UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICK GROVE,

Plaintiff,

-against-

ALIAUNE THIAM a/k/a "AKON," AMERICAN TALENT AGENCY, INC., AMERICAN TALENT AGENCY, LLC, KAYVANA ENTERTAINMENT LLC and YUGESHWAR RAJKUMAR a/k/a MATEO HERMATTE a/k/a MATTHEW "MATEO" RAJKUMAR,

Defendants.

14 CV 1146 (PGG)

AMENDED COMPLAINT

Patrick Grove, the plaintiff herein, as and for his complaint in this action, by his attorney, Donald J. Tobias, Esq., sets forth as follows:

THE PARTIES

1. Patrick Grove ("Grove"), the plaintiff herein, was and is, at all times relevant herein, a citizen of Australia and a resident of Kuala Lumpur, Malaysia.

2. Defendant Aliaune Thiam a/k/a Akon ("Akon") was and is, at all times relevant herein, a musical performer domiciled in the State of Georgia.

3. Defendant American Talent Agency, Inc. ("ATA") was and is, at all times relevant herein, a corporation organized under the laws of the State of New York, domiciled and transacting business in the State of New York, County of New York.

4. Defendant American Talent Agency, LLC ("ATA LLC") was and is, at all times relevant herein, a limited liability company organized under the laws of the State of Delaware, domiciled and transacting business in the State of New York, County of New York.

5. Defendant Kayvana Entertainment LLC ("Kayvana") was and is, at all times relevant herein, a limited liability company organized and existing under the laws of the State of New York, domiciled and transacting business in the State of New York, County of New York.

6. Defendant Yugeshwar Rajkumar a/k/a Mateo Hermatte a/k/a Matthew "Mateo" Rajkumar ("Rajkumar") was and is, at all times relevant herein, an individual domiciled and/or transacting business in New York State.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C §1332. The amount in controversy exceeds the sum of $75,000.00, exclusive of interest and costs. Each of the parties is diverse because the plaintiff is a citizen or subject of a foreign state and the defendants are citizens of a state.

8. This Court has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. §1367.

9. This Court has jurisdiction over defendant Akon by virtue of his regular presence, personally and/or through his agents, in the State of New York, pursuant to New York CPLR 301 and also because the claims against him arise from transactions of business with him, either directly and/or through his agents, including without limitation ATA and Rajkumar, in New York, pursuant to New York CPLR 302(a)(1). Additionally, this action arises in part from a

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contract that was by its terms deemed to be executed in New York and the said defendant has, furthermore, availed himself of this Court's jurisdiction by seeking affirmative relief in this Court.

10. This Court has personal jurisdiction over ATA in that it is a domiciliary of the State of New York, has a regular presence in the State of New York, pursuant to New York CPLR 301 and, additionally, because the claims against it arise from transactions of business in the State of New York, pursuant to CPLR 302(a)(1).

11. This Court has personal jurisdiction over ATA LLC in that it is the alter ego and/or instrumentality of and/or successor in interest to ATA, is a domiciliary of the State of New York, has a regular presence in the State of New York, pursuant to New York CPLR 301 and, additionally, because the claims against it arise from transactions of business with its alter ego and/or instrumentality and/or predecessor in interest, in the State of New York, pursuant to CPLR 302(a)(1).

12. This Court has personal jurisdiction over Kaywana in that it is the alter ego and/or instrumentality of and/or successor in interest to ATA, is a domiciliary of the State of New York, has a regular presence in the State of New York, pursuant to New York CPLR 301 and, additionally, because the claims against it arise from transactions of business with its alter ego and/or instrumentality and/or predecessor in interest, in the State of New York, pursuant to CPLR 302(a)(1).

13. This Court has personal jurisdiction over defendant Rajkumar because Rajkumar is a citizen of the State of New York and/or because he does business within such a forum. It also has jurisdiction over him by virtue of his regular presence, as an officer and/or principal of ATA,

ATA LLC and Kayvana, in the State of New York, pursuant to New York CPLR 301 and also because the claims against him arise from transactions of business with him, either directly and/or through ATA, in New York, pursuant to New York CPLR 302(a)(1).

PRELIMINARY STATEMENT

14. Plaintiff brings this action to recover the sum of $125,000.00, plus interest thereon, from April 30, 2013, plus other amounts set forth and described herein, arising from the defendants' receipt and failure to return the monies that were remitted in connection with a musical performance, which was to be conducted by Akon, that never took place. The plaintiff's right to the recovery that is sought herein is predicated upon, inter alia: (a) defendant Akon's breach of contract; (b) the defendants' fraudulent acts; (c) the defendants' conversion of plaintiff's funds; (d) the defendants' continued unjust and unlawful retention of funds that belong to the plaintiff; and (e) the defendants' violation of New York General Business Law § 349.

