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9 Attorneys for Defendants  
10 ELECTROCELT PROMOTIONS, INC. and  
11 SNAG TICKETS, INC.

ELECTRONICALLY

**FILED**

*Superior Court of California,  
County of San Francisco*

**FEB 06 2015**

Clerk of the Court  
BY: ROMY RISK

Deputy Clerk

12  
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF SAN FRANCISCO

15 UNLIMITED JURISDICTION

16 VALENTIN PONCE,

17 CASE NO.: CGC-15-543487

18 Plaintiff,

19 vs.  
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ANSWER OF DEFENDANTS  
ELECTROCELT PROMOTIONS, INC.  
and SNAG TICKETS, INC. TO  
UNVERIFIED COMPLAINT FOR  
PERSONAL INJURY

ELECTROCELT PROMOTIONS, INC. dba  
SWIG; SNAG TICKETS, INC.; and DOES 1  
to 50,

Defendants.

Defendants ELECTROCELT PROMOTIONS, INC. and SNAG TICKETS, INC., in answer  
to the allegations of the unverified complaint of Plaintiff VALENTIN PONCE on file herein, deny  
each and every allegation of said unverified complaint pursuant to Code of Civil Procedure  
§431.30, and in this connection defendants deny that plaintiff has been injured or damaged in any  
of the sums mentioned in the complaint or in any other amount by reason of any act or omission of  
these defendants.

## FIRST AFFIRMATIVE DEFENSE

The injuries and damages allegedly suffered by plaintiff, if any, were either wholly or in part negligently caused by persons, firms, corporations, or other entities other than these answering defendants and such negligence comparatively reduces up to 100% the percentage of negligence, if any, by these answering defendants.

## **SECOND AFFIRMATIVE DEFENSE**

If plaintiff sustained damages by reason of the matters alleged in their complaint, which is denied, then said damages were caused in whole or in part by the negligence or fault of third persons for whom these answering defendants were in no way responsible.

### THIRD AFFIRMATIVE DEFENSE

Plaintiff VALENTIN PONCE assumed the risk of any injuries and/or damages resulting from the matters set forth in said complaint, and said assumption of risk by Plaintiff VALENTIN PONCE was a proximate cause of the injuries and/or damages alleged by plaintiff, if any there were.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiff VALENTIN PONCE was himself negligent and careless in and about the matters and events set forth in the complaint, and said negligence proximately contributed to his alleged injuries and/or damages, if any there were. The verdict of the jury in favor of Plaintiff VALENTIN PONCE, if any, which may be rendered in this case must therefore be reduced by the percentage that plaintiff's negligence contributed to the accident and injuries complained of, if any there were.

## FIFTH AFFIRMATIVE DEFENSE

The incident alleged to be the cause of plaintiff's damages was caused by the sole negligence of Plaintiff VALENTIN PONCE.

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## SIXTH AFFIRMATIVE DEFENSE

The complaint does not state facts sufficient to constitute a cause of action against these answering defendants.

## SEVENTH AFFIRMATIVE DEFENSE

No conduct by or attributable to defendants was the cause in fact or the legal cause of the injuries or damages, if any, sustained by plaintiff, nor a substantial factor in bringing about said injuries or damages.

## EIGHTH AFFIRMATIVE DEFENSE

Any damages incurred herein by the plaintiff are solely and totally due to the acts or omissions of Plaintiff VALENTIN PONCE, for whom these defendants have no responsibility.

### NINTH AFFIRMATIVE DEFENSE

Should plaintiff recover non-economic damages against any defendant, the liability for non-economic damages is limited to the degree of fault and several liability of said defendant pursuant to Civil Code Section 1431.2, and a separate, several judgment shall be rendered against said defendant based upon said defendant's degree of fault and several liability.

#### TENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

## **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred by reason of the applicable provisions of California Code of Civil Procedure, including, but not limited to, Sections 335.1, 337, 337.1, 337.15, 337.2, 338, 339, 339.5, 340, 340.2, 340.8, 341(a) and 343; and California Business and Professions Code section 17208.

