstorm arrived, so they took cover under a nearby tree. Patient was lying flat under the tree when EMT crew arrived. The lightning struck the tree and a ground charge hit patient. Val Orr did not attempt CPR. Val Orr stated that they were unaware that a tree is not a safe place to take cover in a thunderstorm.</p>			



2CU Labs  
 3701 Kessler Blvd, Indianapolis, IN 46202  
 Phone: (317) 232-4900 Fax: (317) 232-2972  
 e-mail: 2cu@2culabs.com  
 Cody Blue, PhD, DABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 09/04/2014 12:40 p.m.

Patient Name: Doane Orr  
 Patient ID: RMH5287  
 Age: 25 Y  
 Work Order: 08005520

Positive Findings:

Compound	Result	Units	Matrix Source
Ethanol	14	mg/dL	Post Mortem Blood
Blood Alcohol Concentration (BAC)	0.14 %	w/v	Post Mortem Blood

Specimens Received:

<u>ID Tube/ Container</u>	<u>Volume/ Mass</u>	<u>Collection Date/ Time</u>	<u>Matrix Source</u>
001 Clear vial	10 mL	08/23/2014 09:30 PM	Post Mortem Blood

Specimens received on 08/25/2014

Testing Requested:

<u>Analysis Code</u>	<u>Description</u>
8052B	Post Mortem Toxicology - Expanded, Blood

## LIVE PERFORMANCE AGREEMENT

The parties hereto, agree to be bound, and agree as follows:

1. Dis-Chord, Inc. ("Band") is hereby retained by the Amphitheater of Wooded Hills ("AWH") to perform a musical performance ("Concert") as follows:

- A. Date of Performance: August 23, 2014
- B. Band's Performance Time: 8:00 P.M.
- C. Duration of Performance: 1.5 hours
- E. Place: Amphitheater of Wooded Hills
- F. Performance Fee: \$285,000.00
- G. Sound and Lights provided by: Band

2. This Contract cannot be canceled by AWH 30 days prior to the Performance Date, without the written consent of Band. If AWH cancels after that time, payment of the full Performance Fee will still be due.

3. All payments shall be made on the date of the Concert. The Band shall only be entitled to the payment identified above, unless additional payments are mutually agreed to in writing.

4. The Band must make its whereabouts known to the AWH 60 minutes prior to the scheduled performance time and must be at the performance site at least 30 minutes prior to the scheduled start of the performance. **BAND IS EXPECTED TO BEGIN ON TIME**

5. The AWH's facility is to be used solely for the purpose of the Concert and is provided in "as is" condition. The Band shall not make any alterations, additions, or other changes to the Facility or any property of the AWH.

6. Pyrotechnic or pyrotechnic devices of any kind are strictly prohibited by the AWH. Use of any such devices during the Concert shall be deemed a material breach of this Agreement and is grounds for nonpayment pursuant to this Agreement.

7. For safety reasons, concert goers are not permitted on stage for any reason. Band agrees to actively discourage any such behavior, including but not limited to mosh pits, stage diving, and slam dancing and, if necessary, Band shall request that the audience comply with such behavior, or suspend performance until compliance occurs.

8. Band reserves the right to cancel the performance, or to delay the performance for a sufficient time to correct problems, if, in its sole discretion, the performance area is inadequate or dangerous, if weather conditions make performance dangerous or damaging to equipment and AWH has not provided adequate shelter, or if AWH has otherwise failed to meet the terms of this Contract.

9. If cancellation or delay of performance by Band is due to AWH's failure to meet the terms of this Contract, including failure to provide adequate protection from weather conditions, then AWH shall make payment of the Performance Fee in full.

10. Placement and numbers of security personnel will be at the discretion of the AWH.

11. This Agreement shall be binding upon the parties. Neither party may assign, transfer or delegate, in whole or in part, its rights or obligations under this Agreement except with the prior written agreement. Any changes to this Agreement shall be in writing, signed by both parties.