FIRST CAUSE OF ACTION AGAINST AKON (Breach of Contract)

15. In or about late March 2013, the plaintiff sought to engage the services of a musical performer to appear at a private birthday/engagement celebration that he was planning to hold on April 30, 2013, in Kuala Lumpur, Malaysia, where he was then residing and where, as of the date hereof, he still resides. The plaintiff ultimately learned, through music industry sources, as well as through a publicly accessible web-site, that ATA and/or Rajkumar were the booking agents for Akon. After making a series of inquiries and exchanging several e-mails with Rajkumar and other persons that were employed by and/or affiliated with ATA and/or Rajkumar, the plaintiff learned that Akon was available for the aforesaid engagement and that Akon would agree to

render a musical performance, as requested, for the sum of $125,000.00.

16. A written draft agreement setting for the terms and conditions of the proposed engagement was subsequently sent, through ATA and/or Rajkumar, to the plaintiff. The said writing (hereinafter the "Agreement") was ultimately signed, albeit with certain minor modifications to the above referenced initial draft that had been discussed, by plaintiff as "Purchaser" and by Akon as "Artist."

17. Under the terms of the Agreement, it was acknowledged and agreed, among other things, that: (a) "American Talent Agency, Inc. acts only as an agent for Artist (i.e. Akon)" and "assumes no liability hereunder" and that Akon himself, defined therein as the "Artist," was the contracting party; and (b) "in the event that Artist defaults in performing its obligations under this Agreement, Purchaser shall be entitled to require Artist to reimburse Purchaser for any deposits made hereunder as well as for Purchaser's non-recoverable payment for airfares and the like..."

18. In the period that followed the execution of the Agreement, the plaintiff made an initial payment of $62,500.00, representing the first one-half of the total sum that was due and payable thereunder. The parties thereafter proceeded to discuss, in detail, the logistical and related arrangements that had to be completed in advance of the now agreed upon Akon performance.

19. In discussing these logistical details, consisting of, among many other things: (a) arranging the transportation for Akon, and the latter's entourage, to Kuala Lumpur; and (b) setting up the sound and lighting system that was to be employed at the performance venue;

and (c) other, related technical aspects associated with the performance that Akon was to render, the plaintiff and members of plaintiff's staff had frequent and extensive contacts, via both e-mail and telephone, not only with ATA and Rajkumar, but also with Akon's internal managerial and operational team including, without limitation, Mark Singleterry, Akon's Tour Manager, Byron McNeish, Akon's Production Coordinator, who was the person that was charged with coordinating the placement of the sound, lighting and related equipment that was to be utilized at the performance venue, as well as with Robert Carnes, Jr., Akon's Business Manager.

20. On April 19, 2013, Robert Carnes, Jr., Akon's Business Manager, as aforesaid, confirmed, in a telephone conversation that he had with the plaintiff, that Akon would be appearing for the agreed upon performance. Shortly thereafter, the plaintiff wired ATA, at Akon's direction, the second of the two agreed upon payments, i.e., another $62,500.00, and by doing so had thus rendered full and complete payment, in the sum of $125,000.00, for the subject Akon performance.

21. Although the plaintiff had rendered, by late April. 2013, full and complete payment for the agreed upon Akon performance, the aforesaid defendant unequivocally and, in fact, admittedly breached the Agreement and defaulted on his obligations thereunder. In this connection, on April 28, 2013, two days before the subject Akon performance was to take place, the plaintiff received an e -mail message from Mark Singleterry, Akon's Tour Manager, stating, inter alia: "Hope all is great with you. I am sending this email making sure it is understood, because the Australian tour was cancelled, Akon WILL NOT perform in Malaysia on the below proposed date." In apprising the plaintiff of Akon's election to default under the Agreement,

Mr. Singleterry acknowledged that the plaintiff was entitled to a refund for all the sums that had, to that date, been paid. Specifically, Mr. Singleterry denoted that "Also, if any deposits or fees were paid in conjunction with this proposed (Akon) performance, contact Mateo [i.e. defendant Rajkumar, ATA's principal] for a full refund."

22. After receiving the above referenced e-mail, the plaintiff contacted ATA and Rajkumar, as directed by Mr. Singleterry. No refund of any kind was, however, made. Plaintiff made additional, subsequent demands, both to ATA and Rajkumar, as well as, through Akon's counsel, to Akon himself, for this refund, but nothing has to date been returned to the plaintiff. Defendant Akon is and remains in breach of the Agreement.

23. Accordingly, Akon is liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held.

<u>SECOND CAUSE OF</u>
<u>ACTION AGAINST AKON</u>
(Breach of Contract-Actual Authority)

24. Plaintiff repeats and realleges the matter set forth in paragraphs 1-23 of this complaint, as if more fully set forth herein.

