

San Francisco Superior Courts
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Aug-31-2006 4:39 pm

Case Number: CGC-06-455768

Filing Date: Aug-31-2006 4:26

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COMPLAINT

ANTHONY BENINATI VS. BLACK ROC CITY, LLC et al

001C01526042

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BLACK ROCK CITY, LLLC; LARRY HARVEY, DY BOIS, HARLEY DUBOIS, NANCI ELLIOTT, MARIAN GOODSELL, CRIMSON ROSE, DANGER RANGER, aka, MICHAEL MICHAEL, ADA LEE CHESTER DOE 1, DOE2, DOE 3, DOE 4, DOE 5, DOE 6 AND DOES 7-50 INCLUSIVE.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANTHONY BENINATI

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
San Francisco County Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del caso)

CGC-06-455768

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Ronald H. Rouda, Esq. (SB#29945) 415-398-5398 415-398-8169
ROUDA, FEDER, TIETJEN & ZANOBINI
44 Montgomery Street, Suite 4000
San Francisco, CA 94104

DATE:

(Fecha) **AUG 31 2006**

Gordon Park-Li

Clerk, by
(Secretario)

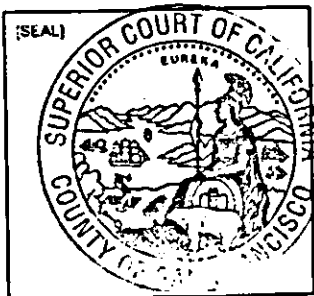
Jun P. Panelo
Deputy
(Adjunto)

Jun Panelo

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify):
- by personal delivery on (date):



BY FAX

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
 Thomas F. Yuhax SB#78679
 THE LAW OFFICES OF IAN HERZOG
 233 Wilshire Boulevard
 Suite 550
 Santa Monica, CA 90401
 TELEPHONE NO: (310) 458-6660 FAX NO.
 ATTORNEY FOR (name) Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS
 CITY AND ZIP CODE: San Francisco, California 94102
 BRANCH NAME:

FOR COURT USE ONLY

FILED
 San Francisco County Superior Court

AUG 31 2006

GORDON PARK-LI, Clerk
 BY: *Joe P. Cameron* Deputy Clerk

CASE NAME: ANTHONY BENINATI V. BLACK ROCK CITY, ET AL.

CASE NUMBER: **CGC-06-455768**

JUDGE
 DEPT:

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|---|--|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other P/DP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input checked="" type="checkbox"/> Other P/DP/DWD (23)
<p>Non-P/DP/DWD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-P/DP/DWD tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (08)
<input type="checkbox"/> Collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (35)
<p>Judicial Review</p> <input type="checkbox"/> Asset foreclosure (05)
<input type="checkbox"/> Petition for arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> FICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|---|--|

2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark 1 to factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): ONE
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015).
- Date: AUGUST 30, 2006
 Thomas F. Yuhax *Thomas F. Yuhax*
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.

• File this cover sheet in addition to any cover sheet required by local court rules.

• If this case is complex under rule 1800 et. seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.

• Unless this is a complex case, this cover sheet will be used for statistical purposes only.

BY FAX

Thomas F. Yuhask SB# 78679

FILED
San Francisco County Superior Court

AUG 31 2006

GORDON PARK-LI, Clerk

BY: [Signature] Deputy Clerk

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THE LAW OFFICES OF IAN HERZOG
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In Association With
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44 Montgomery Street, Suite 4000
San Francisco, California 94104
Telephone: (415) 398-5398

CASE MANAGEMENT CONFERENCE SET

FEB 02 2007 - 9⁰⁰AM

Attorneys for Plaintiff

DEPARTMENT 212

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ANTHONY BENINATI,

Plaintiff

vs.

BLACK ROCK CITY, LLC; LARRY HARVEY,
DY BOIS, HARLEY DUBOIS, Nanci
ELLIOTT, MARIAN GOODELL, CRIMSON
ROSE, DANGER RANGER, aka, MICHAEL
MICHAEL, ADA LEE CHESTER,
DOE 1, DOE 2, DOE 3, DOE 4, DOE 5, DOE 6
AND DOES 7-50, Inclusive.

Defendants.

CASE NO.: CGC-06-455768
COMPLAINT FOR PERSONAL
INJURY AND PROPERTY
DAMAGES

BY FAX

DATED: August 29, 2006

THE LAW OFFICES OF IAN HERZOG
A Professional Corporation

BY: [Signature] (For)
THOMAS F. YUHASK
RONALD H. ROUDA
Attorneys for Plaintiff

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**PLAINTIFFS ALLEGE: FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS:
NEGLIGENCE**

1.

The full extent of the facts linking the fictitiously designated defendants with this cause of action is unknown to Plaintiffs, or the true names or capacities, whether individual, plural, corporate, partnership, associate, LLC, or otherwise of defendants DOES 1 through 50 are unknown to Plaintiff. Plaintiff therefore sues said defendants by such fictitious names. Plaintiff is informed, believes, and alleges that each of the defendants designated herein as a DOE is negligently, wantonly, recklessly, tortiously, and unlawfully responsible in some manner for the events and happenings herein referred to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately caused injury and damages to Plaintiff, as herein alleged. Plaintiff will hereafter seek leave of the Court to amend this Complaint to show said defendants' true names and capacities after the same have been ascertained.

