

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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DANIEL NORIEGA p/k/a ADORE DELANO,

Index No. 651778/2017

Plaintiff,

-against-

PRODUCER ENTERTAINMENT GROUP, LLC
SIDEPEG RECORDS LLC, DAVID CHARPENTIER,
TOMAS COSTANZA, ASHLEY LEVY,
PAUL COULTRUP, WORLD'S END (AMERICA), INC.,
BEVERLY MARTEL MUSIC, LLC, d/b/a
KILLINGSWORTH RECORDING COMPANY,
JOHN AND JANE DOES 1 THROUGH 25,

Defendants.

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AFFIDAVIT OF DAVID CHARPENTIER

DAVID CHARPENTIER, being duly sworn, deposes and says the following under penalties of perjury:

1. I, David Charpentier, am a Defendant in this matter and I am also President of Defendant Producer Entertainment Group, LLC ("PEG" or "Manager"). I make this affidavit on personal knowledge.

2. The allegations contained in the Complaint represent complete fabrications and a perpetuation of fraud on this Court.

3. Before I discuss the details of the Complaint, however, I will briefly explain PEG's business model and Defendants' relationship with the Plaintiff.

Business Model and Defendants' Relationship to Plaintiff

4. PEG is a company that manages artists in the entertainment industry. The terms of PEG's client representations are stated in writing pursuant to an Artist Management Agreement.

5. Plaintiff Daniel Noriega p/k/a Adore Delano ("Plaintiff" or "Noriega" or "Adore" or "Artist") is one of PEG's clients, and as such, executed an Artist Management Agreement on December 23, 2013 ("the Agreement") and PEG subsequently exercised its option to extend the terms of the Agreement as reflected in an addendum dated May 6, 2015 (a true and correct copy of the Agreement with addendum is annexed hereto as Exhibit A).¹

6. The Agreement provides, among other things, that PEG is entitled to collect "twenty percent (20%) of Artist's Gross Monthly Earnings from Artist's activities in the Entertainment Industry" and that net payouts by PEG to Noriega are calculated based on "**deposits collected (minus compensation [and reimbursable expenses])**" for completed contracts. Exh. A, Agreement, ¶¶ 5 and 6 (emphasis added). The 20% "compensation" referenced in the Agreement ("Commissions") applied to, among other things, fees payable to Noriega for concert performances ("Performance Fees").

7. With respect to Noriega's concert performances, PEG communicated with concert promoters to discuss opportunities for Noriega to perform. Promoters presented offers for Noriega that included the date of the proposed performance and the proposed fee payable to Noriega. PEG presented such offers to Noriega. Noriega and the concert promoters entered into an agreement ("Performance Contracts") with respect to the Performance Fee. Performance

¹ Contrary to the Complaint, I did not enter into any contract with Noriega, as I signed the Agreement solely on behalf of PEG. See, Agreement, Exh. A, pg. 10. For this reason alone, it is my understanding that the Complaint does not, as a matter of law, state a claim for breach of contract against me personally.

Contracts were typically either (i) a written agreement signed by Noriega and each promoter, or (ii) otherwise communicated to the promotor by PEG on Noriega's behalf.

8. Pursuant to the Agreement (as specifically related to "deposits collected" referenced in Paragraph 5(a)) and pursuant to the Performance Contracts: (i) the concert promoter would make an advance payment to PEG equal to fifty percent (50%) of the Performance Fee ("Deposit"); (ii) the promoter would pay the balance of the Performance Fee almost exclusively in cash directly to Noriega upon Noriega's arrival at the performance venue at the time of the performance (those direct payments would equal fifty percent (50%) of the Performance Fee)("Balance Payment"); (iii) upon completion of the performance, PEG would deduct its full Commission from the amount held by PEG as a Deposit, deduct any costs or expenses of which it is entitled reimbursement under Paragraphs 5 and 6 of the Agreement, and then pay the balance of the Deposit to Noriega (assuming, as discussed herein, that Noriega did not have a negative balance as a result of other expense advances paid by PEG at Noriega's request).

9. **Of critical importance herein**, the reason why PEG would be entitled to take its full 20% management fee out of the Deposit, was because PEG would take nothing (*i.e.* 0%) of the Balance Payment paid directly by the promotor to Noriega at the time of the performance. If Noriega did not receive the Balance Payment he would typically not perform and would notify PEG of the promotor's breach of the Performance Contract.