25. At all times relevant hereto Akon, through, <u>inter alia</u>, his conduct and other actions, authorized and empowered ATA and/or Rajkumar to enter into, on his behalf, legally binding booking and related agreements. This is the case in that, among other things: (a) Akon had agreed, at various times prior to March 2013, both orally and in writing, to allow ATA and/or Rajkumar to serve as his booking agent and to communicate, to others, ATA's and/or

Rajkumar's status as such; (b) Akon had knowingly allowed ATA and Rajkumar, even after he had, he now apparently contends, purportedly "terminated" their status as his booking agent, to continue, on his behalf, such booking and related business activities; (c) Akon had knowingly allowed ATA and Rajkumar, at least through June, 2013, long after he had, he now apparently contends, purportedly "terminated" ATA and/or Rajkumar as his booking agent, to maintain a web-site through which ATA and/or Rajkumar announced and held out to the public that they were Akon's booking agents; (d) Akon took no steps, of any nature, kind or description, to seek to enjoin ATA and/or Rajkumar from undertaking any booking activities, of which he was at all times relevant hereto aware; (e) Akon took no steps, of any nature, kind or description, to disclaim or renounce, to the public, ATA's or Rajkumar's continued right to act on his behalf; and (f) Akon continued to allow the various members of his management team to interact on his behalf, and in furtherance of revenue generating opportunities and activities, including without limitation the prospective appearance, on April 30, 2013, in Kuala Lumpur, Malaysia with ATA and/or Rajkumar.

26. As a result of the foregoing, even assuming, arguendo only, that the above referenced Agreement, by and between the plaintiff and Akon, was executed by ATA and/or Rajkumar, as and for Akon, and not by Akon himself, it was nevertheless binding and effective upon Akon as the act of the latter's duly authorized agent and Akon is responsible for the damages resulting from the breach thereof.

27. Accordingly, Akon is liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never

held.

THIRD CAUSE OF
ACTION AGAINST AKON
(Breach of Contract-Apparent Authority)

28. Plaintiff repeats and realleges the matter set forth in paragraphs 1-27 of this complaint, as if more fully set forth herein.

29. The plaintiff relied on all of the foregoing acts and omissions, on Akon's part, and reasonably inferred, from those acts and omissions, among others, that ATA and/or Rajkumar were Akon's duly authorized booking agents and were fully empowered to act on his behalf.

30. As a result of the foregoing, even assuming, arguendo only, that the above referenced Agreement, by and between the plaintiff and Akon, was executed by ATA and/or Rajkumar, as and for Akon, and not by Akon himself, it was nevertheless an act that was well within the scope of ATA's and/or Rajkumar's apparent authority, and is binding and effective upon Akon, who is responsible for the damages resulting from the breach thereof.

31. Accordingly, Akon is liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held.

FOURTH CAUSE OF
ACTION AGAINST AKON
(Breach of Contract-Ratification)

32. Plaintiff repeats and realleges the matter set forth in paragraphs 1-31 of this complaint, as if more fully set forth herein.

33. In the period that followed the execution, by and between plaintiff and Akon, of the Agreement, Akon affirmed and ratified, by the following acts, among others, the effectiveness and binding nature thereof: (a) he accepted the funds that were initially remitted by the plaintiff to ATA, which, upon information and belief sent at least a portion of those monies to him; (b) his management team, inclusive of his Tour Manager, regularly communicated, through e-mails and other methods, with the plaintiff and with members of the plaintiff's staff, and actively coordinated with such persons the travel, hotel and related arrangements that were then being made; (c) his management team, inclusive of his Production Coordinator, regularly communicated, through e-mail and other methods, with the members of plaintiff's staff, and actively coordinated with such persons the technical arrangements, including the sound, lighting and other music performance matters, that were being made; (d) he supplied, among other things, copies of his passport, and as well as the passports of those persons that, he represented, would be accompanying him to the performance; (e) he made no attempt to disclaim or in any manner challenge or otherwise reject the Agreement with plaintiff, of which he and his managerial staff were aware; (f) he and his internal management staff including, without limitation, his Tour Manager, his Production Coordinator and his Business Manager, regularly communicated, in person, by telephone and/or through the exchange of e-mails, with ATA and Rajkumar regarding the prospective appearance, in Kuala Lumpur, Malaysia, on April 30, 2013, and the arrangements that were being made in connection therewith; (g) he affirmed, through his Business Manager, during the course of a telephone conversation with the plaintiff that took place on or about April 19, 2013, that he would be appearing at the agreed upon performance venue; and (h) upon

acknowledging, through his Tour Manager, that he would not be appearing, as agreed, he confirmed, through the aforesaid Tour Manager, plaintiff's entitlement to a full and complete refund for any and all amounts that had by that time been paid.

34. As a result of the foregoing, even assuming, arguendo only, that the above referenced Agreement, by and between the plaintiff and Akon, was executed by ATA and/or Rajkumar, as and for Akon, and not by Akon himself, and assuming, arguendo only, that its execution was not initially authorized by Akon, the said Agreement, and/or the authority of ATA and/or Rajkumar as reflected thereunder, was nonetheless affirmed, adopted and ratified by Akon, who is thus responsible for the damages resulting from the breach thereof.

