

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ST. MICHAEL’S MEDIA, INC.,

Plaintiff,

v.

THE CITY OF BALTIMORE, *et al.*,

Defendants.

Case No. 1:21-cv-02337-ELH

**PLAINTIFF’S REPLY IN SUPPORT OF**  
**AMENDED MOTION FOR**  
**PRELIMINARY INJUNCTION**

**1.0 INTRODUCTION**

Defendants’ Opposition to Plaintiff’s Motion contains admissions that the Government is openly restricting Plaintiff’s First Amendment rights on the basis of viewpoint. It argues such discrimination is justified based on an erroneous view of relevant legal standards, as well as unsupported speculation that two speakers out of many more *may* draw counter-protesters who would try to enact a heckler’s veto. Defendants support this heckler’s veto, but the First Amendment does not. Defendants have provided no factual basis or evidence that any violence might occur at Plaintiff’s rally – and no support for the notion that Plaintiff would cause enough violence to disturb a poorly positioned wine glass, much less enough to warrant a suspension of the First Amendment.

**2.0 FACTUAL BACKGROUND**

The majority of the factual background of this case is laid out in Plaintiff’s Motion (*see* Dkt. No. 15 at 3-7) and incorporated by reference. In short, St. Michael’s is a Catholic organization that plans to have a peaceful rally at the MECU Pavilion on November 16, 2021, for the purpose of, *inter alia*, criticizing the U.S. Conference of Catholic Bishops (“USCCB”). It was in the process of making arrangements for the rally and entered into a contractual relationship with the manager of the property, Defendant SMG, for the event, when the Government unilaterally canceled this contract. Michael Voris of St. Michael’s then spoke with Defendant James Shea

about the cancellation, and Shea told Mr. Voris that he had heard of unspecified reports that St. Michael's had ties to the January 6 insurrection in Washington, D.C. and that the City decided Plaintiff's rally was a security risk.

Since the suit was filed and the Court entered a TRO against the Government Defendants, St. Michael's and SMG resumed their arrangements for the November 16 rally and agreed to all terms of the contract for the event. SMG sent a completed contract to St. Michael's for signature. St. Michael's accepted the terms, sent a deposit, and signed the contract. Suddenly, again, SMG declined to sign the contract on the advice of its counsel, who also work for and represent the Government Defendants in an obvious conflict of interest. (*See* Dkt. No. 19-2.)

Defendants' Opposition clarifies some issues, while misrepresenting others. They admit that they own MECU Pavilion. (Dkt. Nos. 25-2 & 25-3.) They also admit that they ordered SMG to "cease talks with . . . St. Michael's . . . to use the MECU Pavilion." (Dkt. No. 25-4 at ¶ 3.)

Defendants admit either that Defendant Shea was lying to Mr. Voris when explaining the reason for canceling the contract, or that Defendants are now misrepresenting their reasoning. The Opposition argues that Defendants canceled the contract because they were concerned about the possibility of violence resulting from Steve Bannon and Milo Yiannopoulos speaking at Plaintiff's rally, citing a number of inadmissible media articles that discuss either politically-charged statements from these speakers or times where they drew counter-protesters who became violent. (*See* Dkt. No. 25-1 at 8-10.)<sup>2</sup> Defendants also claim that they canceled the contract because of

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<sup>2</sup> This proffered rationale is not credible. Mr. Voris spoke at length with Shea regarding the reasons Defendants canceled the November 16 rally. Not once did Shea mention that any of the speakers created a risk of violence. (Dkt. No. 8-1.) He mentioned only that someone found something on the Internet which falsely claimed St. Michael's had "ties to the January 6 riot" (Dkt. No. 8-1 at ¶¶ 18-19) and that St. Michael's was a security risk for unspecified reasons. (*Id.* at ¶¶ 23-24.) But even if this were, in fact, the Government's initial reasoning for canceling Plaintiff's rally, it would not help Defendants. It is worth noting that in the interest of compromise, St. Michael's even offered to remove whichever speakers the Government wanted from the rally. The Government refused this. St. Michael's also offered to let the Government pre-approve any speeches. The Government refused. The Government is so hostile to St. Michael's that it rejected these offers, presumably because the Government simply disagrees with St. Michael's to such an extent that its belated new excuse, that it doesn't like two of the speakers, is itself pretextual.

statements Mr. Voris made in an online video that expressed an opinion about the legitimacy of the 2020 Presidential election and the events of January 6. This is apparently the extent of the alleged “ties”<sup>3</sup> between St. Michael’s and the people who participated in the events of that day.<sup>4</sup> Meanwhile, Plaintiff will present extensive evidence at hearing, including witness statements, that there is no such tie, that the City’s evidence of such “rumors” is flawed, and that security will not be an issue.<sup>5</sup>

### 3.0 LEGAL ARGUMENT

#### 3.1 St. Michael’s Media is Likely to Succeed on the Merits of its Claims

St. Michael’s Media asserts claims under 42 U.S.C. § 1983 for violation of the First Amendment: (1) freedom of speech; (2) free exercise of religion; (3) violation of the establishment

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<sup>3</sup> Tellingly, Defendants do not even attempt to identify the source of this claim and do not bother to repeat it in their Opposition. This calls Shea’s credibility into question.

<sup>4</sup> Defendants also briefly try to impute some sinister meaning to the name “Church Militant” that St. Michael’s uses for itself. This argument is a bigoted statement, trying to smear Plaintiff’s faith. In Catholic theology, there are “three states of the Church.” The Church Triumphant, which consists of Christians who have ascended to Heaven; the Church Penitent (Christians currently in purgatory); and Church Militant (Christians who struggle on earth to combat sin). The only “church” to which a living human can belong is the “Church Militant.” And in fact, every Christian is thus a member of “The” Church Militant. The name does not suggest that St. Michael’s is violent, and Defendants cannot point to a single incident of St. Michael’s ever being violent or promoting violence. The City claims that it has extensive evidence “from the Internet” that St. Michael’s is violent. However, if it simply googled the term “Church Militant,” it should have found this information. See, e.g., [https://en.wikipedia.org/wiki/Churches\\_Militant\\_Penitent\\_and\\_Triumphant](https://en.wikipedia.org/wiki/Churches_Militant_Penitent_and_Triumphant). The attempt to smear Plaintiff by trying to imply that the term “Militant” has a violent connotation is not clever, but is a terribly disappointing demonstration of bigotry – such as when an Islamophobe might refer to “Jihad” to smear Muslims – as if it had no other meaning than the violent interpretation (it literally means “the spiritual struggle within oneself against sin” – or how an anti-Semite would use the term “zionist” to infer that a Jewish citizen has “divided loyalties” or is practicing bigotry. See, e.g., <https://www.ajc.org/translatehate/Zionism-is-racism>; Rahm Emanuel, "I've Faced the Charge of Dual Loyalty, It was anti-Semitic then, and it's anti-Semitic now." The Atlantic, March 7, 2019 (available at <https://www.theatlantic.com/ideas/archive/2019/03/ilhan-omars-dual-loyalty-charge-was-anti-semitic/584314/>)

<sup>5</sup> The Plaintiff intends to call Kent Campbell as an expert in online reputation, to rebut the City’s testimony. See **Exhibit 8**. Further, the Plaintiff intends to proffer its security chief’s assessment of the security risks. Given the tight deadline, these reports are not completed, but will be filed as errata the moment they are.

clause; and (4) freedom of assembly. It also asserts a claim for specific performance on the contract between St. Michael's and SMG. St. Michael's is likely to succeed on all its claims, though for purposes of this Motion there is no need to argue the free exercise and establishment clause claims in light of Defendants' Opposition, which surprisingly confesses to violations of the first two claims.

### **3.1.1 Free Speech Claim**

#### **3.1.1.1 The MECU Pavilion is a Designated Public Forum**

Defendants admit they own Pier VI and the MECU Pavilion, which is merely managed by private entity SMG. (Dkt. Nos. 25-2 & 25-3.) This requires a discussion of whether the Pavilion is a public forum and, if so, what kind. Courts in First Amendment public forum cases use a three-part test to determine the proper analytical framework: (1) whether the speech is protected; (2) the nature of the forum where the speech is to occur and the proper standard for restrictions in that forum; and (3) whether the government justification satisfies the applicable standard. *Cornelius v. NAACP Legal Defense & Education Fund*, 437 U.S. 788, 797 (1985).

There are three categories of government spaces: (1) traditional public forums; (2) designated public forums; and (3) non-public forums. Traditional public forums are "places which by long tradition or by government fiat have been devoted to assembly and debate," and restrictions on speech in them are subject to strict scrutiny, meaning the Government must "show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). The typical example of a traditional public forum is a public park, street, or sidewalk. *See Hassay v. Mayor of Ocean City*, 955 F. Supp. 2d 505, 519 (D. Md. 2013) (Hollander, J.) A designated public forum "is a nonpublic government site that has been made public and 'generally accessible to all speakers.'" *Sons of Confederate Veterans v. City of Lexington*, 722 F.3d 224, 230 (4th Cir. 2013) (quoting *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Sch.*, 457 F.3d 376, 382 (4th Cir. 2006)). This kind of forum "may be made available 'for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects.'"

*Id.* The Government makes property a public forum when it “purposefully open[s] it to the public, or some segment of the public, for expressive activity.” *ACLU v. Mote*, 423 F.3d 438, 443 (4th Cir. 2005). “As long as a dedicated public forum remains open, ‘it is bound by the same standards as apply in a traditional public forum,’” *i.e.*, the Government must satisfy strict scrutiny. *City of Lexington*, 722 F.3d at 231 (quoting *Perry*, 460 U.S. at 46).<sup>6</sup> A non-public forum is “[p]ublic property which is not by tradition or designation a forum for public communication,” such as an airport or an election polling place. *See Perry*, 460 U.S. at 45-46. A non-public forum may be identified by whether “opening it to expressive conduct would ‘somehow interfere with the objective use and purpose to which the property has been dedicated.’” *Davison v. Randall*, 912 F.3d 666, 681-82 (4th Cir. 2019) (quoting *Mote*, 423 F.3d at 443). A restriction on speech in a non-public forum is permissible if it “‘is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.’” *Multimedia Pul’g Co. of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154-159 (4th Cir. 1993) (quoting *Perry*, 460 U.S. at 46).

The Supreme Court’s first explicit statement of the designated public forum doctrine came in *Southeastern Promotions v Conrad*, 420 U.S. 546 (1975). Southeastern Promotions sought permission to use Chattanooga, Tennessee’s municipal auditorium for performances of the musical “Hair.” Although the auditorium had been rented for a wide variety of expressive activities prior to Southeastern’s application, Chattanooga city officials refused Southeastern’s request, citing Hair’s nudity, tacit approval of drug use, sexual themes, and bad language. The Court found the municipal auditorium to be a designated public forum, and the city’s refusal to permit use of its auditorium to be an unconstitutional prior restraint. *Id.* at 557-58, 562. The degree of protection afforded to an event in a public forum is not affected by a subjective determination of the expressive merit of speech. *See Norma Kristie, Inc. v. Oklahoma City*, 572 F. Supp. 88, 91-92 (W.D. Okla. 1983) (applying *Conrad*, finding publicly owned convention center managed by

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<sup>6</sup> There is also a sub-category of designated public forums known as limited public forums, which exist where “the government creates a channel for a specific limited type of expression where one did not previously exist.” *Child Evangelism*, 457 F.3d at 382. The MECU Pavilion is not a limited public forum, as it is not a space reserved for particular kinds of speech.

private company was designated public forum, and finding national contest for female impersonators in “Miss Gay American Pageant” entitled to full First Amendment protections upon rejecting government argument that it was contrary to community standards).