2.

At all times herein mentioned defendants and each of them were citizens and residents of the State of California and/or had a principal place of business in San Francisco, California.

3.

At the time of this accident, Plaintiff was an event ticket holder and an occupant, inhabitant, dweller, camper, licensee, invitee and tenant on the land leased by defendants and used for the event, and Plaintiff was lawfully on the premises that was then leased, operated, managed, maintained, and controlled by DEFENDANTS.

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4.

This accident occurred on September 3, 2005 at the Burning Man 2005 annual event at a remote desert location in northwest Nevada. Burning Man gathers participants, primarily from California but also from across the nation, at a remote desert camp called Black Rock City. Black Rock City is something the event sponsors build and tear down every year. It is billed as an event and a community gathering. At the time of this accident and at all relevant times leading up to the accident, defendants, and each of them, were lessees and/or owners of the property and possessed, managed, maintained, operated, supervised, coordinated, and controlled the event and the event premises called Black Rock City, and held it for the use and enjoyment of event ticket holder invitees, staff and other event attendees, and said attendees were guests, invitees and members of the public authorized by defendants to attend the event and participate in the sponsored and authorized Black Rock City Burning Man activities, including the central Burning Man event on the second to last night of the event, an event where a 60 foot wood sculpture in the shape of a man and called "Burning Man" is set on fire with accelerant and left to burn until it topples toward the surrounding crowd. During the initial burning and before the toppling, performers circle the Burning Man in dance and other activities and demonstrations involving additional pyrotechnic art devices. Immediately following the Burning Man's topple, and while the fire is still burning in a gigantic bonfire heap, the crowd is authorized and invited to approach the flames to deposit tokens, mementos and other combustible objects into the fire so attendees can participate more fully and completely in the Burning Man experience.

5.

At or about the time of the happening of this accident, Plaintiff was attending the event and using the aforesaid event situs in a manner reasonably foreseen by DEFENDANTS, and each of them.

6.

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3 At or about the time of this accident, and at all relevant times leading up thereto, said
4 defendants, and each of them, negligently, wantonly, tortiously, and unlawfully operated,
5 maintained, managed, supervised, coordinated, warned, advised, and controlled the aforesaid event
6 premises, situs and crowd seating area relative to the Burning Man sculpture, especially in the area
7 that the performing artists occupied around the Burning Man during the burn. During the burn and
8 before the sculpture toppled, defendant staff and volunteers formed an outer circle that set a
9 boundary for the spectators and afforded a safety zone, away from the fire and away from the
10 performers. At the time the sculpture toppled, the crowd was authorized, invited and encouraged to
11 come forward into the fire zone so as to deposit photos, letters, and other burnable objects into the
12 fire. Despite defendants' knowledge, plan and intend that the entire crowd would surge forward,
13 defendants made no accommodations for safe approach and exit routes. In fact, defendants
14 coordinated and timed the withdrawal guards, firefighters and staff who made up the protective
15 outer circle to coincide with the sculpture toppling. With that withdrawal of staff, all semblance of
16 crowd coordination ceased and the crowd surged forward, as defendants planned and as the crowd
17 was encouraged and invited and authorized to do. At a minimum, crowd control should have been
18 established which included safe ingress and egress routes and corridors. Instead, the crowd was left
19 to its own devices and surged forward, carrying Plaintiff into the fire and causing him to fall and to
20 suffer the burns and injuries alleged herein based on the above cited and the following acts and
21 omissions and conduct:

- 22
23 1. managing, maintaining, servicing, repairing, inspecting, warning, guarding, and
24 operating said Burning Man event and fire in a manner that encouraged, invited and
25 authorized participants to engage in individual burning acts near the fire without
26 providing adequate and appropriate controls, supervision and established ingress and
27 egress routes for those moved by the event to directly participate in the burning
28 ritual; AND

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2. conducting themselves with reference to said event, exhibit and property and to Plaintiff so as to proximately cause Plaintiff's burns and injuries, all as a result of these defendants' above cited conduct.

7.

As a direct and proximate result thereof, Plaintiff sustained permanent bodily injuries, and has and in the future will have pain, suffering, worry, and anxiety, all to Plaintiff's general damages in an amount within the jurisdiction of this Court and according to proof.

8.

As a direct and proximate result thereof, Plaintiff has and in the future will incur medical and related expenses all to Plaintiff's damages in an amount to be proven at trial.

9.

As a direct and proximate result thereof, Plaintiff has and in the future will lose the ability to do Plaintiff's usual work, and have and will have lost earnings and earning capacity all to said Plaintiff's damage in such amount as will be proven at trial.

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10.

As a direct and proximate result thereof, certain personal property belonging to Plaintiff was damaged in such an amount as will be proven at trial.

WHEREFORE, Plaintiff prays for judgment against defendants as follows:

1. For general damages in an amount within the jurisdiction of the Superior Court;
2. For medical and related expenses according to proof;
3. For property damage according to proof.
4. For lost earnings and impaired earning capacity according to proof;
5. For pre-judgment interest pursuant to C.C.P. §998 and Civil Code §3291;
7. For costs of suit;
8. For such other and further relief as the Court may deem just and proper.

Beninat\Complain.P01