35. Accordingly, Akon is liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held.

FIFTH CAUSE OF ACTION
AGAINST ATA AND RAJKUMAR
(Fraud)

36. Plaintiff repeats and realleges the matter set forth in paragraphs 1-35 of this complaint, as if more fully set forth herein.

37. In or about March 2013, ATA and Rajkumar apprised the plaintiff in, among other things, e-mails that were sent between March 12, 2013 and March 22, 2013: (a) that Rajkumar "was headed to meet with [Akon] and his manager" to discuss the prospective appearance by Akon, in Kuala Lumpur, Malaysia, on April 30, 2013 "now" (March 13, 2013 e-mail); (b) that ATA and/or Rajkumar were the "exclusive international" booking agents for Akon (March 14,

2013 e-mail); (c) that they believed that they could "have Akon agree to the event ...for $125k with no band" (March 14, 2014 e-mail); (d) that they would, upon the receipt of the initial sum of $62,500.00, "officially lock the date [i.e. April 30, 2013] in Akon's calendar" (March 20, 2013 e-mail); and (e) that they "would like to start advancing and getting the travel done with a 30 day window." (March 22, 2013 e-mail). These statements, among others that were made to the plaintiff and/or to members of plaintiff's staff, were made in order to induce the plaintiff to believe that all of the communications that ATA and Rajkumar were having with him, relative to the prospective performance by Akon that was to be held in Kuala Lumpur, Malaysia on April 30, 2013, were being exchanged in good faith, with Akon's knowledge and consent, and that any consummated agreement, as arranged by or through ATA and/or Rajkumar, that was reached by and between plaintiff and Akon would represent a real and binding commitment on Akon's part. All such representations, which were material to the negotiations that culminated in the execution of the Agreement between the plaintiff and Akon, were relied upon by the plaintiff.

38. In engaging in these communications, ATA and Rajkumar deliberately and intentionally failed to disclose to the plaintiff that Akon had, prior to March 2013, regularly engaged in the practice of asserting, with respect to those obligations that he did not intend to fulfill, that the authority of ATA and Rajkumar had purportedly been "terminated" and that such commitments, as had been arranged thorough ATA and Rajkumar, were allegedly "unauthorized." The deliberate failure, by ATA and Rajkumar, to apprise the plaintiff of Akon's practice and assertions, as aforesaid, were material omissions that were undertaken knowingly, in furtherance of their effort: (a) to extract fees for performances that they well knew, consistent

with the preconceived, albeit undisclosed, intentions of defendants ATA, Rajkumar and Akon in this connection, would not be given; and/or (b) to insulate Akon from liability for the breach of those obligations or commitments that he ultimately found to be inconvenient or for any reason wished not to honor; and/or (c) to enable the defendants to obtain and retain, albeit wrongfully and under false pretenses, and without imparting fair and reciprocal consideration or suffering legal consequences on their part, monies, goods and services or other items of value, all with intent to defraud plaintiff.

39. These egregious acts, which the defendants herein have directed at the plaintiff, and which formed a pattern of behavior that was, furthermore, also directed at members of the public, have been employed and perpetrated against several other persons or entities with which these defendants have done business.

40. As a result of this misconduct, the plaintiff has suffered damages in the form of: (a) the sum of $125,000.00 that was paid in connection with a performance engagement that, Akon now contends, he was able to cancel, unilaterally, without consequence; and (b) all of the expenses, including without limitation the legal fees and related costs, that have been and will be incurred in order to obtain a refund of the monies that were paid for an Akon concert that was never held.

41. Accordingly, ATA and Rajkumar are liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for all of the out-of-pocket costs, inclusive of attorneys' fees, that are attributable to and have resulted from the said defendants' actions, as hereinbefore described; and

(c) for exemplary and punitive damages, in the sum of $375,000.00.

SIXTH CAUSE OF ACTION
AGAINST AKON
(Fraud)

42. Plaintiff repeats and realleges the matter set forth in paragraphs 1-41 of this complaint, as if more fully set forth herein.

43. The fraudulent actions of ATA and Rajkumar, as hereinbefore described, were performed by the aforesaid defendants at a time that ATA and/or Rajkumar were clothed with actual and/or apparent authority to act as Akon's agent, which authority has been, additionally, ratified and affirmed.

44. Accordingly, and as a result of the foregoing, Akon is liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for all of the out-of-pocket costs, inclusive of attorneys' fees, that are attributable to and have resulted from the said defendants' actions, as hereinbefore described; and (c) for exemplary and punitive damages, in the sum of $375,000.00.

SEVENTH CAUSE OF ACTION
AGAINST AKON, ATA
AND RAJKUMAR
(Conspiracy to Commit Fraud)

45. Plaintiff repeats and realleges the matter set forth in paragraphs 1-44 of this complaint, as if more fully set forth herein.