## TWELFTH AFFIRMATIVE DEFENSE

Plaintiff was guilty of willful misconduct and wanton and reckless behavior in and about

1 the matters and events set forth in said complaint; and said willful misconduct and wanton and  
2 reckless behavior proximately contributed to the injuries and damages alleged, if any there were.  
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4 THIRTEENTH AFFIRMATIVE DEFENSE

5 Plaintiff willfully and wrongfully provoked the altercation in which he was involved, and  
6 said provocation by plaintiff was a legal cause of the injuries and damages allegedly sustained.  
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8 FOURTEENTH AFFIRMATIVE DEFENSE

9 Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the complaint,  
10 and each and every alleged cause of action contained therein. To the extent that such damages, if  
any, were incurred, plaintiff's recovery, if any, should be reduced accordingly.  
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12 FIFTEENTH AFFIRMATIVE DEFENSE

13 At all relevant times, plaintiff knew, or should have known, that the circumstances described  
14 in the complaint posed potential risks and hazards. In the event plaintiff is entitled to any damages,  
15 the amount of those damages should be reduced as a result of the plaintiff's failure to act  
16 accordingly, notwithstanding this knowledge.  
17

18 SIXTEENTH AFFIRMATIVE DEFENSE

19 Plaintiff has lost any right to relief against defendants through laches, in that he has failed to  
20 take timely action to assert his rights, if any, and this delay has caused substantial prejudice to  
21 defendants.  
22

23 SEVENTEENTH AFFIRMATIVE DEFENSE

24 Any and all acts or omissions of defendants, and any agent or employee thereof, were  
25 reasonable and therefore defendants are not liable to plaintiff for any of the damages alleged in the  
26 complaint.  
27

28 EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants are not liable for any of the damages alleged in the complaint because they did

not have notice, constructive, actual or otherwise, of the existence of any dangerous condition in the premises as alleged in the complaint.

## NINETEENTH AFFIRMATIVE DEFENSE

Defendants are not liable for any of the damages alleged in the complaint because they did not create the allegedly dangerous condition of which plaintiff complains.

## TWENTIETH AFFIRMATIVE DEFENSE

Defendants are informed and believe and thereon allege that if, in fact, plaintiff was injured or damaged, the injuries and/or damages were a direct and proximate result of the intervening and superseding actions on the part of other parties or entities, and not these answering defendants, and such intervening and superseding actions of other parties or entities bar or diminish the recovery of plaintiff against these answering defendants.

## TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their answer to assert additional affirmative defenses as investigation and discovery progress.

## TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Defendants reserve their right to amend this Answer to assert additional affirmative defenses should discovery indicate it would be appropriate, in accordance with the provisions of the Code of Civil Procedure.

WHEREFORE, Defendants ELECTROCELT PROMOTIONS, INC. and SNAG TICKETS, INC. pray that plaintiff take nothing by way of the complaint on file herein and that defendants have judgment for their costs and for such other and further relief as the court deems proper.

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1 DATED: February 6, 2015  
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LAW OFFICES OF LORI B. FELDMAN

By



Lori B. Feldman

Attorneys for Defendants  
ELECTROCELT PROMOTIONS, INC.  
and SNAG TICKETS, INC.

## **PROOF OF SERVICE**

I, the undersigned, declare as follows:

I am over the age of eighteen years and not a party to the within action.

My business address is 165 North Redwood Drive, Suite 110, San Rafael, CA 94903.

On February 6, 2015, I served a copy of the attached

**ANSWER OF DEFENDANTS ELECTROCELT PROMOTIONS, INC. and SNAG TICKETS, INC. TO UNVERIFIED COMPLAINT FOR PERSONAL INJURY**

by placing a true and correct copy thereof in a sealed envelope, with postage thereon fully prepaid, in the United States mail at San Rafael, California, addressed as follows:

Nikolaus W. Reed, Esq.  
Law Office of Nikolaus W. Reed  
135 10<sup>th</sup> Street  
San Francisco, CA 94103

Attorney for Plaintiff VALENTIN PONCE

I declare under penalty of perjury, in accordance with the laws of the State of California, that the foregoing is true and correct.

Executed on February 6, 2015.

  
LORI B. FELDMAN