10. The reason why these facts are so critical is because **every mathematical calculation and purported figure contained in the Complaint completely omits and disregards the Balance Payments that Noriega collected directly from the promoters – which totaled approximately \$450,000.**

11. Thus, the Complaint is based entirely on the false underlying assumption that PEG collected all Performance Fees, when in fact, Noriega himself directly collected 50% thereof via Balance Payments. When the Balance Payments are accurately factored into the equation -- including, but not limited to, the 20% management fees **and in excess of \$300,000 in production and merchandise expenses that PEG paid in advance for Noriega at his request** -- it unequivocally exhibits that Noriega's and his attorneys' Complaint is both frivolous and baseless in fact.

12. As more thoroughly explained below, it is also critical for the Court to understand at the outset how Defendants Tomas Costanza, Ashley Levy and Paul Coutrup (the other alleged members of Defendants' preposterous "criminal enterprise") are involved in this matter. They are the songwriters/composers and producers that created Noriega's songs and albums. They were justifiably compensated for their work and Noriega was aware that he was obligated to compensate them.

13. The Complaint essentially alleges six general areas of wrongdoing: (i) that Defendants breached a fiduciary duty to Plaintiff Daniel Noriega (professionally known as Adore Delano) ("Plaintiff" or "Noriega" or "Delano") since they allegedly opened, controlled and mismanaged a bank account in his name; (ii) that 50% of the revenues generated through Noriega's performances were stolen by Defendants right off the top and that Defendants then took a commission on the remaining 50%, leaving Noriega with close to nothing; (iii) that Defendants wrongfully reimbursed themselves for travel and hotel expenses; (iv) that PEG's accounting statements omit "many" Noriega performances for the purported purpose of concealing additional monies allegedly stolen from Noriega; (v) that Defendants wrongfully charged Noriega with credit card processing fees; and (vi) that monies were wrongfully stolen

from Noriega with respect to his album sales and disbursed between the Defendants, whom Noriega alleges is a criminal enterprise. Each and every one of these allegations are unequivocally false, and demonstrate either an intentional effort to commit a fraud on the Court or, and far less likely, a shocking ignorance of the facts.

14. Before addressing each of the aforementioned subject-matters, however, I must correct for the record some of the alleged facts stated in the “Preliminary Statement” of the Complaint, as these allegations relate to Noriega’s credibility before this Court and represent some of the faulty underlying assumptions upon which the claims are based.

Background Misrepresentations Contained in the Complaint

15. Paragraph 1 of the Complaint alleges that “Adore has performed in hundreds of sold out concerts all over the world.” While Adore has performed in approximately three hundred shows, only about 20% of those shows were sold out.

16. Paragraph 2 of the Complaint alleges that “[s]ales of Adore’s albums range in the tens of thousands, while, simultaneous and ongoing downloads, and iTunes purchases of individual songs, range in the hundreds of thousands.” The actual numbers are far more bleak. Noriega’s total album purchases (for both his first and second albums) is a combined 19,569 units, and the combined number of “singles” sold is 133,387 units. The Complaint further alleges at Paragraph 2 that “some of Plaintiff’s YouTube music videos have been viewed by nearly 10 million people.” It is very interesting that Noriega would bring up his YouTube music videos since all revenues collected from YouTube are made directly to Noriega, for which **Noriega currently owes PEG a 20% management fee under Paragraph 5 of the Agreement.**

Should the Court allow this case to be heard on the merits, PEG intends to file Counterclaims

against Noriega for breach of the Agreement and for a full accounting of revenues generated by Noriega from his “nearly 10 million” music video views.

17. Paragraph 3 of the Complaint alleges that Noriega has “appeared as a regular on the popular television program entitled ‘Rupaul’s Drag Race All Stars...’” In reality, Noriega quit in the middle of the second episode.

18. Paragraph 4 and 5 of the Complaint allege that Noriega “is a lucrative brand, and has generated over \$2,500,000.00 in the past three years alone” but that, “... during said period, [Noriega] received less than \$300,000.00, a nominal fraction of what he was legally entitled to.” These two paragraphs of the Complaint are paramount to the Court’s understanding as to why the entire basis of the Complaint is a complete falsehood. As indicated above, Noriega has intentionally omitted from the Complaint the fact that only the Deposits reflecting fifty percent (50%) of Performance Fees are paid through the PEG account -- and the remaining 50% of Performance Fees is paid directly by the promoters to Noriega at the time of performance (almost exclusively in cash). In addition, as stated in greater detail below, Noriega also directly received all revenues in connection with tour and online merchandise sales and revenues generated from YouTube.

19. Paragraph 5 of the Complaint is absolutely false since it omits (and removes for from the equation completely) the Balance Payments paid directly to Noriega, which equal over \$450,000. In other words, PEG did not take 50% off the top (as alleged in the Complaint); but rather, Noriega simply omitted from his Complaint the fact that he received 50% of all touring revenues directly from the promoters.