46. In or about March, 2013, ATA and Rajkumar apprised the plaintiff in, among other things, e-mails that were sent between March 12, 2013 and March 22, 2013: (a) that Rajkumar "was headed to meet with [Akon] and his manager" to discuss the prospective appearance by

Akon, in Kuala Lumpur, Malaysia, on April 30, 2013 "now" (March 13, 2013 e-mail); (b) that ATA and/or Rajkumar were the "exclusive international" booking agents for Akon (March 14, 2013 e-mail); (c) that they believed that they could "have Akon agree to the event ...for $125k with no band" (March 14, 2014 e-mail); (d) that they would, upon the receipt of the initial sum of $62,500.00, "officially lock in the date [i.e. April 30, 2013] on Akon's calendar" (March 20, 2013 e-mail); and (e) that they "would like to start advancing and getting the travel done with a 30 day window." (March 22, 2013 e-mail). These statements, among others that were made to the plaintiff and/or to members of plaintiff's staff, were made in order to induce the plaintiff to believe that all of the communications that ATA and Rajkumar were having with him, relative to a prospective performance by Akon that was to be held in Kuala Lampur, Malaysia on April 30, 2013, were being exchanged in good faith, with Akon's knowledge and consent, and that any consummated agreement, as arranged by or through ATA and/or Rajkumar, that was reached by and between plaintiff and Akon would represent a real and binding commitment on Akon's part. All such representations, which were material to the negotiations that culminated in the execution of the Agreement between the plaintiff and Akon, were relied upon by the plaintiff.

47. The above described activities, statements and representations were undertaken and made in concert with Akon, and with Akon's knowledge, and in full awareness of the latter's actual, albeit fraudulent, intention, which the defendants did not disclose, to disclaim as "unauthorized" the efficacy of any commitment that had been negotiated and/or consummated by and/or through ATA and Rajkumar, for Akon's benefit or on Akon's behalf. This was done in furtherance of the conspiracy, on the part of ATA, Rajkumar and Akon, and consistent with what

had by that time become a regular practice on their part, inter alia: (a) to extract fees for performances that they well knew, consistent with the preconceived, albeit undisclosed, intentions of defendants ATA, Rajkumar and Akon in this connection, would not be given; and/or (b) to insulate Akon from liability for the breach of those obligations or commitments that he ultimately found to be inconvenient or for any reason wished not to honor; and/or (c) to enable the defendants to obtain and retain, albeit wrongfully and under false pretenses, and without imparting fair and reciprocal consideration or suffering legal consequences on their part, monies, goods and services or other items of value, all with intent to defraud plaintiff.

48. These egregious acts, which the defendants herein have directed at the plaintiff, and which formed a pattern of behavior that was, furthermore, also directed at members of the public, have been employed and perpetrated against several other persons or entities with which these defendants have done business.

49. As a result of this misconduct, the plaintiff has suffered damages in the form of: (a) the sum of $125,000.00 that was paid in connection with a performance engagement that, Akon now contends, he was able to cancel, unilaterally, without consequence; and (b) all of the expenses, including without limitation the legal fees and related costs, that have been and will be incurred in order to obtain a refund of the monies that were paid for an Akon concert that was never held.

50. Accordingly, ATA, Rajkumar and Akon are liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for all of the out-of -pocket costs, inclusive of attorneys'

fees, that are attributable to and have resulted from the said defendants' actions, as hereinbefore described; and (c) for exemplary and punitive damages, in the sum of $375,000.00.

EIGHTH CAUSE OF ACTION
AGAINST ATA AND RAJKUMAR
(Violation of General Business Law § 349)

51. Plaintiff repeats and realleges the matter set forth in paragraphs 1-50 of this complaint, as if more fully set forth herein.

52. ATA and Rajkumar regularly failed to disclose, to members of the consuming public and/or to those with whom they did business, their knowledge of Akon's actual, albeit fraudulent, practice of disclaiming as "unauthorized" the efficacy of commitments that had been negotiated and/or consummated, in the State of New York, by and/or through ATA and Rajkumar, for Akon's benefit or on Akon's behalf. This was done in furtherance of the undisclosed plan, by ATA, Rajkumar and Akon, inter alia: (a) to extract fees for performances that they well knew, consistent with the preconceived, albeit undisclosed, intentions of defendants ATA, Rajkumar and Akon in this connection, would not be given; and/or (b) to insulate Akon from liability for the breach of those obligations or commitments that he ultimately found to be inconvenient or for any reason wished not to honor; and/or (c) to enable the defendants to obtain and retain, albeit wrongfully and under false pretenses, and without imparting fair and reciprocal consideration or suffering legal consequences on their part, monies, goods and services or other items of value. Such conduct, undertaken in connection with business, trade or commerce or in the furnishing of any service performed in New York State, violates New York State General Business Law § 349.

53. Accordingly, ATA and Rajkumar are liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for the attorneys' fees and related costs of this action; and (c) for the punitive damages contemplated and authorized pursuant to New York State General Business Law § 349.