The MECU Pavilion is a designated public forum. It is dedicated to general use by the public for a wide variety of reasons, with SMG managing it for the City, as SMG admits. The Royal Farms website states “*Royal Farms Arena is Baltimore’s premier multi-use sports and entertainment facility and is a great place to host a wide variety of events. Our flexible and dynamic space has the ability to accommodate major concerts, family shows, sporting events, college commencements, conferences, corporate events and political function . . . We can also facilitate booking your event at the legendary MECU Pavilion . . . MECU offers the perfect space to enjoy entertainment along Baltimore’s famed Inner Harbor.*” (“Book an Event” page of Royal Farms website, attached as **Exhibit 1**.)<sup>7</sup> The Government allows a wide variety of people to use the venue for a wide variety of purposes. Indeed, Defendants permitted St. Michael’s to hold the same kind of rally for the same purpose in 2018;<sup>8</sup> they can hardly argue now that the November 16 rally falls outside the purposes to which the Pavilion has been dedicated.

Defendants argue that MECU Pavilion is a nonpublic forum because not all members of the public are automatically capable of entering it at any time. This misapprehends public forum analysis. *Goulart v. Meadows*, 345 F.3d 239 (4th Cir. 2003) dealt with publicly owned community centers requiring permission to use. However, “the Recreation Coordinators at the community centers make only ministerial judgments because they are allowed to deny an application only if it is ‘not in accordance with the provisions outlined in the [Use Policy].’ In other words, if a

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<sup>7</sup> Available at: <http://www.royalfarmsarena.com/business-opportunities/book-an-event> (last accessed Sept. 26, 2021).

<sup>8</sup> Defendants argue that the November 16 rally is distinct from the 2018 one because more people are planned to attend this year’s rally. This does not much matter, however, as the event is scheduled for a maximum of 3,000 people, while the MECU Pavilion can accommodate 4,500, leaving plenty of room for rally-goers. (See Ticketmaster “Venue Guide” for the MECU Pavilion, attached as **Exhibit 4**) (available at: <https://blog.ticketmaster.com/venue-faq-mecu-pavilion-baltimore-md/>) (last accessed Sept. 26, 2021).

proposed user falls within the confines of the Use Policy, the application will be granted.” *Id.* at 250-51. It then found the community centers to be either designated or limited public forums. *Id.* at 251. Access to a forum is thus not “selective” merely because the Government must approve the use of the forum by the public, but rather it is selective only when the Government has chosen to limit the acceptable uses of the forum. That is not the case - MECU Pavilion may be used by essentially anyone.

Defendants’ cases are inapposite. *New Eng. Reg’l Council of Carpenters v. Kington*, 284 F.3d 9 (1st Cir. 2002) dealt with a fishing pier that had traditionally been used for commercial fishing but expanded to include a conference center, eateries, and offices. The court found that “the dominant character of the property is still that of a commercial fishery” and the government agency running the commercial fishery at most “tolerates the presence of some members of the public on the Fish Pier.” *Id.* at 22-23. Notably missing was an affirmative act showing a government intent to designate the property “as a place for public expression.” *Id.* at 23. Here, however, the MECU Pavilion is dedicated specifically for the purpose of allowing expressive speech of the general public; it is not a factory that private businesses happened to form around.<sup>9</sup>

Defendants cite *Chicago Acorn v. Met. Pier & Expo. Auth.*, 150 F.3d 695, 699 (7th Cir. 1998), which dealt with a government-owned pier containing public and non-public facilities and found that *private meeting rooms within one of the facilities* were not designated public forums. It came to this conclusion, because the entire pier was being managed as a commercial entity, and

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<sup>9</sup> The Pavilion has a tribute band for PRIMUS scheduled soon. (See Royal Farms page for “PRIMUS – A Tribute to Kings,” attached as **Exhibit 5**) (available at: <https://www.livenation.com/event/1AvfZp7GkSIX97m/primus-a-tribute-to-kings>) (last accessed Sept. 26, 2021.) The Pavilion hosted Garrison Keillor’s Prairie Home “Love and Comedy” tour in September 2017. (See MECU Pavilion Facebook post advertising Prairie Home tour, attached as **Exhibit 6**) (available at: <https://m.facebook.com/MECUPavilion/photos/a.93704663441/10155375883013442/?type=3>) (last accessed Sept. 26, 2021.) In August 2015, it hosted comedian Jim Gaffigan. (See MECU Pavilion Facebook posting for “Jim Gaffigan at Pier Six Pavilion, attached as **Exhibit 7**” (available at: [https://www.facebook.com/events/1603807349834417/?acontext=%7B%22event\\_action\\_history%22%3A\[%7B%22surface%22%3A%22page%22%7D\]%7D](https://www.facebook.com/events/1603807349834417/?acontext=%7B%22event_action_history%22%3A[%7B%22surface%22%3A%22page%22%7D]%7D)) (last accessed Sept. 26, 2021).)

that conduct occurring at or people attending one facility could have positive or negative economic effects for another facility; “[s]electivity and restriction are of the essence of the commercial strategy that informs the MPEA’s management of the pier.” *Id.* at 700. Here, however, there is no suggestion that the City of Baltimore or SMG carefully curate who may book which events at the MECU Pavilion as part of a comprehensive strategy for the economic area. Rather, nearly any member of the public may book nearly any kind of event there. Similarly, the court in *Fla. Gun Shows v. City of Fort Lauderdale*, No. 18-62345-FAM, 2019 U.S. Dist. LEXIS 26926 (S.D. Fla. Feb. 19, 2019) found that an auditorium was a non-public forum because the government previously denied use of the venue to other events that it found to be unsuitable and that “access to the venue is not open to all who apply for a lease.” *Id.* at \*29-30. There is no evidence of such selectivity here. Defendants’ position is precisely that of Chief Justice Rehnquist’s dissent in *Conrad* decrying the possibility of municipally owned theatres and other entertainment venues not being able to discriminate on the basis of content or viewpoint. *Conrad*, 420 U.S. at 572-73 (Rehnquist, J., dissenting). The Supreme Court rejected Rehnquist’s position.

Defendants finally argue the MECU Pavilion is a non-public forum because St. Michael’s requires tickets to attend.<sup>10</sup> This is a non-sequitur. A venue’s public forum status is not determined by what the organizers do with their event, but by whether it has been dedicated by the government for public use. The MECU Pavilion will not be open to anyone who simply wanders by during the rally, but anyone can reserve the Pavilion for almost any kind of event, whether it be political, musical, or educational. Defendants’ argument, if accepted, would mean that a public park is a non-public forum because the government allows a Shakespeare festival to perform in it a few days a year and charges an admission fee. Needless to say, this is wrong.

### **3.1.1.2 Defendants’ Exercise of Unfettered Discretion is Unconstitutional**

Regardless of the type of public forum, “there is broad agreement that . . . investing

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<sup>10</sup> Defendant rely heavily on the “heckler’s veto” as a reason to censor the event, yet requiring tickets would seemingly be the most effective way to keep hecklers separated from the faithful.

governmental officials with boundless discretion over access to the forum violates the First Amendment.” *Child Evangelism*, 457 F.3d at 386. “For this reason, even in cases involving nonpublic or limited public forums, a policy . . . that permits officials to deny access for any reason, or that does not provide sufficient criteria to prevent viewpoint discrimination, generally will not survive constitutional scrutiny.” *Id.* at 387. A “corollary of the prohibition on viewpoint discrimination is the principle that administrators may not possess unfettered discretion to burden or ban speech, because ‘without standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or view-point of the speaker.’” *Child Evangelism Fellowship v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1068 (quoting *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 763-64 (1988)). Rules without guardrails like this—where the City can veto any event it wants—run the risk (a proven risk) that the government will use claimed neutral standards in pretextual and censorial ways, “hiding the suppression from public scrutiny.” *Child Evangelism*, 457 F.3d at 386. Accordingly, the City’s position that it has this power has unwittingly walked the City into a scenario where the entire regulation should be struck down as facially unconstitutional, as well as unconstitutionally applied in this case.

The government may not “condition speech on obtaining a license or permit from a government official in that official’s boundless discretion.” *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (deciding whether an official has unbridled discretion in setting permit fee for public speaking events, parades, or assemblies); *see Se. Promotions v. Conrad*, 420 U.S. 546 (1975) (addressing whether municipal board charged with leasing city auditorium had unbridled discretion); *Saia v. People of N.Y.*, 334 U.S. 558, 559-60 (1948) (addressing whether licensing use of amplifiers gave police chief unfettered discretion); *Am. Entert. v. City of Rocky Mount*, 888 F.3d 707, 720 (4th Cir. 2018) (deciding licensing scheme for sexually oriented businesses gave licensing official unfettered discretion).

The standard form contract SMG presented to St. Michael’s for use of the MECU Pavilion has content-neutral requirements, and SMG approves applicants who meet these requirements.

However, Defendants may then swoop in with the unilateral right to interfere with the contracts for any reason – without guardrails. (See Dkt. No. 8-2 at 3.) Defendants have not identified any standards used to determine when the Government may order SMG to cancel a contract for use of the MECU Pavilion. When Mr. Voris asked Shea what standards were used to cancel Plaintiff’s contract with SMG, Shea refused to answer. (Dkt. No. 14 at ¶ 33.) Government Defendants have given themselves unfettered discretion to deny any event at the MECU Pavilion for any reason, despite dedicating it as a public space for expression. This unfettered discretion adds another layer of constitutional infirmity to the Government’s conduct and requires application of strict scrutiny. If the Fourth Circuit has ever upheld such governmental discretion, Plaintiff has not found it.

Relatedly, Government Defendants argue they should be held to a lower level of scrutiny because they are a “proprietor” of MECU Pavilion instead of a “regulator.” (Dkt. No. 25-1 at 24-25.) They want it both ways, by arguing they own the property but are not responsible for what happens there. This argument is inconsistent, as they have given themselves the unilateral authority to disallow any event for any reason. They are directly regulating speech here by exercising unfettered veto power.

The City argues inconsistently that MECU Pavilion is a privately run, but city owned property. They cannot use “private” where it helps and “public” where it does not. “The Supreme Court never has circumscribed forum analysis solely to government-owned property.” *Davison v. Randall*, 912 F.3d 666, 682-683 (4th Cir. 2019). Certainly, the converse is true - that government ownership, with management delegated to a private entity will not flip the analysis. Private property is a public forum when the government retains substantial control over the property by regulation or contract. See, e.g., *Conrad*, 420 U.S. at 547, 555 (finding “a privately owned Chattanooga theater under long-term lease to the city” was a “public forum[] designed for and dedicated to expressive activities”); *Christian Legal Soc’y Chapter v. Martinez*, 561 U.S. 661, 679 (2010) (“this Court has employed forum analysis to determine when a governmental entity, in regulating property in its charge, may place limitations on speech”); *First Unit. Church v. Salt Lake City Corp.*, 308 F.3d 1114, 1122 (10th Cir. 2002) (“forum analysis does not require that the

government have a possessory interest in or title to the underlying land. Either government ownership or regulation is sufficient for a First Amendment forum of some kind to exist”). Government ownership of the property triggers Constitutional obligations. The Government Defendants cannot avoid this.

### 3.1.1.3 Defendants’ Restriction on Speech is Viewpoint-based

Because MECU Pavilion is a public forum, the Government must pass strict scrutiny. But even if the Pavilion were not a public forum, Defendants’ restriction on Plaintiff’s speech, namely not allowing St. Michael’s to conduct its rally, is impermissible because it is viewpoint-based.