20. While it is true that of the 50% touring Deposits and music sales revenues that passed through PEG (the gross amount of which is approximately \$1.116 million), Noriega has

received approximately \$240,668 from PEG directly -- that is because PEG took its Commission out of the Deposits (the Commission was based on the full amount of the Performance Fees, which included the 50% Balance Payment that was paid directly to Noriega generally in cash), took out expenses for which it was entitled under Paragraph 6 of the Agreement and paid royalties to the songwriters, composers and producers as detailed below. Moreover, the reimbursable expenses were quite significant. For example, at Noriega's request, PEG made advance payments in excess of \$200,000 for album and music video production costs (for two albums and eleven music videos). In excess of \$75,000 was also advanced for merchandising inventory for Noriega to sell at concerts and online, for which Noriega is again in breach of the Agreement by failing to pay PEG its Commission on all merchandise.²

21. Paragraph 6 of the Complaint alleges that "PEG and Charpentier" have distributed to themselves "upwards of \$2,000,000.00 in cash from Noriega's earnings and accounts." This allegation is without a shred of merit. As previously mentioned, Noriega was the only recipient of cash for Performance Fees. All payments of Deposits that passed through PEG accounts were made by wire transfer, check, money order, credit card or PayPal from promoters, and to my knowledge no amount was paid by any promoter to any other defendant. Moreover, I have not taken any monies whatsoever from Noriega, outside of the compensation I received from PEG, which has earned Commissions pursuant to the Agreement. To date, PEG has earned approximately \$294,000 from Noriega's revenues ((i) none of which was received in cash; and (ii) is less than what Noriega currently owes PEG in Commissions with respect to online and tour merchandise revenue and music video monetization for which Noriega failed to account, as described below)).

² This is another counterclaim that PEG intends to file should the Court permit this case to be heard on the merits.

22. Absolutely nothing has been concealed from Noriega. He has received account statements pursuant to the Agreement and all monies, fees and expenses, are fully accounted for. As explained more specifically below, Noriega -- or his attorneys, who obviously failed to perform any investigation of the facts before filing the frivolous and vexatious Complaint which has caused irreparable damage to Defendants' reputations -- simply fabricated fictitious allegations to suit their outrageous narrative.

23. Finally, the "Preliminary Statement" of the Complaint (at paragraphs 8 and 9) alleges that the "PEG Defendants" "would convince Adore that he was in tremendous financial shape" and "... if Adore pressed the matter, PEG Defendants' threatened to ruin his career in the entertainment industry, and would order him to go back to work, and not question his finances." Noriega's contentions are false and nonsensical. First, none of the "PEG Defendants" were in any way involved in Noriega's personal finances or offered any financial advice. PEG is Noriega's talent manager pursuant to the terms of the Agreement, which (non-coincidentally) states that, "[n]othing herein shall be construed to prevent Artist from consulting with Artist's attorney, business manager, booking agent, tax advisor or other similar professional." Exh. A, ¶ 3.³ Second, none of the "PEG Defendants" have ever threatened to harm Noriega's career, nor does that assertion make any sense given that the more revenues generated by Noriega, the greater the commissions that would be received by PEG. There was no scenario in which it would have made sense for PEG to harm Noriega's career.

³ For this same reason, Noriega's allegation (at Paragraph 27) of the Complaint that the "PEG Defendants' were also responsible for all financial aspects of Adore's career and income" is also false.

No Bank Account Was Ever Opened by Defendants for Noriega

24. Paragraph 29 of the Complaint alleges that the “PEG Defendants” unilaterally opened a bank account for Noriega and “were the fiduciary and signatory on this account, and had complete control and access to this account, and Noriega’s earnings.” Paragraph 30 of the Complaint then alleges that “[a]ny and all earnings, income, expenses, reimbursements, and distributions were purportedly to flow in and out of this account.” There is no truth to these allegations. No bank account was ever opened for Noriega, and none of the “PEG Defendants” have ever maintained any control, or were signatories, to any bank account in Noriega’s name.