NINTH CAUSE OF ACTION
AGAINST AKON
(Violation of General Business Law § 349)

54. Plaintiff repeats and realleges the matter set forth in paragraphs 1-53 of this complaint, as if more fully set forth herein.

55. The violations of General Business Law § 349 as hereinbefore described were engaged in by ATA and Rajkumar at a time that ATA and/or Rajkumar were clothed with actual and/or apparent authority to act as Akon's agent, which authority has been, additionally, ratified and affirmed.

56. Accordingly, Akon is liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for the attorneys' fees and related costs of this action; and (c) for the punitive damages contemplated and authorized pursuant to New York State General Business Law §349.

TENTH CAUSE OF ACTION
AGAINST ATA, RAJKUMAR AND AKON
(Violation of General Business Law § 349)

57. Plaintiff repeats and realleges the matter set forth in paragraphs 1-56 of this complaint, as if more fully set forth herein.

58. ATA, Rajkumar and Akon, in engaging in the deceptive practices and conduct that are more fully described herein, and in their conspiracy to perform such acts, which were undertaken in connection with business, trade or commerce or in the furnishing of any service in New York State, committed acts in violation of New York State General Business Law § 349.

59. Accordingly, ATA, Rajkumar and Akon are liable to the plaintiff herein: (a) in the sum of $125,000.00, plus interest thereon, from April 30, 2013, that was paid for the Akon performance that was never held; (b) for the attorneys' fees and related costs of this action; and (c) for the punitive damages contemplated and authorized pursuant to New York State General Business Law § 349.

ELEVENTH CAUSE OF ACTION
AGAINST AKON, ATA
AND RAJKUMAR
(Conversion)

60. Plaintiff repeats and realleges the matter set forth in paragraphs 1-59 of this complaint, as if more fully set forth herein.

61. Defendants Akon, ATA and Rajukmar, who have acknowledged the plaintiff's right to a refund of the $125,000.00 that was transmitted in full payment for the Akon performance that never materialized, continue to exercise wrongful and wholly unauthorized dominion over that specific sum. These defendants were by their own words to render an immediate return of all such monies but have failed to do so and have instead retained and converted, wrongfully, the said amount.

62. Accordingly, the defendants Akon, ATA and Rajkumar are liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013.

TWELFTH CAUSE OF ACTION
AGAINST AKON, ATA
AND RAJKUMAR
(Unjust Enrichment)

63. Plaintiff repeats and realleges the matter set forth in paragraphs 1-62 of this complaint, as if more fully set forth herein.

64. The plaintiff has paid the defendants the sum of $125,000.00 for a performance that never took place, and which sums would be, the defendants stated, fully refunded. The continued retention by the defendants of all such monies has, however, enabled, and continues to enable, the defendants to be unjustly enriched, at the plaintiff's expense.

65. Accordingly, the defendants are liable to the plaintiff herein in the sum of $125,000.00, plus interest thereon, from April 30, 2013.

THIRTEENTH CAUSE OF ACTION
AGAINST ATA LLC
(Successor Liability-Alter Ego and Instrumentality)

66. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 65 of this complaint, as if more fully set forth herein.

67. On or about March 12, 2012, Rajkumar and/or members of his immediate family, formed ATA LLC, a purported limited liability company.

68. ATA LLC was formed for the purpose of continuing, under another name, the business of ATA and assisting ATA in its unlawful and wrongful effort to defeat and impair the legitimate rights of creditors. It was and is, therefore, the mere alter ego and instrumentality of ATA since, among other things:

(a) It has held itself out, at all times material hereto, to be the same company as ATA;

(b) Any assets, business, customer accounts, licenses, business opportunities and client relationships that it purportedly possessed, utilized or employed were received from ATA, for no consideration, for the sole purpose of continuing ATA's operation, in derogation of the rights of creditors, under another name;

(c) It was owned and operated through persons that had been agents, officers and/or employees of ATA; and

(d) There has been no substantive or operational distinction, aside from the mere filing of another set of organizational documents, between ATA and ATA LLC.

69. Accordingly, ATA LLC is liable to the plaintiff herein for all of the sums demanded against ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action.

FOURTEENTH CAUSE OF ACTION
AGAINST ATA LLC
(Successor Liability-Mere Continuation)

70. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 69 of this complaint, as if more fully set forth herein.

71. Defendant ATA LLC was and is the mere continuation of ATA and is liable for the latter's indebtedness to the plaintiff.

72. Accordingly, judgment should be entered in favor of the plaintiff and against ATA LLC for all of the sums demanded against ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action.

FIFTEENTH CAUSE OF ACTION
AGAINST ATA LLC
(Successor Liability-De Facto Merger)

73. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 72 of this complaint, as if more fully set forth herein.