A restriction on speech is content-based when it seeks to restrict a particular subject matter. *See Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). Any restriction on speech based on the message conveyed is presumptively unconstitutional. *See Turner B’casting Sys. v. FCC*, 512 U.S. 622, 641-43 (1994). This presumption becomes stronger when a government restriction is based not just on subject matter, but on a particular viewpoint expressed about that subject. *See R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992). The government cannot impose restrictions on speech where the rationale for the restriction is the opinion or viewpoint of the speaker. *See Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983). A content-based restriction on speech must satisfy strict scrutiny, meaning it furthers a compelling government interest and is narrowly tailored to achieve that interest. *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011). “The ‘government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Saltz v. City of Frederick*, Civil Action No. ELH-20-0831, 2021 U.S. Dist. LEXIS 88283, at \*42-43 (D. Md. May 10, 2021) (Hollander, J.) (quoting *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). Because of this, “‘a viewpoint-based restriction of private speech rarely, if ever, will withstand strict scrutiny review.’” *Id.* (quoting *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v.*

*Mayor & City Council of Balt.*, 721 F.3d 264, 288 (4th Cir. 2013)).<sup>11</sup>

The Supreme Court has found that “[g]iving offense is a viewpoint.” *Matal v. Tam*, 137 S. Ct. 1744, 1749 (2017). “[D]isparaging the views of another to support one’s own cause is protected by the First Amendment.” *Bible Believers v. Wayne County*, 805 F.3d 228 (6th Cir. 2015) (en banc) (finding government enacted heckler’s veto by failing to protect, and eventually removing, evangelical group at Arab International Festival who “parad[ed] around with banners, signs, and tee-shirts that displayed [anti-Muslim sentiments] associated with” their religious beliefs); see *Gerber v. Herskovitz*, 2021 U.S. App. LEXIS 27674, \*34-35, 2021 Fed. App. 0219P, \*21-22 (6th Cir.) (approving of *Bible Believers* and finding that synagogue members could not assert § 1983 claims against government for permitting anti-Israel picketers to demonstrate outside synagogue). Viewpoint neutrality requires the Government not only to refrain from overt discrimination based on viewpoint of speech, but also to “provide adequate safeguards to protect against the improper exclusion of viewpoints.” *Child Evangelism Fellowship*, 457 F.3d at 384.

Mayor Scott’s Chief of Staff, Michael G. Huber, declares that speakers confirmed for the November 16 rally include “*Steve Bannon and others whose speaking engagements and statements have a track record inviting protesters and counter protesters and supporting the January 6 attack on the Capitol in Washington, D.C. According to available media reports, their events and statements have a demonstrated history of inciting property destruction, physical assaults, and other violence, i.e., secondary effects.*” (Dkt. No. 25-3 at ¶ 4 (emphasis added).) Huber tellingly fails to identify any such “media reports.” Defendants cites them (without attaching them) as

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<sup>11</sup> Just as the government cannot compel speech it likes, it equally cannot punish or deter speech, assembly, or religious exercise based on its content or viewpoint. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 61-63 & n.5 (1963) (state decency commission told book distributors that particular publications were objectionable and that it had the power to recommend action by the attorney general - this was unconstitutional); cf. *Chernin v. Lyng*, 874 F.2d 501, 502-03, 506-08 (8th Cir. 1989) (government told employer it would have to fire employee to obtain government inspection services, so employee entitled to due process).

though they are conclusive evidence that the speakers will be violent.<sup>12</sup> Even if these articles were admissible, none claims that Messrs. Bannon or Yiannopoulos directly incited audiences to imminent lawless action. Rather, they discuss either politically charged speech not made in front of a crowd (none of which constitutes a true threat or any other category of unprotected speech), or instances of *others*, wishing to shut them down, becoming violent.<sup>13</sup> There is not a scintilla of evidence to suggest that these speakers have engaged in *unprotected* speech before, much less that they will on Nov. 16. The alleged danger of violence is purely theoretical and insufficient to outweigh Plaintiff's First Amendment rights. "If the First Amendment guarantee means anything, it means that, absent clear and present danger, government has no power to restrict expression because of the effect its message is likely to have on the public." *Central Hudson Gas & Elec. Corp. v. Public Service Commission*, 447 U.S. 557, 575 (1980) (Brennan, J., concurring).

Defendants do not argue that St. Michael's or anyone at the November 16 rally will engage in conduct that is not protected by the First Amendment. They do not allege, much less provide evidence of, any speech that will incite rally-goers to violence or contain "fighting words" (to the extent such things even exist anymore). The primary concern Defendants express in presenting this fictitious scenario is the *possibility* of a *counter-protest*, meaning violence committed not by St. Michael's, but others who wish to harm St. Michael's or censor its speech. The City is worried that third parties will be so offended by the speech at the rally that counter-protesters<sup>14</sup> will attack

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<sup>12</sup> A fundamental problem with this "evidence" is that it is inadmissible hearsay. These are media reports, which cannot be considered to prove the truth of the matter asserted. *See, e.g., Green v. Scott*, 637 Fed. Appx. 749, 751-52 (4th Cir. 2016) (finding media article asserting party opponent made statement was inadmissible to prove that statement was made). St. Michael's does not dispute that media sources have made false claims about Steve Bannon and Milo Yiannopoulos, but Defendants' articles cannot be used to show that these speakers have actually incited or caused violence.

<sup>13</sup> Some of these articles may falsely characterize Bannon or Yiannopoulos's speech as encouraging others to violence, but neither has ever been criminally charged with such conduct and a newspaper's biased reporting on an unpopular public figure is not a substitute for legal analysis. The Court should never accept a newspaper's legal conclusions.

<sup>14</sup> Furthermore, *what counter-protesters?* One of the main purposes of St. Michael's holding its rally at MECU Pavilion is to ensure that U.S. Bishops cannot avoid their history of covering up

rally-goers. This means that Defendants’ restriction on Plaintiff’s speech is based on the *past* unpopular viewpoints of St. Michael’s and two of its scheduled speakers, specifically that their speech will give such offense to third parties that these third parties will become violent.<sup>15</sup> St. Michael’s appreciates the admission that Defendants are inclined to effectuate a heckler’s veto, despite the First Amendment commanding otherwise.

“Historically, one of the most persistent and insidious threats to First Amendment rights has been that posed by the ‘heckler’s veto,’ imposed by the successful importuning of government to curtail ‘offensive’ speech at peril of suffering disruptions of public order.” *Berger v. Battaglia*, 779 F.2d 992, 1001 (4th Cir. 1985). “A heckler’s veto involves burdening speech ‘simply because it might offend a hostile mob.’” *Bennett v. Metro. Gov’t & Davidson Cnty.*, 977 F.3d 530, 544 (6th Cir. 2020) (quoting *Forsyth*, 505 U.S. at 134-35). Granting a heckler’s veto is an impermissible and unconstitutional content-based restriction. *Terminiello v. City of Chicago*, 337 U.S. 1 (1949). The Government has a responsibility to permit controversial speech even when there could be a hostile reaction by others. *See, e.g., Ovadal v. City of Madison*, 416 F.3d 531, 537 (7th Cir. 2005); *Smith v. Ross*, 482 F.2d 33, 37 (6th Cir. 1973); *Grider v. Abramson*, 994 F. Supp. 840, 845-46 (W.D. Ky. 1998).

“When a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals . . . If the speaker, at his or her own risk, chooses to continue exercising the constitutional right to freedom of speech, he or she may do so without fear of retribution from the state, for the speaker is not the one threatening to breach the peace or break the law.” *Bible Believers*, 805 F.3d at 252. The *Bible Believers* court noted

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for the sexual abuse of minors by Catholic priests. Do Defendants fear that a violent gang of pedophilia advocates will attack? St. Michael’s does not say this to be glib; it is forced to speculate as to the identity of counter-protesters because Defendants do not identify any, nor do they even claim to have received reports of possible counter-protesters. These violent agitators are figments of the Government’s imagination or, more likely, a pretext for its viewpoint-based discrimination.

<sup>15</sup> Meanwhile, the City has no idea what these speakers are going to say. St. Michael’s offered to let the City pre-screen their prepared remarks, but the City refused this offer.

that the plaintiffs, who were expressing religious beliefs at a festival only to be physically attacked by protesters, may have conveyed their message in a manner that was “vile and offensive to most everyone who believes in the right of their fellow citizens to practice their faith of his or her choosing; nonetheless, they had every right to espouse their views.” *Id.* at 254-55. The court found it impermissible for the police not to prevent the violence against the speakers, but rather to tell them to leave the festival for “being disorderly” by allegedly causing such violence. *Id.* at 255. It concluded that the government “effectuated a heckler’s veto, thereby violating the Bible Believers’ First Amendment rights.” *Id.*

Imagine if all a white supremacist needed to do to end a “Black Lives Matter” rally would be to get very angry at the content of the rally. Would the City do what it is doing now, or would it abide its duty to suppress the threat, but permit the rally? This analogy is apt, as the City’s argument is that third parties will instigate violence in response to the predicted content and viewpoint of the speeches. Rather than protect St. Michael’s from such alleged violence, Defendants wish to prevent St. Michael’s from speaking. Just as in *Bible Believers*, any allegedly offensive message communicated at Plaintiff’s rally will “not advocate, condone, or even embrace imminent violence or lawlessness,” and so no restriction is warranted. *Id.* at 244. Defendants’ conduct is a heckler’s veto and is unconstitutional.

Defendants claim that Baltimore police are understaffed and that the rally would require significant diversion of police. A group’s First Amendment rights is not contingent on whether a city’s budget can accommodate them. It would serve as a perverse end-run around the First Amendment to allow a city to invent a security threat, use a police officer relying on non-specific “training, education, and experience” to make an arbitrary prediction of the number of police needed to secure the public against this fictitious threat (Dkt. No. 25-5), as a basis for censoring a religious rally.<sup>16</sup> Further, it is premature to even predict what security measures would be

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<sup>16</sup> Deputy Commissioner Sheree Briscoe claims that nearly 200 police officers would be needed to hold back these unidentified attackers. King Leonidas held back 100,000 Persians with 300 Greeks. Meanwhile, the access point to MECU is a tiny foot-bridge a magnitude more narrow

necessary – as making that assessment this far in advance is poor policing.<sup>17</sup>

To remove any doubt as to Defendants’ motives in restricting Plaintiff’s speech, Defendants argue that, even if St. Michael’s were to have no guest speakers at the rally, cancellation would be justified because of “the recent statements by Mr. Voris regarding January 6.” (Dkt. No. 25-1 at 20.) Defendants do not contend that Mr. Voris or St. Michael’s was in any way involved in the January 6, 2021 riot at the Capitol. They allege only that Mr. Voris referred to the participants as “patriots.” (Dkt. No. 25-1 at 7.) They allege that St. Michael’s “promoted and exalted these rioters in its broadcast from that evening” (*Id.*), but St. Michael’s did no such thing and never condoned any violence. The video approvingly quoted former President Trump’s calling on everyone involved to be peaceful, highlighted Catholics peacefully praying the “Our Father” on the Capitol lawn, and pointed out the hypocrisy of those who condemned the events of January 6 while refusing to condemn the nationwide violence caused at Antifa and Black Lives Matter events, which St. Michael’s has routinely denounced. Furthermore, this video was published before the extent of violence became known. Defendants do not argue that St. Michael’s spurred anyone to violence, or to participation in the events of that day, nor could they. Defendants’ position appears to be that since Voris had an opinion they do not like, the whole rally should be censored. This is a stunning admission of unconstitutionality which should, by itself, justify the requested injunctive relief.

#### 3.1.1.4 Defendants Cannot Satisfy Strict Scrutiny

Whether MECU Pavilion is a designated public forum or a nonpublic forum does not change the Constitutional analysis. Defendants’ actions are subject to strict scrutiny due to the viewpoint-based nature of their restriction on Plaintiff’s speech and assembly. This requires the Government to show its restriction furthers a compelling government interest and is narrowly tailored to achieve that interest. *Bennett*, 564 U.S. at 734.

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than the pass at Thermopylae. Plaintiff is engaging an expert who will show this claim to be utterly unsupported.

<sup>17</sup> Plaintiffs intend to proffer an expert in this, but have not yet come to terms with one.