12. If either party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, AWH shall have the right to reschedule the concert at a time mutually agreed upon with the Band. The Band will not be compensated for any expenses incurred for the original date of performance. Events beyond a party's reasonable control shall include, but are not limited to: (1) Acts of God, (2) any order, rule or regulation of any court or government agency, (3) government restrictions, (4) wars, insurrections, terrorism, or civil disorder in or around the performance venue, (5) strikes, lockouts, or other forms of labor difficulties, and/or (6) any other cause beyond the reasonable control of the party whose performance is affected ("Force Majeure Event"). If a Force Majeure Event occurs pursuant to this paragraph, the parties' respective obligations will be excused fully, without any additional obligations, and each party shall bear its own costs incurred in connection with this Agreement. If the performance is cancelled pursuant to a Force Majeure event, then the parties will use reasonable efforts to reschedule the performance at a mutually acceptable time.

IN WITNESS WHEREOF, the parties have executed this Agreement, by their respective officers hereunto duly authorized, the day and year written above.

AGREED TO AND ACCEPTED:

DISCHORD, INC.

By /s/ Mel O'Dee (Signature)

September 24, 2013 (Date)

AMPHITHEATER OF WOODEN HILLS

By /s/ Max Doolittle (Signature)

September 28, 2013 (Date)

CURRICULUM VITAE  
LOUDEN CLEAR

AREAS OF SPECIALIZATION

- Lightning Safety Education
- Weather Analysis and Forecasting
- Severe and Unusual Weather
- Observations and predictability of high-impact, hazardous weather events

EDUCATION

Ph.D. - Atmospheric Science, University of Missouri - Columbia, MO, 1995

M.S. - Atmospheric Science, University of Missouri - Columbia, MO, 1991

B.S. - Meteorology, State University of New York at Oswego - Oswego, NY, 1988

PROFESSIONAL EXPERIENCE

2014 – Present	Certified Consulting Meteorologist, Silver Spring, MD
2011- 2014	Lightning Safety Specialist, National Weather Service, Silver Spring, MD
2007 - 2011	Professor, Department of Earth and Atmospheric Science, Purdue University, West Lafayette, IN; Department Chair: 2009 – 2011.
2001 - 2007	Associate Professor, Department of Earth and Atmospheric Sciences, Purdue University, West Lafayette, IN.
1995 - 2001	Assistant Professor, Department of Earth and Atmospheric Sciences, Purdue University, West Lafayette, IN.

AWARDS AND HONORS

- Silver Medal Award, Department of Commerce, 2014
- Public Education Award, National Weather Association, 2013
- Cleveland Abbe Award, American Meteorological Society, 2010.
- Science Advocate Award, University Corporation for Atmospheric Research, 2005-12
- Outstanding Teacher Award, Purdue University, 2004, 2006 - 2011
- Sagamore of the Wabash, (State of Indiana), 2010

PROFESSIONAL MEMBERSHIPS

- American Meteorological Society, Fellow
- American Association for the Advancement of Science

PUBLICATIONS

- The presentation of storm information in television broadcasts: What is normal? Nat. Wea. Dig., 2012
- Weather, Climate and Worldviews: The sources and consequences of public perceptions of local weather patterns. Weather, Climate, and Society Journal, May, 2010.
- The climatology of Indiana tornadoes. American Meteorology Society Bulletin, November 2009.
- Principal Investigator - September 2003 to August 2004: Severe Local Storms. Grant, National Oceanic and Atmospheric Administration.



NATIONAL WEATHER SERVICE  
LIGHTNING STRIKE DATA  
FOR INDIANAPOLIS

<u>2012</u>		<u>2013</u>		<u>2014</u>	
June 29, 2012	2	June 13, 2013	15	June 2, 2014	1
July 18, 2012	13	June 23, 2013	47	June 4, 2014	3
July 19, 2012	7	June 26, 2013	1	June 11, 2014	4
July 20, 2012	1	June 29, 2013	1	June 18, 2014	38
July 27, 2012	2	July 1, 2013	2	June 19, 2014	16
August 4, 2012	44	July 2, 2013	1	June 30, 2014	16
August 5, 2012	136	July 3, 2013	5	June 24, 2014	1
August 9, 2012	30	July 10, 2013	1	June 23, 2014	3
August 10, 2012	48	July 20, 2013	2	July 7, 2014	1
August 16, 2012	8	July 22, 2013	1	July 8, 2014	7
August 17, 2012	1	August 31, 2013	22	July 23, 2014	404
August 27, 2012	1	September 1, 2013	32	July 26, 2014	171
September 1, 2012	13	September 19, 2013	40	July 27, 2014	11
September 7, 2012	5			July 29, 2014	46
September 8, 2012	168			July 30, 2014	1
September 21, 2012	9			August 1, 2014	2
September 22, 2012	2			August 4, 2014	8
				August 20, 2014	561
				August 22, 2014	36
				August 23, 2014	37
				August 25, 2014	50
				August 26, 2014	84
				September 2, 2014	25
				September 6, 2014	12
				September 10, 2014	14
				September 11, 2014	50
				September 15, 2014	8
				September 21, 2014	1