74. ATA LLC should be deemed to be the successor to ATA by de facto merger and/or combination since, among many other things:

(a) It acquired all of the assets that were necessary for the continued and uninterrupted operation of the business that ATA had conducted;

(b) It was assigned and/or assumed and/or utilized the virtual entirety of ATA's business including, without limitation, all of the latter's intellectual property and good will;

(c) It took over ATA's business and customer accounts, licenses, business opportunities and client relationships;

(d) It assumed ATA's material liabilities;

(e) It held itself out, to the public, as the successor of ATA;

(f) It continued to operate, through persons that had been agents, officers and/or employees of ATA, the latter's business; and

(g) It continued to be owned by persons, or members of their immediate families, that had an ownership and/or other form of lawfully cognizable interest in ATA.

75. Since ATA LLC had become, by virtue of the foregoing, ATA's successor by de facto merger and/or consolidation, it was and is responsible, in toto, for the latter's indebtedness to the plaintiff.

76. Accordingly, ATA LLC is liable to the plaintiff herein for all of the sums demanded of ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action.

SIXTEENTH CAUSE OF ACTION AGAINST KAYVANA
(Successor Liability-Alter Ego and Instrumentality)

77. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 76 of this complaint, as if more fully set forth herein.

78. On or about March 23, 2013, Rajkumar and/or members of his immediate family, formed Kayvana, a purported limited liability company.

79. Kayvana was formed for the purpose of continuing, under another name, the business of ATA and assisting ATA and ATA LLC, ATA's alter ego and instrumentality, in their unlawful and wrongful effort to defeat and impair the legitimate rights of ATA's creditors. It was and is, therefore, the mere alter ego and instrumentality of ATA since, among other things:

(a) It has held itself out, at all times material hereto, to be the same company as ATA;

(b) Any assets, business, customer accounts, licenses, business opportunities and client relationships that it purportedly possessed, utilized or employed were received from ATA and/or ATA LLC, the latter's alter ego and instrumentality, for no consideration, for the sole purpose of continuing ATA's operation, in derogation of the rights of ATA's creditors, under another name;

(c) It was owned and operated through persons that had been agents, officers and/or employees of ATA and ATA LLC; and

(d) There has been no substantive or operational distinction, aside from the mere filing of another set of organizational documents, between ATA, ATA LLC and Kayvana.

80. Accordingly, Kayvana is liable to the plaintiff herein for all of the sums demanded against ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth causes of action.

SEVENTEENTH CAUSE OF ACTION
AGAINST KAYVANA
(Successor Liability-Mere Continuation)

81. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 80 of this complaint, as if more fully set forth herein.

82. Defendant Kayvana was and is the mere continuation of ATA and ATA LLC and is liable for the latters' indebtedness to the plaintiff.

83. Accordingly, judgment should be entered in favor of the plaintiff and against Kayvana for all of the sums demanded against ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth causes of action.

EIGHTEENTH CAUSE OF ACTION
AGAINST KAYVANA
(Successor Liability-De Facto Merger)

84. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 83 of this complaint, as if more fully set forth herein.

85. Kayvana should be deemed to be the successor to ATA and ATA LLC by de facto merger and/or combination since, among many other things:

(a) It acquired all of the assets that were necessary for the continued and uninterrupted operation of the business that ATA and ATA LLC, ATA's alter ego and instrumentality, had conducted;

(b) It was assigned and/or assumed and/or utilized the virtual entirety of the business of ATA and ATA LLC, ATA's alter ego and instrumentality, including, without limitation, all of the aforesaid entities' intellectual property and good will;

(c) It took over the business, customer accounts, licenses, business opportunities and client relationships of ATA and ATA LLC, ATA's alter ego and instrumentality;

(d) It assumed the material liabilities of ATA and ATA LLC, ATA's alter ego and instrumentality;

(e) It held itself out, to the public, as the successor of ATA and ATA LLC, ATA's alter ego and instrumentality;

(f) It continued to operate, through persons that had been agents, officers and/or employees of ATA and ATA LLC, ATA's alter ego and instrumentality; and

(g) It continued to be owned by persons, or members of their immediate families, that had an ownership and/or other form of lawfully cognizable interest in ATA and ATA LLC, ATA's alter ego and instrumentality.

86. Since Kayvana had become, by virtue of the foregoing, ATA's and ATA LLC's successor by de facto merger and/or consolidation, it was and is responsible, in toto, for the latters' indebtedness to the plaintiff.

87. Accordingly, Kayvana is liable to the plaintiff herein for all of the sums demanded of ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth causes of action.

NINETEENTH CAUSE OF ACTION
AGAINST RAJKUMAR
(Individual Liability)

88. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 87 of this complaint, as if more fully set forth herein.

89. Rajkumar was, at the time that ATA was dissolved by state proclamation, which occurred on July 27, 2011, ATA's president and principal shareholder. As such, he is personally liable for its indebtedness, and the indebtedness of any of ATA's alter ego entities, to the plaintiff.

90. Accordingly, judgment should be entered in favor of the plaintiff and against Rajkumar for all of the sums demanded against ATA, ATA LLC and Kayvana in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth causes of action.