Any governmental interest in ensuring public safety is not furthered by not allowing St. Michael's to hold its rally. Defendants never received any information that could lead them to believe St. Michael's is in any way violent or that allowing the rally to go forward would even potentially lead to violence. Defendants' restriction is not narrowly drawn either, as Defendants made no effort to negotiate a safer means of conducting the rally, such as by requesting that St. Michael's excise the two speakers that Defendants claim are especially problematic.<sup>18</sup> Defendants argue that St. Michael's may hold its rally at a different location, but (1) forbidding a speaker from using its chosen public forum as a venue is not a narrowly drawn restriction; and (2) holding the rally at a different time or in a different place would make Plaintiff's speech ineffective for its intended purpose.<sup>19</sup>

Defendants argue that their restriction is not that burdensome because MECU Pavilion is in no way necessary for St. Michael's and its rally-goers to express their message to the USCCB, reasoning that there is no evidence that any Catholic Bishops will be at or near MECU Pavilion. This ignores that the USCCB's Fall General Assembly is taking place in a hotel immediately across the water from MECU Pavilion. This body of water provides a physical obstruction between the two venues, but it does not create any obstruction to seeing or hearing St. Michael's rally. And that is the point – that the USCCB hears and sees the rally-goers. Even then, this is a public forum; St. Michael's is under no obligation to justify why it chose to rally in a particular forum. The City must show a compelling interest to stop the rally. *Bennett*, 564 U.S. at 734

Defendants argue that the location of MECU Pavilion provides special danger because it is surrounded on three sides by water, meaning any violence could result in people drowning. This is truly ridiculous. It seems that a greater danger would be posed by an event serving alcohol, with drunken patrons potentially falling into the water and drowning, yet there is no evidence of any

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<sup>18</sup> Defendants refer to alleged violence associated with only two speakers, Steve Bannon and Milo Yiannopoulos, while the rally will feature at least 10 other speakers with whom Defendants have voiced no objection. (Dkt. No. 25-3 at ¶ 5.) This solution would not be Constitutional either, but it would at least be *more* narrowly tailored than censoring the whole event.

<sup>19</sup> If Defendants are truly concerned about safety, how would a different location help?

ban on alcohol at MECU Pavilion events. And in either case, less restrictive alternatives are obvious; erect temporary barriers near the water's edge to prevent anyone from falling into it, or provide flotation devices, or station lifeguards nearby – or better yet, recognize this argument for what it is – a pretext for the City's unconstitutional actions.

Defendants next attempt to use the “secondary effects” doctrine to claim rally-goers or counter-protesters will be worked into a frenzy and become violent. This betrays a profound failure to understand the secondary effects doctrine, which permits restrictions focused on addressing the secondary effects of speech, where the restriction makes no reference to the content. *See Saltz*, 2021 U.S. Dist. LEXIS 88283, at \*42-43 (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) and *Renton v. Playtime Theatres*, 475 U.S. 41, 47-49 (1986)). This doctrine has been used almost exclusively to justify zoning restrictions targeted at sexually oriented businesses. *See, e.g., Renton*, 475 U.S. 41. To counsel's knowledge, it has *never* been used to restrict political speech. In fact, the Supreme Court has counseled against this very application of the doctrine. *Chase v. Town of Ocean City*, 825 F. Supp. 2d 599, 619 (D. Md. 2011) (Hollander, J.) (citing *Boos v. Barry*, 485 U.S. 312, 320-21 (1988) (subjecting to strict scrutiny D.C. ordinance prohibiting signs critical of foreign government within 500 feet of embassy, and explaining that “[l]isteners' reactions to speech are not the type of ‘secondary effects’ we referred to in *Renton*”)).

Defendants conflate the secondary effects of speech with the primary, intended effect of the speech. Regulations on the primary effects, *i.e.*, the intended persuasive effects caused by the speech or “the direct impact of speech on its audience,” are presumptively invalid. *Barry*, 485 U.S. at 320-21. Where a regulation “focuses only on the content of the speech and the direct impact that speech has on its listeners,” it is aimed at the primary effects of speech. *Id.* at 321. Defendants argue that rally-goers and/or imaginary counter-protesters will engage in violence as a direct result of being persuaded or offended by speech at the rally. The “secondary effects” doctrine has no application here.

Defendants bring up destructive riots following the death of Freddie Gray, claiming that even though such protests started peacefully, they became violent and caused extreme property

damage. Yet they do nothing to explain how these events have anything to do with St. Michael's holding a rally criticizing Catholic Bishops. The argument appears to be that because on one occasion a peaceful demonstration against police killing led to violent riots, the Government can assume that every peaceful demonstration in the future will lead to riots. Defendants do not actually believe this, as evidenced by the fact that the City has allowed other public events and demonstrations to go forward. The Court should not give this argument any credence.<sup>20</sup>

### **3.1.2 Right of Assembly Claim**

Defendants agree that the analysis for the right of assembly claim is largely identical to the analysis of St. Michael's freedom of speech claim. Defendants premise their argument on the assertion that MECU Pavilion is a non-public forum. As explained above, however, it is a public forum. Even if it were not, Defendants have exercised unfettered discretion in restricting Plaintiff's speech and have discriminated on the basis of viewpoint. Defendants' restriction must satisfy strict scrutiny.

### **3.1.3 Free Exercise and Establishment Clause Claims**

St. Michael's Second and Third Claims for Relief are brought pursuant to the First Amendment's Free Exercise and Establishment Clauses. St. Michael's intends to continue to pursue these claims, but detailed argument supporting them would be merely cumulative – the burdens on speech and assembly are equally applicable to the Free Exercise claims.

### **3.1.4 Specific Performance Claim**

SMG and St. Michael's have a valid contract between them. Now that SMG is conveniently represented by the main defendant, SMG seems to disagree. However, without the City's interference, there would be no debate about this.

Prior to the Government Defendants' unconstitutional interference, St. Michael's and SMG

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<sup>20</sup> If this justification were given any respect at all, it would seem to stamp a judicial imprimatur on banning Black Lives Matter rallies. The Constitutional repugnance of doing so should be clear. Further, if the Court gave this even the slightest respect in dicta, it would likely be a very short time before a racist city elsewhere pointed to it to ban civil rights marches. The constitutional tone-deafness of Defendants' argument here should be embarrassing.

had a meeting of the minds regarding the November 16 rally. They agreed on all material terms, such as the venue, date, purpose of the rally, and pricing, and were discussing only minor alterations to the language in the written memorialization of their agreement. (*See* Dkt. Nos. 14-1 & 14-2.) This meets the “definiteness of terms” discussed in *Cochran v. Norkunas*, 919 A.2d 700, 708 (Md. 2007). In reliance on SMG’s agreement on these terms, St. Michael’s expended significant time, money, and resources preparing for its November 16 rally at MECU Pavilion, including paying a \$3,000 deposit to SMG, which SMG accepted. In its discussions with Shea, SMG showed that it was willing and able to go forward with its contract with St. Michael’s, and the only reason it did not do so is because the Government Defendants unconstitutionally told it to cancel the contract. (Dkt. No. 14-3.)

St. Michael’s and SMG were thus in a contractual relationship at the time the Government Defendants interfered. To remove any ambiguity on this point, once the Court entered a TRO against the Government Defendants, St. Michael’s and SMG resumed their conversations about arranging the November 16 rally and agreed to a new, revised contract for the event. (*See* updated contract between SMG and St. Michael’s, attached as **Exhibit 2**)<sup>21</sup> (laying out terms of contract); Dkt. No. 19-2 (showing assent to terms).) The only reason SMG and St. Michael’s did not enter into a formal written agreement at this point was because SMG’s counsel, who also represents the Government Defendants, ordered it not to. (*See id.*) St. Michael’s had fulfilled all of its obligations under this agreement or was making preparations to fulfill obligations which were not yet due at the time of the contract’s cancellation. But for the Government Defendants’ unconstitutional interference, SMG had no reason not to fulfill its contractual obligations to St. Michael’s.

Astoundingly, Defendants claim that SMG and St. Michael’s did not have a meeting of the minds because signing the contract was a material term, and the parties had not yet signed it. (*See* Dkt. No. 25-1 at 27.) This argument hardly warrants a response, as a signature on a contract is an

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<sup>21</sup> Though this draft of the contract is dated July 14, 2021, it was provided by SMG to St. Michael’s following the Court’s entry of the TRO.

indication of affirmative consent to the agreement, not a material term of the agreement.<sup>22</sup> Furthermore, the only reason the parties did not sign the contract is *because the Government ordered SMG to cancel it*, by operation of its unconstitutionally unfettered claim to have the authority to do so on a whim, and its use of that whimsical power to suppress speech it disapproves of. St. Michael's is likely to prevail on this claim.

### 3.2 St. Michael's Media Has Been Irreparably Injured.

The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). When a plaintiff seeks injunctive relief for "an alleged violation of First Amendment rights, a plaintiff's irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff's First Amendment claim." *WV Assn'n of Club Owners and Fraternal Svcs. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). Thus, if Plaintiff can show a likelihood of success on the merits of its First Amendment claim, injunctive relief must issue.<sup>23</sup> This presumption is arguably of lesser force in regard to the specific performance claim against SMG, but Plaintiff's First Amendment rights will be harmed just as significantly if injunctive relief is not granted against SMG.

Defendants deprived St. Michael's of its First Amendment rights on August 5, 2021. On that date, St. Michael's was informed that it would not be permitted to hold its November 16 rally at MECU Pavilion. As explained above, the Government had no valid basis for canceling the contract between St. Michael's and SMG, and instead did so because of its disapproval of the views

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<sup>22</sup> Defendants continue their kitchen-sink approach by claiming Carmen Allard and Teresa Waters did not have authority to bind their respective organizations. (*Id.*) This ignores that: (1) Waters is a Manager of SMG, and an officer with authority to bind SMG; (2) St. Michael's also negotiated with Jason Smith, SMG's Director of Events, who *also* had authority; and (3) everyone involved believed the other participants had authority to enter into the contract on behalf of their respective organizations, creating apparent authority. This is not a serious argument from Defendants.

<sup>23</sup> Defendants argue that Plaintiff's First Amendment rights will not be harmed in the absence of injunctive relief because it can simply hold its rally at another venue. This ignores the fact that denying Plaintiff its venue of choice is a constitutional injury, and *any* constitutional injury *per se* establishes irreparable harm. Further, what other venue would suffice? And if St. Michael's is so violent and dangerous (as the City claims), what other venue in Baltimore would be acceptable?

of St. Michael's and two of its scheduled speakers. The Court should issue injunctive relief to restore the status quo that existed before Defendants unlawfully canceled the November 16 rally.

Defendants argue there is no urgency in Plaintiff's request for injunctive relief because it waited over a month to file suit. This ignores that Plaintiff attempted to resolve its dispute with Defendants informally before resorting to litigation. Defendants acknowledge these efforts—in particular, Plaintiff's August 27 demand letter giving Defendants a week to allow the rally to go forward. Plaintiff, apparently naively, did not think Defendants would double down on their obviously unconstitutional conduct and insist on litigation, but it should not be punished for thinking the Government would be reasonable. Furthermore, there is nothing egregious about taking a little over a month to learn of a constitutional violation, evaluate one's options, attempt to negotiate a resolution, hire counsel, and prepare a complaint and motion for injunctive relief. Defendants cite no authority to support this proposition because there is none.<sup>24</sup>

Defendants make the bad-faith argument that the status quo here is actually the absence of a contract between St. Michael's and SMG for use of MECU Pavilion on November 16. This ignores that, by the time of the Government's interference, St. Michael's and SMG had already agreed to all material terms of the contract and were only negotiating small details. They were in privity of contract, and a signed written agreement was imminent. Indeed, after the Court enjoined the Government from further interfering with this contractual relationship, the parties agreed to all terms all that was missing was a counter-signature. (*See* Dkt. No. 19-2.) The only reason this contractual agreement was not formally signed by SMG is the Government interfered.

The Government cannot violate the Constitution to create a new status quo, thereby necessitating a lawsuit, and then claim that a preliminary injunction would disturb the status quo it unlawfully created. Preliminary injunctive relief is appropriate not only to maintain the existing status quo, **but also to restore the status quo prior to a defendant's unlawful or**

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<sup>24</sup> The one case Defendants cite to support this, *Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75 (4th Cir. 1989), dealt with a request for an injunction halting construction of a road *six months* after all necessary federal approvals for the road had been granted.