INDIANAPOLIS AREA FORECAST FROM THE NATIONAL WEATHER SERVICE  
AS OF TUESDAY, AUGUST 19, 2014

Tonight: Evening storms could be severe. Dry overnight. Low 69.

Wednesday: Partly sunny. High 87.

Wednesday Night: Chance of evening showers and storms. Likely after midnight. Low 71.

Thursday: Partly to mostly cloudy with a chance of showers and storms, mainly in the morning. High 88.

Thursday Night: Slight shower and storm chances. Low 72.

Friday: Partly sunny with a slight shower/storm chance. High 90.

Friday Night: Slight shower and storm chances. Low 73.

Saturday: Partly sunny with a slight shower/storm chance. High 91.

Saturday Night: Partly cloudy. Low 72.

INDIANAPOLIS AREA FORECAST FROM THE NATIONAL WEATHER SERVICE  
AS OF FRIDAY, AUGUST 22, 2014

Today: Partly to mostly cloudy with periods of showers and storms. Best chances are north and east of Indianapolis, especially in the morning. High 88.

Tonight: Shower and storm chances. Low 73.

Saturday: Partly to mostly cloudy with scattered showers and storms. High 88.

Saturday Night: Partly cloudy. Low 72.

EXCERPTS FROM WEATHERFIRST AUTOMATED TEXT MESSAGES FOR  
CENTRAL INDIANA BETWEEN AUGUST 20, 2014 THROUGH AUGUST 23, 2014

August 20, 2014 7:45 p.m. Numerous Severe Thunderstorm Warnings are now in effect for Central Indiana as a line of strong and severe thunderstorms continues to move to the Southeast. Damaging winds in excess of 60 mph, frequent lightning and very heavy rainfall are likely.

August 21, 2014 6:54 p.m. A Severe Thunderstorm Warning has been issued for Marion, Hendricks and Boone Counties, including the City of Indianapolis, until 11:15 p.m. Damaging winds up to 65 mph, quarter size hail, frequent lightning and very heavy rainfall are likely.

August 21, 2014 9:21 p.m. Severe Thunderstorm Warning has been issued for Marion, Hendricks and Boone Counties; frequent lightning 60 mi NW of Indianapolis.

August 22, 2014 10:23 p.m. A Severe thunderstorm watch has expired but a few flash flood warnings remain in effect. Storms with heavy rain and damaging winds possible later tonight and through sunrise Friday.

August 23, 2014 3:56 p.m. Heavy rain and frequent lightning observed near Crawfordsville.

August 23 2014 4:04 p.m. Storms will continue to move southeast as the winds move them toward Indy. Isolated storms ahead of main storm line.

August 23, 2014 4:43 p.m. Line of storms continues to push SE into the Indianapolis area but scattered storms form ahead of the main line

August 23, 2014 5:39 p.m. Strong t-storm advisory for Hendricks, Marion, Morgan Counties till 6:15 p.m. 50 mph winds possible.

August 23, 2014 6:26 p.m. Strong t-storm advisory for SE Hendricks, NW Johnson and southern Marion County until 7:15 p.m.

August 23, 2014 7:14 p.m. At 7 p.m., heavy showers and thunderstorm activity from Kokomo to Indianapolis to Seymour. Much of the state has seen heavy rain and gusty winds this afternoon and now the focus moves into eastern Indiana. Light rain still continues west of Indianapolis.

August 23, 2014 7:37 p.m. T-storm advisory of scattered storms with some intense lightning for east of Indianapolis.

August 23, 2014 8:06 p.m. Thunderstorm warning. Lightning intense storm in Seymour at 8 p.m. Heavy rain pushes southeast of Indianapolis.