TWENTIETH CAUSE OF ACTION
AGAINST RAJKUMAR
(Individual Liability-Piercing Entity Veil)

91. Plaintiff repeats and realleges the matter set forth in paragraphs 1 through 90 of this complaint, as if more fully set forth herein.

92. Defendant Rajkumar has, at all times relevant herein, exercised such domination and control over ATA. ATA LLC and Kayvana as to have abused the privilege of conducting business in corporate form and/or as a limited liability company. Such abuses include, without limitation: (a) the failure to maintain adequate and/or required business records; (b) the failure to treat these

alleged businesses as separate legal entities; (c) commingling and transferring, between the aforesaid entities, the computers and other fixed assets used in his business operation; (d) transferring assets between the aforesaid entities for no consideration; (e) installing his wife, an individual with no experience in the entertainment business, as the ostensible shareholder and/or principal officer of one or more of such entities; (f) employing alleged "corporate " or "entity" funds for personal use; and (g) paying personal debts with "corporate" or "entity" funds.

93. ATA, ATA LLC and Kayvana should, therefore, be disregarded as business entities and Rajkumar should be deemed personally responsible for the indebtedness of ATA, ATA LLC and Kayvana to the plaintiff.

94. Accordingly, judgment should be entered in favor of the plaintiff and against Rajkumar for all of the sums demanded against ATA, ATA LLC and Kayvana in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth causes of action.

WHEREFORE, plaintiff respectfully requests the entry of judgment as follows:

1. On the first cause of action against Akon in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

2. On the second cause of action against Akon in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

3. On the third cause of action against Akon in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

4. On the fourth cause of action against Akon in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

5. On the fifth cause of action against ATA and Rajkumar: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for all of the out-of-pocket costs, inclusive of attorneys' fees, that are attributable to and have resulted from the said defendants' actions, as hereinbefore described; and (iii) for exemplary and punitive damages, in the sum of $375,000.00;

6. On the sixth cause of action against Akon: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for all of the out-of-pocket costs, inclusive of attorneys' fees, that are attributable to and have resulted from the defendants' actions, as hereinbefore described; and (iii) for exemplary and punitive damages, in the sum of $375,000.00;

7. On the seventh cause of action against Akon, ATA and Rajkumar: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for all of the out-of-pocket costs, inclusive of attorneys' fees, that are attributable to and have resulted from the said defendants' actions, as hereinbefore described; and (iii) for exemplary and punitive damages, in the sum of $375,000.00;

8. On the eighth cause of action against ATA and Rajkumar: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for the attorneys' fees and related costs that the plaintiff has necessarily incurred in this action; and (iii) for the punitive damages contemplated and authorized pursuant to New York State General

Business Law § 349;

9. On the ninth cause of action against Akon: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for the attorneys' fees and related costs that the plaintiff has necessarily incurred in this action; and (iii) for the punitive damages contemplated and authorized pursuant to New York State General Business Law § 349:

10. On the tenth cause of action against ATA, Rajkumar and Akon: (i) in the sum of $125,000.00, plus interest thereon, from April 30, 2013; (ii) for the attorneys' fees and related costs that the plaintiff has necessarily incurred in this action; and (iii) for the punitive damages contemplated and authorized pursuant to New York State General Business Law § 349;

11. On the eleventh cause of action against Akon, ATA and Rajkumar in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

12. On the twelfth cause of action against Akon, ATA and Rajkumar in the sum of $125,000.00, plus interest thereon, from April 30, 2013;

13. On the thirteenth cause of action against ATA LLC for all of the relief demanded by plaintiff against ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action;

14. On the fourteenth cause of action against ATA LLC for all of the relief demanded by plaintiff against ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action;

15. On the fifteenth cause of action against ATA LLC for all of the relief demanded by plaintiff against ATA in the fifth, seventh, eighth, tenth, eleventh and twelfth causes of action;

16. On the sixteenth cause of action against Kayvana for all of the relief demanded by plaintiff against ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth causes of action;

17. On the seventeenth cause of action against Kayvana for all of the relief demanded by plaintiff against ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth causes of action;

18. On the eighteenth cause of action against Kayvana for all of the relief demanded by plaintiff against ATA and ATA LLC in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth causes of action;

19. On the nineteenth cause of action against Rajkumar for all of the relief demanded by plaintiff against ATA, ATA LLC and Kayvana in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth causes of action;

20. On the twentieth cause of action against Rajkumar for all of the relief demanded by plaintiff against ATA, ATA LLC and Kayvana in the fifth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth causes of action;

21. Awarding plaintiff the costs and disbursements of this action; and

22. Awarding plaintiff such other and related relief as the Court may deem to be just and proper.

Dated: New York, New York
April 29, 2014

DONALD J. TOBIAS
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(212) 759-4200

By: Donald J Tobias

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JURY TRIAL DEMAND

The plaintiff demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: New York, New York
April 29, 2014

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