**unconstitutional actions.** See *Aggarao v. MOL Ship Management Co.*, 675 F.3d 355 (4th Cir. 2012) (holding that “it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions ..., [but] such an injunction restores, rather than disturbs, the status quo ante”). Other circuits agree. See *Savoie v. Merchants Bank*, 84 F.3d 52, 58-59 (2d Cir. 1996) (upholding preliminary injunction that restored the status quo by ordering bank to escrow \$500,000, noting logistical hurdles to restoring status quo were “properly laid at the doorstep of the Bank, which acted precipitously, not the plaintiffs, who appropriately pursued their legal remedies”); *United Steelworkers v. Textron, Inc.*, 836 F.2d 6, 10 (1st Cir. 1987) (upholding preliminary injunction requiring defendant to resume paying insurance premium payments, in part because during the “last uncontested status,” defendant had paid premiums).

### **3.3 The Balance of Equities Tips Decidedly in Plaintiff’s Favor.**

Courts “balance the competing claims of injury” and “consider the effect on each party of the granting or withholding” of injunctive relief. *Winter*, 555 U.S. at 24. In other words, the Court must determine whether the harms faced by the plaintiff in the absence of an injunction outweigh the potential harm to the defendant if the injunction is issued. See *Mt. Valley Pipeline, LLC v. Western Pocahontas Props. Ltd. P’ship*, 918 F.3d 353, 366 (4th Cir. 2019).

The balance tips in Plaintiff’s favor. Failing to grant the requested injunction will deprive St. Michael’s and its adherents of their First Amendment rights. Meanwhile, Defendants will suffer no harm if St. Michael’s obtains injunctive relief. An injunction will merely restore the rights guaranteed by the U.S. Constitution. There is no evidence the City of Baltimore will suffer any hardship, because Defendants have not shown any likelihood that violence will result from the rally. SMG will not suffer any hardship, and will instead be allowed to perform the now-existing Contract with St. Michael’s, which it was planning to do anyway before the Government Defendants unconstitutionally interfered. Indeed, the only entity that may potentially be harmed by allowing the rally to go forward is the USCCB, and its “harm” will simply be having to hear views it does not like.

### 3.4 Injunctive Relief is in the Public Interest.

The public interest “favors protecting First Amendment rights.” *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D.W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D.D.C. 2011); *Mullin v. Sussex Cnty.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). Moreover, the unconstitutional regulation being enforced by Defendants in this case has the potential to harm nonparties because it will limit or infringe upon the rights granted to them by the First Amendment as well. *See Wolfe Fin. Inc. v. Rodgers*, 2018 U.S. Dist. LEXIS 64335, at \*49 (M.D.N.C. April 17, 2018) (*citing McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015)).

St. Michael’s has shown that its First Amendment rights are being infringed and that the public interest favors protecting those rights. Moreover, the public has an interest in being further informed of the various forms of misconduct committed by the USCCB. There is no demonstrated danger to public health or safety by allowing the rally to go forward, as Defendants have not shown any violence or property destruction is a likely result of it.<sup>25</sup> The public interest favors the issuance of the injunctive relief requested by St. Michael’s.

### 3.5 At Most, a Minimal Bond Should be Required.

A bond should be required only if the enjoined party will suffer any harm from the issuance of the injunction. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002). Defendants will suffer no damages if the Court issues the injunction, which will simply allow St. Michael’s to conduct its peaceful rally. St. Michael’s requests that the injunction issue with no bond. If a bond is required, St. Michael’s requests that it be minimal and no more than \$500.00.

Defendants argue that St. Michael’s should be required to post a bond of \$1,000,000 due to the possibility of violence and/or property damage breaking out, which could result in litigation against the City. First, without any showing that any violence is likely to break out, there is no justification for this outrageous bond. Second, such a bond is unnecessary because St. Michael’s

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<sup>25</sup> Defendants also claim that requiring them to allow Plaintiff’s rally to go forward will set the “dangerous precedent” of requiring the Government not to engage in viewpoint-based discrimination in a designated public forum. (Dkt. No. 25-1 at 34.) Providing a remedy for unconstitutional Government conduct is necessary, not dangerous.

already contractually agreed to obtain insurance for millions of dollars for such damages, with SMG, the City of Baltimore, and Mayor Scott as insured parties. (See Dkt. No. 14-1 at p. 5, ¶ 11.) St. Michael's has already obtained this insurance policy, and thus a bond already exists. (St. Michael's insurance policy, attached as **Exhibit 3**.) By allowing the rally to go forward, Defendants will already be insured against the harm they pretextually claim to fear.

#### 4.0 CONCLUSION

For the foregoing reasons, the Court should grant the requested preliminary injunction, should compel SMG to perform under the contract, and should enjoin the City from any further interference or actions that would have the intent or effect of suppressing St. Michael's First Amendment rights to free speech, free assembly, or free exercise of their religion. The event planned for November 16, 2021 should go forward, as planned without any further interference by the government.

Dated: September 27, 2021

Respectfully Submitted,

/s/Marc J. Randazza

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Attorneys for Plaintiff  
St. Michael's Media, Inc.

Case No. 1:21-cv-02337-ELH

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 27th day of September 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court’s CM/ECF System.

/s/ Marc J. Randazza  
Marc J. Randazza

**RANDAZZA** | LEGAL GROUP

# **EXHIBIT 1**

## BOOK AN EVENT

Royal Farms Arena is Baltimore's premier multi-use sports and entertainment facility and is a great place to host a wide variety of events. Our flexible and dynamic space has the ability to accommodate major concerts, family shows, sporting events, college commencements, conferences, corporate events and political functions. Capacities and seating configurations can be customized for your event.

We can also facilitate booking your event at the legendary MECU Pavillion (formerly known as Pier Six Pavillion). MECU offers the perfect space to enjoy entertainment along Baltimore's famed Inner Harbor.

Our staff has more than 50 years of experience and will be your partner throughout the planning process to ensure a successful and memorable event.

For all ticketed events, meetings and special events at Royal Farms Arena and MECU Pavillion, please contact Teresa Waters (mailto:twaters@royalfarmsarena.com) at twaters@royalfarmsarena.com or by phone at (410) 347-2047

For your catering needs for both Royal Farms Arena and MECU Pavillion, please contact Patti Pielert (mailto:pielert-patti@crownfoodsinc.com); Crown Foods at pielert-patti@crownfoodsinc.com

# **EXHIBIT 2**

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**USE LICENSE AGREEMENT**

**BY AND BETWEEN**

**SMG AND ST. MICHAEL'S MEDIA**

**DATED – JULY 14, 2021**

**EVENT – BALTIMORE CONFERENCE & PRAYER MEETING 2021 – 11/16/2021**

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PIER SIX PAVILION

USE LICENSE AGREEMENT

**THIS USE LICENSE AGREEMENT** (together with the Exhibits attached hereto, the “**Agreement**”) is dated as of the 14<sup>th</sup> day of July, 2021, by and between SMG, a subsidiary of ASM Global and Pennsylvania general partnership, with an address at 300 Four Falls Corporate Center, 300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428 (“**SMG**”), and St. Michael’s Media, whose current address is 2840 Hilton Road, Ferndale, MI 48220 (the “**Licensee**”).

**BACKGROUND**

SMG is the manager of a facility commonly known as Pier Six Pavilion (the “**Facility**”), located at 731 Eastern Ave, Baltimore, Maryland 21202, which is owned by the City of Baltimore (the “**Owner**”). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, SMG desires to grant to Licensee, and Licensee hereby accepts from SMG, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of the Facility.

(a) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the “**Authorized Areas**”), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A (each such date and time, an “**Event**”). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the “**Expiration Time**”) and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on Exhibit A, Licensee shall request from SMG prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as additional rent an amount equal to the sum of SMG’s actual costs for performing its obligations under this Agreement during the date(s) and time(s) requested, and a fee in an amount determined by SMG to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

(c) Licensee acknowledges that, in connection with SMG’s management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors (the “**Third-Party Contractors**”). Licensee hereby agrees that SMG shall not be responsible in any way for the acts and/or omissions of any one or all of the Third-Party Contractors.

(d) Floor Plans, Descriptions, and Set-Up.

(i) At least eight (8) weeks prior to the first Event, Licensee shall provide to SMG, for SMG’s review (and/or the review of any consultant or representative engaged by SMG), five (5) copies of a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event.

(ii) At least four (4) weeks prior to the first Event, Licensee shall provide to SMG information relating to room or hall set-up(s), staging, event personnel requirements, and food and beverage requirements.

(iii) Licensee shall be solely liable for any and all Losses arising from Licensee's failure to deliver to SMG the materials described in subparagraphs (i) and (ii) of this Section 1(d) within the specified time periods, including, without limitation, overtime pay and short-notice delivery fees.

2. Purpose.

(a) The Facility is to be used solely for the purpose of holding a conference, Baltimore Conference & Prayer Meeting 2021. Licensee shall not use the Facility or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) Licensee shall be solely liable for any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to SMG, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 15(m) hereof (relating to intellectual property matters), Section 16 hereof (relating to the Civil Rights Act), and Section 17 hereof (relating to the Americans with Disabilities Act), and (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with all Rules and Regulations for facility users, including fire, safety and health rules, as may be imposed from time to time by Company and/or local authorities.

Licensee shall provide to Company, for Licensor's review and approval (i) a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event, and (ii) a Licensee Operations Plan in substantially the same form supplied by Licensor. Licensee shall update the Plan from time-to-time as may be necessary or appropriate to address any changes in operating conditions. Licensor reserves the right in its sole discretion to accept the Plan, or request modifications to ensure compliance with event rules imposed by the Licensor and all other applicable laws, regulations, codes, ordinances, orders or similar requirements.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has inspected the Facility, and that Licensee is satisfied with and has accepted the Facility in its present condition.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by SMG to accomplish the foregoing, said failure resulting from circumstances beyond the control of SMG, shall not be considered a breach of this Agreement by SMG, and (ii) any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair, as elected by SMG.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of SMG. SMG may, at its election, accept delivery of property addressed to Licensee only as a service to Licensee, and Licensee will

indemnify, defend, and hold harmless SMG for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time. SMG assumes no responsibility whatsoever for any property placed in the Facility. Notwithstanding anything to the contrary set forth herein, Licensee shall be solely responsible and liable for any and all Losses arising out of any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

4. Term of License. The license granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Section 13, until the date and time set forth on Exhibit A.

5. License Fee, Merchandising Fee, Broadcast Fee, and Reimbursable Service Expenses. In consideration of the grant of the license in Section 1 above, Licensee shall pay to SMG a license fee, merchandising fee, broadcast fee, and shall reimburse SMG for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

(a) License Fee. Licensee shall pay a license fee (the “**License Fee**”) equal to Twenty Three Thousand Dollars (\$23,000.00).

(b) Merchandising Fee. Licensee will not sell any type of merchandise

(c) Broadcast Fee. SMG shall retain all television, film, radio and/or recording rights to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast fee (the “**Broadcast Fee**”) equal to the greater of (i) \$-to be determined, or (ii) in the event that Licensee desires to sell such rights to a third party after purchasing them from SMG pursuant to this clause (c), %-to be determined of all amounts received by Licensee from such third party under the applicable written contract between Licensee and such third party. Said contract shall be delivered to SMG not less than 24 hours prior to the commencement of any such television, broadcast, film or recording activity of any Event in or at the Facility, and shall be accompanied by a written and signed statement by Licensee that no other agreement, express or implied, written or oral, has, to its knowledge, been reached or is in the process of being reached wherein Licensee shall receive any additional monies for such rights.

(d) Reimbursable Service Expenses.

(i) SMG shall provide, as required for each Event, the following services (collectively, the “**Services**”), the expenditures for which are reimbursable by Licensee to SMG (“**Reimbursable Service Expenses**”): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees (includes EMT’s but not ambulance service); food and beverage services; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical plant staff; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials, or extra services furnished by SMG at the request of Licensee which are set forth on Exhibit B.

(ii) SMG shall determine the level of staffing for such Services at each Event after consultation with, and input from, Licensee. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse SMG for actual costs incurred by SMG in connection with the Services as provided in Section 6 below.

6. Payment Terms.

(a) License Fee, Merchandising Fee, and Broadcast Fee. The License Fee, Merchandising Fee, and Broadcast Fee set forth in Sections 5(a), (b), and (c) of this Agreement shall be paid by Licensee as provided in Exhibit B attached hereto.

(b) Reimbursable Service Expenses. Reimbursable Service Expenses shall be paid by Licensee as provided in Exhibit B attached hereto.

(c) Late Charges. If Licensee fails to pay any amounts when due under this Agreement, Licensee shall pay to SMG a late charge of 1.5% per month on the unpaid balance.

(d) Security for Payment. In order to ensure the payment to SMG of the License Fee, Merchandising Fee, Broadcast Fee, the Reimbursable Service Expenses, and any other amounts as may accrue from time to time under this Agreement, Licensee shall deliver into the custody of SMG, upon execution of this Agreement, a certified check payable to SMG, performance bond, letter of credit, ticket sales escrow, or other security acceptable to SMG, in the amount of Three Thousand Dollars (\$3,000.00). Should Licensee fail to pay the License Fee, Merchandising Fee, Broadcast Fee, the Reimbursable Service Expenses, or any other amounts due to SMG in accordance with the terms of this Agreement, then SMG may apply the proceeds of said check, performance bond, letter of credit, ticket sales escrow, or other security in settlement thereof. The remedy provided under this Section 6(d) shall be non-exclusive and shall be in addition to any other remedy available to SMG in this Agreement or in law or equity. At any time, from time to time, during the term of this Agreement, SMG may, in its sole discretion, require Licensee to deliver into the custody of SMG any additional amounts determined by SMG to be reasonably necessary to ensure Licensee's performance of this Agreement. In the event (i) the initial deposit due upon the execution of this Agreement is received less than thirty (30) days prior to the Event, or (ii) any deposit check previously delivered to SMG cannot be drawn on sufficient funds, the deposits described herein must be delivered to SMG in the form of a cashier's check. SMG may apply the proceeds of said checks in settlement of the License Fee, the Reimbursable Service Expenses, and/or any other amounts due to SMG under this Agreement.

7. Revenues and Costs. SMG shall retain one hundred percent (100%) of all revenues generated in connection with the sale of food and beverages at the Facility. In addition to payment of the Reimbursable Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the holding of an Event at the Facility, including, but not limited to, all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of an Event.

8. Ticket Sales.

(a) SMG acknowledges that this event is a not a public, ticketed event and admission is by advance registration only. Licensee shall have complete control over the registration process, and registrations shall not be regarded as "tickets" or "ticketing."

(b) Licensee shall be solely responsible for the refund of the price of any registrations to the Event if such Event is canceled.

9. Records, Reports, and Audits

(a) Records. Licensee shall maintain accurate books and records with respect to its activities at the Facility, including, but not limited to, the costs and revenues of each Event. Licensee shall keep and preserve such books and records at all times during the term of this Agreement and for at least three (3) years following the expiration or termination hereof.

(b) Reports. Licensee shall deliver to SMG no later than three (3) days after the date of a revenue-generating Event for the account of SMG a detailed written notice of the amounts claimed to be due to

SMG pursuant to Sections 5(a), 5(b), 5(c), and 6(a) of this Agreement (each a “**Statement**”). Each Statement shall detail (i) with respect to ticket sales, all tickets sold and all amounts collected by Licensee, with all deductions (sales tax, etc.) therefrom, (ii) with respect to novelty and merchandizing revenue, all items sold and all amounts collected by Licensee, with all deductions (sales tax, etc.) therefrom, and (iii) with respect to broadcast revenues, a detail of all broadcast revenues collected by Licensee, with all deductions (sales tax, etc.) therefrom. Statements shall be deemed incontestable unless objected to by SMG, in writing, specifying the nature of and reasons for such objection, within twelve (12) months after receipt by SMG.

(c) Audits. Licensee shall give SMG and its representatives access to the books and records Licensee maintains pursuant to Section 9(a) above at any time when so requested by SMG. Licensee shall also provide, at Licensee’s own expense, a copy of any such book or record upon request. To the extent that any Statement prepared by Licensee has become contestable, SMG shall have the right to cause nationally recognized independent auditors to audit all of the books and records of Licensee relating to such Statement. If any such audit demonstrates that the revenues or expenses reflected in any Statement are understated (in the case of revenues) or overstated (in the case of expenses), in either case by more than five percent (5%), Licensee shall pay to SMG the reasonable cost of such audit. In any event, Licensee shall promptly pay to SMG the portion of any License Fee, Merchandising Fee, or Broadcast Fee due to SMG as a consequence of such overstatement or understatement.

10. Taxes. SMG shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect of any Event, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

11. Insurance.

(a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the first Event set forth on Exhibit A and shall keep in force at all times during the term of this Agreement:

(i) a comprehensive general liability insurance policy in form acceptable to SMG, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability, independent contractors, and products and completed operations. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, high risk events (including, without limitation, rap concerts), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;

(ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, SMG, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and

(iii) applicable workers compensation insurance for Licensee’s employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) SMG/ASM Global Parent, Inc. and (the Mayor and City Council of Baltimore, MD) shall be named as additional insureds thereunder. Not less than thirty (30) days prior to the first Event set forth on Exhibit A, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such form as SMG may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement

stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to each of SMG, Risk Management Director, 300 Four Falls Corporate Center, 300 Conshohocken State Road, Suite 770, Conshohocken, PA 19428, and Mayor and City Council of Baltimore, Maryland c/o Baltimore Arena, 201 W. Baltimore Street, Baltimore, MD 21201." If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to SMG at least thirty (30) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.

(iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 12 below.

(c) The terms of all insurance policies referred to in this Section 11 shall preclude subrogation claims against SMG and Owner and their respective officers, directors, employees, and agents.

(d) The failure of the Licensee to provide insurance in accordance with this Section 11 shall be a breach of this Agreement and shall, notwithstanding any cure period set forth in Section 13 below, preclude the Event from taking place.

12. Indemnification.

(a) Licensee shall indemnify, defend and hold harmless ASM, ASM Global Parent, Inc., the Mayor and City Council of Baltimore, and their respective officers, directors, agents, and employees (the "Indemnitees") from and against any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to Licensor, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, including without limitation, health and safety laws, the Civil Rights Act, the American with Disabilities Act and intellectual property laws, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

(b) The provisions set forth in subparagraph (a) above shall survive termination or expiration of this Agreement.

13. Default, Termination and Other Remedies.

(a) Default. Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails (A) to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 6(d) hereof by the date when due, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default, or (iii) Licensee makes a general assignment for the benefit of creditors. SMG shall be in default under

this Agreement if SMG fails to perform or fulfill any term, covenant, or condition contained in this Agreement and SMG fails to commence a cure thereof within five (5) business days after SMG has been served with written notice of such default. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) above, if the breach by Licensee or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then SMG may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(b) Termination by Reason of Default. Upon a default pursuant to Section 12(a) hereof, the nonbreaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of the parties with respect thereto. In addition to the foregoing, if Licensee fails to comply with any of the provisions of this Agreement, SMG may, in its sole discretion, delay and/or withhold payment and/or settlement of all accounts and funds related to monies collected or received by SMG for the benefit of Licensee hereunder until the completion of an investigation relating to such violation.

(c) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, SMG shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.

(d) Termination Upon Owner's Termination of Management Agreement. Licensee acknowledges that SMG has been granted the right to manage and operate the Facility pursuant to a certain Management and Operating Agreement dated January 1, 2017 with the Owner (the "**Management Agreement**"). Under the terms of the Management Agreement, Owner has the right to terminate the Management Agreement for convenience at any time upon written notice to SMG. In the event the Management Agreement is terminated for convenience by the Owner at any time during the term of this Agreement and such termination will be effective on a date which is prior to the completion of the Event, SMG shall have the right to terminate this Agreement upon seventy-five (75) days' prior written notice to Licensee.

(e) Injunctive Relief. In addition to any other remedy available at law, equity, or otherwise, SMG shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.

(f) Unique Qualities. The parties agree and acknowledge that the Licensee is a unique entity and, therefore, the rights and benefits that will accrue to SMG by reason of this Agreement are unique and that SMG may not be adequately compensated in money damages for Licensee's failure to comply with the material obligations of Licensee under this Agreement and that therefore SMG, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility, or to provide evidence of fulfillment of its obligations under Section 14(m) of this Agreement.

14. Representations and Warranties. Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

15. Covenants. Licensee hereby covenants as follows:
- (a) Licensee shall not occupy or use the Facility except as provided in this Agreement.
  - (b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.
  - (c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. “**Hazardous Material**” shall mean, without limitation, those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances”, or “solid waste” in any applicable state or federal environmental law.
  - (d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG.
  - (e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of SMG. If approval is granted by SMG, then all monies received from such broadcast will be considered as broadcast revenues for the purpose of determining the Broadcast Fee due to SMG.
  - (f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG.
  - (g) Licensee shall not operate any equipment or materials belonging to SMG without the prior written approval of SMG.
  - (h) Licensee, its officers, directors, employees, agents, members, or other representatives shall not “scalp” tickets for an Event, to the extent applicable. Licensee and its representatives shall provide assistance to SMG in its efforts to control and prevent such ticket “scalping”.
  - (i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exitways shall be maintained in such manner as to be visible at all times.
  - (j) If the Licensee Fee includes a percentage of revenue generated from an Event, then no collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of SMG. In such event, donations or collections are granted by SMG in lieu of an admission ticket, then all such monies received from such collections or donations will be considered as ticket revenues for the purpose of determining the License Fee due to SMG.
  - (k) Licensee shall abide by and conform to all rules and regulations adopted or prescribed by SMG. Licensee shall agree to General Terms and Conditions as outlined in Exhibit D.
  - (l) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.
  - (m) With respect to any Event at the Facility, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the reproduction or performance of proprietary or copyrighted materials and works of third parties (the “**Works**”), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this Agreement do not include royalty, copyright or other payments which may be payable on behalf of third party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform, publish or reproduce any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies

and/or parties, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SAG, SESAC and other similar agencies. Licensee agrees hereby to produce evidence of such reports and payments to SMG, including evidence of compliance with the requirements of this paragraph to be provided to SMG in advance of any such Event. Provision of such evidence is a material condition of this Agreement. Licensee agrees to indemnify, defend, protect and hold harmless SMG and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the use by Licensee of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States. The foregoing indemnity shall apply regardless of the means of publication or performance by Licensee, and shall include specifically and without limitation the use of recordings, audio broadcasts, video broadcasts, Works on other magnetic media, sounds or images transmitted via the worldwide web, chat rooms, webcast, or on-line service providers, satellite or cable, and all other publication or performance means whatsoever, whether now known or developed after the date of this Agreement.

(n) Licensee shall not engage in the sale and/or distribution of samples, food and/or beverages at the Facility without express written approval from SMG

(o) Licensee shall use the Facility's logo (the "**Facility Logo**") in all advertising controlled by or done on behalf of Licensee relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. Licensee's right to use the Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with Licensee's use of the Facility Logo as permitted in this Section 14(o), Licensee shall use only the form of the Facility Logo as provided by SMG to Licensee in any artwork or other depiction thereof.

(p) If Licensee's event involves pyrotechnics, Licensee shall be responsible for providing SMG with a certificate of insurance from the pyrotechnic contractor verifying that the Licensee, performers, SMG and the Mayor and City Council of Baltimore, MD are named as additional insureds under a \$1 million general liability policy. The pyrotechnic contractor must obtain a permit from the Fire Marshall and must provide SMG with a copy of the permit thirty (30) days in advance of the event.

16. Civil Rights Act. During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

17. Americans With Disabilities Act. With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state and local laws (collectively, the "**ADA**"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA, including, without limitation, those that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

18. Use of Information. Licensee hereby acknowledges and agrees that SMG shall have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event.

19. Construction of this Agreement

(a) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of Maryland without giving effect to the conflict of law principles thereof.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT NO OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, OR SALES PERSON OF EITHER PARTY HERETO, OR OF THE OWNER OR ANY THIRD PARTY HAS THE AUTHORITY TO MAKE, HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, GUARANTEE, OR PROMISE WITH RESPECT TO THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT. THE LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY ASSESSMENT OF THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT IS SOLELY THAT OF THE LICENSEE'S OWN DETERMINATION AND JUDGMENT.**

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) Independent Contractor; No Partnership. SMG and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

20. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written consent of SMG. SMG shall be entitled to assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii)

upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to SMG: SMG/Pier Six Pavilion  
c/o Royal Farms Arena  
201 W. Baltimore Street  
Baltimore, MD 21201  
Attention: General Manager

with a copy to: SMG  
300 Four Falls Corporate Center  
300 Conshohocken State Road, Suite 450  
West Conshohocken, PA 19428  
Attention: Director of Risk Management

If to Licensee: St. Michael's Media  
2840 Hilton Road  
Ferndale, MI 48220  
Attn: Carmen Allard, [carmenallard@churchmilitant.com](mailto:carmenallard@churchmilitant.com)

(d) Non-Exclusive Use. SMG shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm or other entity regardless of the nature of the use of such other space.

(e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of the parties, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions imposed by government officials, terrorist acts, strikes or labor disputes (though not of the employees of the Licensee), failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, then the parties shall be relieved of their respective obligations hereunder. In the event performance is excused in accordance with the foregoing provisions, Licensor shall refund to Licensee any deposits paid by Licensee, less any reasonable costs and expenses which have been incurred by Licensor up to the time further performance is excused.

(f) Acts and Omissions of Third Parties. SMG shall not be liable in any way for any acts and/or omissions of any third party to this Agreement, including, without limitation, any ticket agency used by SMG in connection with the sale of tickets for any Event.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

SMG, a Pennsylvania general partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**St. Michael's Media**

By: Carmen Allard

Name: Carmen Allard

Title: Manager, Special Events

**PIER SIX PAVILION**

EXHIBIT A TO USE LICENSE AGREEMENT

BALTIMORE CONFERENCE & PRAYER MEETING – TUESDAY, NOVEMBER 16, 2021

<u>Authorized Area</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>
PAVILION, OFFICE SPACE, DRESSING ROOM, PARKING LOT, ETC.	TUESDAY	NOVEMBER 16, 2021	8AM	MOVE IN
			10AM	DOORS
			11AM	EVENT START
			5PM	EVENT END
			5PM-7PM	POST-EVENT INT.
			11PM	MOVE OUT BY

PIER SIX PAVILION

EXHIBIT B TO USE LICENSE AGREEMENT

BALTIMORE CONFERENCE & PRAYER MEETING – TUESDAY, NOVEMBER 16, 2021

1. (a) License Fee. The License Fee set forth in Section 5(a) is as follows: Licensee shall pay a flat fee of \$23,000 for rental and reimbursable service expenses.
  - (b) If the Event does not end within the time set forth on Exhibit A attached hereto, the following overtime rental per hour or any portion thereof will be charged: Two Thousand Dollars (\$2,000.00) plus expenses. If any of Licensee's equipment and or vehicles are not removed from the venue premises or parking lot by the move-out time set forth on Exhibit A, penalty/parking fees may be assessed.
2. (a) Reimbursable Service Expenses. Cost of set-up, staffing, cleaning, utilities and use of any equipment (i.e., chairs, available tables, electricity inside Arena, staging, risers, forklift, sound system, spotlights – less union operators), which SMG has in-house are included in 1(a) above. In addition, Licensee shall pay:
  - (b) Box Office Fee. Not Applicable
  - (c) Local 19 I.A.T.S.E. Stagehand Personnel. I.A.T.S.E. shall be at commercial rate if the event or any portion thereof is taped, televised or broadcast. A broadcast origination fee may apply.
  - (d) T-shirt Security Personnel. Licensee shall pay the cost of any additional security personnel requested.
  - (e) Baltimore City Police: Licensee shall pay the cost of any special Baltimore City Police requested.
  - (f) House Manager: Licensee shall pay \$1200
  - (g) Cost of Fire Protective Services Personnel.
  - (h) EMT - Service to be determined by SMG
  - (i) Telephone Installation Fee. Flat fee of \$125.00 per line for installation and usage.
  - (j) High Speed Internet. \$300.00 per day
  - (k) Merchandising. Licensee is not selling merchandise of any kind.
  - (l) Group Sales. Licensee has the option to use the services of SMG's group sales subcontractor at a fee of ten percent (10%) plus pre-approved group sales expenses.
  - (m) Marketing/Public Relations. Licensee has the option to use the services of SMG's marketing/public relations department to plan your event advertising, place media buys, promote your event or handle event day media relations at a mutually agreed upon fee.
  - (n) Catering. All backstage or VIP party catering must be coordinated with SMG's contract concessionaire, Crown Foods, Inc., phone 410 843 9540. If an outside caterer is permitted, they must provide their own Health Department permits. Licensee shall furnish SMG with ten meal tickets for any backstage catering.
  - (n) TV Lights: \$2,000 per performance
  - (o) Confetti: There shall be an additional cleaning cost of \$500 assessed if confetti is disbursed in the Arena during any portion of your event.

(p) Ambulance Service, if deemed necessary by SMG

(q) Damage Deposit, if deemed necessary by SMG

3. Payment of License Fee.

(a) Deposit: A Three Thousand Dollar (\$3,000.00) non-refundable deposit is due upon execution of this Agreement. PAID VIA BANKWIRE 6.22.2021.

(b) Licensee shall pay the balance of the License Fee (\$20,000) plus all estimated production expenses on or before November 1,2021. Any payments made less than thirty days in advance must be made by Cashier's check or credit card. If payment is made by credit card, Licensee shall be responsible for a 3% bank card fee for Visa/MC and a 4% bank card fee for American Express.

4. Settlement. Licensee will be billed or credited accordingly after the event for any differences between the estimates and actual charges. Any settlement proceeds due Licensee shall be sent via bankwire.

**PIER SIX PAVILION**

**EXHIBIT C TO USE LICENSE AGREEMENT**

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractors' commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and as amended and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and as amended and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractors noncompliance with the regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 20 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the contractor becomes involved in, or is threatened with, litigation with the subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT D

GENERAL TERMS AND CONDITIONS

I. BUSINESS TERMS

- a) Lessee must provide proof of liability insurance coverage of amounts no less than those specified on the Use License Agreement.
- b) Lessor reserves the right to cancel the Event at any time if there is unlawful behavior or if, in the opinion of Lessor, the safety of the public is threatened for any reason.
- c) The Event must end no later than 11:00 p.m. The penalty for extending beyond 11:00 p.m. will be \$2,000 per hour of any portion thereof, plus any applicable expenses
- d) Lessee must provide a roster of artists who will perform prior to tickets going on sale. No changes in the scheduled acts will be allowed without express written consent of Lessor. Lessee must forward copies of signed letters from the respective agencies representing the acts, confirming their appearances. If an artist advertised on the ticket does not appear, Lessee will be responsible for refunds to ticket buyers.

II. SECURITY REQUIREMENTS:

- a) The number of security personnel required shall be determined by SMG. The promoter must agree to all financial responsibilities of adding extra manpower to secure the facility. This includes CSC as well as any additional police.
- b) Backstage passes will be limited and closely monitored. All backstage passes will be left at Will Call. Lessee shall not exceed the number of fifteen (15) passes for backstage access.
- c) All persons entering the building, both guests and performers, are subject to metal detectors and search.

III. GENERAL TERMS

- a) All seating must be reserved; no general admission or festival seating without prior approval.
- b) Intermissions will be kept to a maximum of twenty (20) minutes or less to allow for effective crowd control.
- c) The event must end on time as scheduled, as agreed to by Lessee and Lessor.
- d) The exterior of the Pier Six Pavilion may be barricaded at entry doors to control crowd, creating chutes to allow and directing the flow of traffic.
- e) Adequate signage on the exterior of the Pier Six Pavilion and at entry doors will be posted to notify patrons that searches will be conducted upon entry into the facility.
- f) Metal detectors, pat downs and/or wandings may be used at all entry doors, backstage load in doors and the administrative entrance.
- g) Lessor will distribute backstage passes or conduct a pre-Event meeting with Lessee to discuss passes.
- h) Doors to facility will open one (1) hour to ninety (90) minutes prior to the start of the Event to allow time for security check.

i) Prior to the Event day, Lessor will conduct a meeting with Lessee and a security representative to discuss show policies, show timeline, and logistics of the Event.

AGREED:

Carmen Allard 9/16/21  
Promoter (Date)

- End -

# **EXHIBIT 3**

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

09/16/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Smith Insurance Group / Comm'l Undrwrters Risk Mgmt 8258 Allen Rd  Allen Park MI 48101-1402		<b>CONTACT NAME:</b> Commercial Lines <b>PHONE (A/C, No, Ext):</b> (313) 278-3800 <b>FAX (A/C, No):</b> (313) 278-8467 <b>E-MAIL ADDRESS:</b>	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Frankenmuth Mutual	<b>NAIC #</b> 13986
<b>INSURED</b> Saint Michaels Media Inc. Church Militant 2900 Hilton Rd Ferndale MI 48220-1017		<b>INSURER B:</b> Liberty Mutual Insurance Group	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** CL2132502583**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		6679570	03/22/2021	03/22/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
							Employment Practices	\$ 100,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			6679569	03/22/2021	03/22/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6679570	03/22/2021	03/22/2022	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	WC5-34S-533176-011	05/25/2021	05/25/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 100,000
							E.L. DISEASE - EA EMPLOYEE	\$ 100,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000
A	Rented Misc Equipment, Audio/Video Equipment			6679570	03/22/2021	03/22/2022	Policy Limit	\$20,000
							Deductible	\$500

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

SMG/ASM Global Parent, Inc. and (the Mayor and City Council of Baltimore, MD) are named as additional insureds thereunder.

This policy will not be canceled or materially changed or altered without first giving thirty days written notice thereof to each SMG Risk Management Director and Mayor and City Council of Baltimore, Maryland.

**CERTIFICATE HOLDER****CANCELLATION**

SMG/ASM Global Parent, Inc. 300 Conshohocken State Road 300 Four Falls Corporate Ctr Conshohocken PA 19428	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# **EXHIBIT 4**

# Venue Guide: MECU Pavilion – Baltimore, MD

Nov 27, 2020



## MECU Pavilion History

Since 1981, the [MECU Pavilion](#) has been one of Baltimore's most instantly identifiable landmarks, with a white big-top tent ceiling that's become a defining feature of the city's waterfront. Known for many years as the Pier Six Concert Pavilion, the venue acquired the MECU name in 2018 when the Municipal Employees Credit Union of Baltimore purchased the naming rights. With a capacity of 4,600 split between

covered seating and an open-air lawn, the MECU Pavilion is Baltimore's premier venue for outdoor summer concerts.

## MECU Pavilion Performers

In its early-'80s infancy, the Pavilion was the place to catch legends like Tony Bennett, Ray Charles and Ella Fitzgerald in their golden years. In the '90s, it was a destination for classic-rock warhorses like Jethro Tull and The Doobie Brothers, and jam-band descendents like Widespread Panic and The String Cheese Incident. While that traditionalist tilt is still in effect today, the Pavilion has more recently played host to modern-rock phenoms like Machine Gun Kelly and Greta Van Fleet.

	Events at MECU Pavilion	
<b>SEP 29</b> Wed • 7:00 PM	PRIMUS - A Tribute to Kings Baltimore, MD - MECU Pavilion	<a href="#">See Tickets</a>
<b>OCT 8</b> Fri • 8:00 PM	Rod Wave: SoulFly Tour presented by Rolling Loud and Live Nation Baltimore, MD - MECU Pavilion	<a href="#">See Tickets</a>
<b>OCT 23</b> Sat • 8:00 PM	The Greatest Hits of Foreigner Baltimore, MD - MECU Pavilion	<a href="#">See Tickets</a>
<b>DEC 31</b> Fri	2021 Season Tickets Baltimore, MD - MECU Pavilion	<a href="#">See Tickets</a>

# Planning Your Visit to MECU Pavilion

Located on Pier 6 in Baltimore's Inner Harbor, the MECU Pavilion is the heart of one of Baltimore's busiest destination zones. As such, its surrounding area is teeming with restaurants and prime patios, including the local chapter of the Hard Rock Cafe, Ruth's Chris Steakhouse and high-end Japanese eatery Azumi. Or, if you want to make a day of it, spend the afternoon before your show exploring the nearby National Aquarium.

## MMECU Pavilion Frequently Asked Questions

### What are MECU Pavilion's parking options?

The venue doesn't have an on-site lot, but several independently operated garages are in close proximity. The preferred parking option for MECU Pavilion is Harbor Park Garage (55 Market Place).

### Does MECU Pavilion serve food?

Yes, concessions stands are located throughout the venue and serve standard outdoor-event fare like cheeseburgers, hot dogs, popcorn and nachos.

### What are the seating options at MECU Pavilion?

The Pavilion features a general-admission pit in front of the stage, three tiers of covered seating and a general-admission lawn area.

### What are MECU Pavilion's safety & security guidelines?

The venue forbids weapons of any kind, glass bottles or cans, alcohol, laser pointers and backpacks. All guests will be subject to metal detectors and/or a physical pat-down.

### MECU Pavilion At A Glance

Venue Name	MECU Pavilion
Location	Baltimore, MD
Address	<a href="#">731 Eastern Ave, Baltimore, MD 21202</a>
Phone #	(410) 547-7200
Capacity	4,600
Opened	1991
Operator	City of Baltimore
Website	<a href="https://www.livenation.com/venue/KovZpZAa1enA/mecu-pavilion-events">https://www.livenation.com/venue/KovZpZAa1enA/mecu-pavilion-events</a>

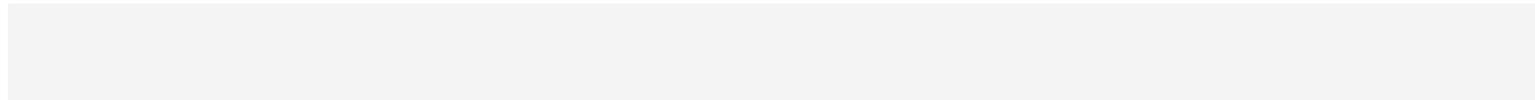
## Tags

Venue

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## Venue Guide: Cynthia Woods Mitchell Pavilion presented by Huntsman-...

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Mitchell Pavilion  
presented by  
Huntsman History  
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forested setting of  
The Woodlands, The  
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# **EXHIBIT 5**



Search for events, livestreams & festivals



THE EVENT HAS BEEN RESCHEDULED

Live Nation / Rock / Primus



# PRIMUS - A Tribute to Kings

Wed Sep 29, 2021 7:00 PM

MECU Pavilion | Baltimore, MD

BUY TICKETS

Event Info

Artist Info

# Lineup



**Primus**  
Rock



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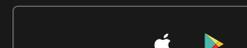


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# **EXHIBIT 6**

# facebook



**MECU Pavilion is on Facebook.** To connect with MECU Pavilion, log into Facebook.

Log In

or

Join



## MECU Pavilion

Just Announced: Garrison Keillor's Prairie Home "Love and Comedy" Tour on September 13th. The Show will also feature Richard Dworsky & The Road Hounds, Heather Masse, and Fred Newman . Tickets on sale this Friday April 28 at 10am. Visit [piersixpavilion.com](http://piersixpavilion.com) or [livenaton.com](http://livenaton.com) for more info.

Timeline Photos · Apr 24, 2017 · 🌐

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Cantrice Moore

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4 yrs [Report](#)



Sara Glik

ThNks it is a great idea  
I have to see if it's a conflict for footfall dance weekend  
Thank you

4 yrs [Report](#)

# **EXHIBIT 7**

# facebook

Sign Up

Join or Log Into Facebook

28 Events

Events



**AUG 11** Jim Gaffigan at Pier Six Pavilion  
Public · Hosted by MECU Pavilion

Tuesday, August 11, 2015 at 7:00 PM EDT  
More than a year ago

MECU Pavilion  
731 Eastern Ave, Baltimore, MD 21202 [Show Map](#)

### Details

Jim Gaffigan - Contagious

Tuesday, August 11  
Doors: 7:00 p.m. Show: 8:00 p.m.  
All Ages

Get tickets: <http://ticketf.ly/18FE9XL>

### Hosted by

 MECU Pavilion

79 Went · 23 Interested

Share this event with your friends

### About the Venue



 MECU PAVILION

**MECU Pavilion**  
Performance & Event Venue · 41,409 likes

English (U.S.)  
Français

Privacy · Cookies · Facebook

Email or Phone

Password

[Forgot account?](#)

Log In

Do you want to join Facebook?

Sign Up

Go to Page

# **EXHIBIT 8**

## Contact

[www.linkedin.com/in/kentcampbell](http://www.linkedin.com/in/kentcampbell)  
(LinkedIn)  
[www.reputationx.com](http://www.reputationx.com) (Company)

## Top Skills

Online Reputation Repair  
Google Business Ranking  
Search Engine Marketing (SEM)

# Kent Campbell

Online Marketing Consultant | SEO | ORM | Changing the Lens  
Through Which Brands Are Perceived  
San Francisco Bay Area

## Summary

People experience most of the world through a screen. I improve the way brands are perceived by remapping the online information landscape to change people's minds.

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## Experience

### Reputation X

About Me | CMO | Reputation Management | Reputation Marketing |  
Review Management | Brand Building  
February 2010 - Present (11 years 8 months)  
San Francisco Bay Area

As Chief Marketing Officer of Reputation X, I manage a diverse, global team of marketing professionals engaged in:

- > Reputation Management
- > Corporate reputation marketing
- > Online brand building
- > Technical public relations
- > Review management
- > Web development
- > Marketing automation integration

Together, we improve how brands look online using search engine optimization (SEO), content marketing, public relations, negotiation, review management, social media marketing and other tools to improve corporate online reputation.

Solutions include:

- > Development of online brand from the ground up
- > Improving online visibility
- > Online reputation repair
- > Defamation solutions

- > Improvement of online reviews and star ratings
- > Google Knowledge Panel improvement
- > Search engine marketing (SEM)
- > Wikipedia editing and development.

In addition to client-facing strategy and sales support activities, I design, develop and direct purpose-built marketing teams composed of inbound and outbound marketers.

These include search marketers with specific cultural and technical areas of expertise, researchers, data analysts, and other diverse talent to meet your reputation marketing campaign objectives.

My charitable works include:

- Immunizing children against polio in Nigeria
- Creating diabetes clinics in Cameroon
- Bringing water to remote villages in the Philippines
- Raising funds to build over 100 greenhouses for Quechua-speaking families living in the high plains of the Andes.

### Internet Reputation Management

Reputation Marketing | Marketing Strategy | SEO | Vice President  
Corporate Marketing

July 2001 - January 2010 (8 years 7 months)

Los Angeles, California, United States

My team and I designed, developed and implemented corporate reputation marketing strategies for companies and executives. This includes research, analysis, and marketing strategy development.

Brand strategies covered search engine marketing and optimization (SEO), content development, process development, and management of both in-house and external teams.

Website: <http://internetreputationmanagement.com/>

### Rare Medium

2 years

Web Services | Internet Marketing | Start-ups | Founder | Vice President  
User Experience

1999 - July 2001 (2 years)

Los Angeles, California, United States

I founded one of the three companies merged to create Rare Medium, a NASDAQ listed firm focused on web services, internet marketing, venture funding and business incubation / start-ups.

User Interface Design | Software Development | Vice President Head of User Experience

1999 - 2001 (2 years)

I managed an international team of user-experience leads including information architects, user behavior researchers, user interface design specialists and software developers.

We designed and developed web-based platforms for Fortune 2000 companies.

Evit Caretni Interactive

Web Development | Online Shopping Solutions | Founder | President

January 1995 - December 1999 (5 years)

Santa Monica, California

I was founder and President of Evit Caretni, a 30-person web development firm with offices in Santa Monica, California and Mumbai, India. Our team of geeks designed and developed online shopping solutions when, in retrospect, it seemed the internet was still made of wood (!).

I managed a team of graphic designers, software architects, project managers and other brave souls.

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## Education

ArtCenter College of Design

BA, interactive design · (1990 - 1993)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ST. MICHAEL'S MEDIA, INC.,

Plaintiff,

v.

THE CITY OF BALTIMORE, *et al.*,

Defendants.

Case No. 1:21-cv-02337-ELH

**DECLARATION OF**  
**ALEX J. SHEPARD**

I, ALEX J. SHEPARD, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have first-hand knowledge of the facts set forth herein, and if called as a witness could and would testify competently thereto.

2. I am an attorney licensed in the States of Nevada and California.

3. I am an associate attorney with Randazza Legal Group, PLLC, counsel for Plaintiff St. Michael's Media, Inc. ("St. Michael's"). I submit this Declaration in support of Plaintiff's Reply in support of its Motion for Preliminary Injunction.

4. On September 26, 2021, while at my residence in Las Vegas, Nevada, and while using a Macbook Air laptop with the Safari internet browser, I visited the "Book an Event" page on the Royal Farms Arena website, at the url: <http://www.royalfarmsarena.com/business-opportunities/book-an-event>. Immediately after visiting this web page, I made a printout of it using the print to PDF function on the Safari browser. A true and correct copy of this printout is attached to Plaintiff's Reply as **Exhibit 1**.

5. On September 26, 2021, while at my residence in Las Vegas, Nevada, and while using a Macbook Air laptop with the Safari internet browser, I visited the page on the Royal Farms Arena website for the "PRIMUS – A Tribute to Kings" event scheduled for the MECU Pavilion, at the url: <https://www.livenation.com/event/1AvfZp7GkSIX97m/primus-a-tribute-to-kings>. Immediately

after visiting this web page, I made a printout of it using the print to PDF function on the Safari browser. A true and correct copy of this printout is attached to Plaintiff's Reply as **Exhibit 5**.

6. On September 26, 2021, while at my residence in Las Vegas, Nevada, and while using a Macbook Air laptop with the Safari internet browser, I visited the MECU Pavilion's April 24, 2017 Facebook post advertising the Garrison Keillor Prairie Home "Love and Comedy" tour at the MECU Pavilion, at the url: <https://m.facebook.com/MECUPavilion/photos/a.93704663441/10155375883013442/?type=3>. Immediately after visiting this web page, I made a printout of it using the print to PDF function on the Safari browser. A true and correct copy of this printout is attached to Plaintiff's Reply as **Exhibit 6**.

7. On September 26, 2021, while at my residence in Las Vegas, Nevada, and while using a Macbook Air laptop with the Safari internet browser, I visited the MECU Pavilion's Facebook event post advertising Jim Gaffigan's event at the MECU Pavilion scheduled for August 11, 2015, at the url: [https://www.facebook.com/events/1603807349834417/?acontext=%7B%22event\\_action\\_history%22%3A\[%7B%22surface%22%3A%22page%22%7D\]%7D](https://www.facebook.com/events/1603807349834417/?acontext=%7B%22event_action_history%22%3A[%7B%22surface%22%3A%22page%22%7D]%7D). Immediately after visiting this web page, I made a printout of it using the print to PDF function on the Safari browser. A true and correct copy of this printout is attached to Plaintiff's Reply as **Exhibit 7**.

8. On September 26, 2021, while at my residence in Las Vegas, Nevada, and while using a Macbook Air laptop with the Safari internet browser, I visited the Ticketmaster website's "Venue Guide" page for the MECU Pavilion, at the url: <https://blog.ticketmaster.com/venue-faq-mecu-pavilion-baltimore-md/>. Immediately after visiting this web page, I made a printout of it using the print to PDF function on the Safari browser. A true and correct copy of this printout is attached to Plaintiff's Reply as **Exhibit 4**.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed this 27<sup>th</sup> day of September, 2021.

/s/ Alex J. Shepard  
Alex J. Shepard