25. The only “artist account” that existed relevant to the facts of this case, is that Noriega had an “account” with PEG in the sense that Noriega was PEG’s client (in the same way, for example, that customers of Verizon have an “account” with Verizon). Any monies that came to PEG in relation to Noriega’s earnings were deposited into PEG’s operating bank account, but that was not a distinct account for Noriega. Indeed, pursuant to the Agreement, PEG was contractually entitled to deduct from those monies its management fees and other reimbursable expenses (expenses that were often in excess of any monies owed Noriega -- which is why his “account” with PEG often had a negative balance).⁴

26. Noriega’s allegation in Paragraph 28 of the Complaint that the PEG Defendants “exclusively controlled” his earnings is absolutely false. Noriega knows full well that he personally received 50% percent (from the promoters directly) of the Performance Fees in cash on the day of his performance -- again, that amount was approximately \$450,000 in cash

⁴ For example, and as stated above, PEG advanced in excess of \$275,000 in production and merchandise expenses at Noriega’s request. Thus, until those expenses were reimbursed, Noriega’s performances (which often only generated a few thousand dollars at a time) would on occasion not generate income to Noriega out of the Deposits that would pass through the PEG account. Noriega would still collect, however, all of the Balance Payments.

received directly by Noriega. Noriega also directly received all revenues from his tour merchandise sales (believed to be approximately \$600,000), and all of his online merchandise sales went directly to Noriega's PayPal account (believed to be approximately \$200,000). Noriega also directly received income from YouTube (believed to be approximately \$100,000). Noriega's representation to this Court that the PEG Defendants "exclusively controlled" his earnings, is patently and demonstrably false.

27. And of course, the same is true with respect to Noriega's allegation (at Paragraph 5 of the Complaint) that he has received less than \$300,000 of the revenues generated by him over the past three years. That allegation is completely false. During that time period, upon information and belief, Noriega has received approximately \$1,590,668.

The Complaint's Contention that 50% of his Earnings Was Stolen "Off the Top" is Frivolous and is a Fraud on this Court; and Such Fraud is Tacitly Admitted by Noriega in his "Affidavit of Merit" Dated May 22, 2017

28. As previously explained, each Performance Contract provides for a 50% Deposit to be sent to PEG with the remaining 50% Balance to be paid directly from the promoter to Noriega at time of performance. Examples showing how PEG appropriately and consistently maintained its obligations with Noriega are listed below.

29. The Complaint (at Paragraphs 37 and 38) references two performances (the "Estate" in Boston and "Voyeur" in Philadelphia). A true and correct copy of the Performance Contract for the Voyeur show in Philadelphia on April 25, 2014 is annexed hereto as Exhibit B. That contract demonstrates that the total performance fee is \$2,000, with the initial deposit of \$1,000 paid to PEG and the balance of \$1,000 to be paid "to Artist [defined therein as Noriega] prior to performance via **cash only** or act will not perform." Exh. C (emphasis in original). Thus, because only \$1,000 would ever pass through PEG for this performance (the other \$1,000

was paid in cash to Noriega directly), PEG would take its 20% Commission out of the \$1,000 deposit -- but that 20% Commission would be calculated based on the total Performance Fee amount of \$2,000 (pursuant to Paragraph 5 of the Agreement). Upon information and belief, a Balance Payment of \$1,000 was paid by the promotor directly to Noriega. My belief is based on the fact that at no time prior to the filing of this complaint has Noriega ever indicated to me that the promoter of the April 25, 2014 Voyeur show failed to make payment of the \$1,000 Balance to Noriega at the time of the performance as required by that Performance Contract -- and PEG has paid Noriega the balance of the Deposit after the deduction of PEG's appropriate Commission and expenses.

30. The same is true in connection with the Estate performance in Boston on April 24, 2014. While there was no written contract for that performance, the payments on the Performance Fee of \$2,500 was broken up into an initial deposit of \$1,250 (paid to PEG as a Deposit) with a Balance Payment of \$1,250 paid directly to Noriega at time of performance (in cash). Annexed hereto as Exhibit C is a true and correct copy of email correspondence, dated April 23, 2014, that I sent to Noriega with respect to his touring schedule for April 24 through April 29, 2014 (which included both the Estate and Voyeur performances). Those emails show, among other details of the expenses incurred in touring, that the respective "balances" for each show would need to be collected by Noriega. As was the case with each of Noriega's performances, because only the \$1,250 Deposit would ever pass through PEG for this performance (the \$1,250 balance was paid in cash directly to Noriega), PEG would take its 20% fee out of the \$1,250 -- but that 20% fee would be calculated based on the total Performance Fee amount of \$2,500 (pursuant to Paragraph 5 of the Agreement).

31. Thus, far from showing anything inappropriate, Paragraphs 37 and 38 of the Complaint highlights that PEG did absolutely nothing wrong. What it does show, however, is how Noriega and his attorneys have intentionally concealed from this Court the fact that Noriega was paid 50% of the Performance Fees directly -- which materially alters every purported example and calculation contained in the Complaint.

32. I also understand that in support of his Motion for Default, Noriega submitted an "Affidavit of Merit" sworn to May 22, 2017 (the "Noriega Affidavit") (Doc. 49). Therein, at Paragraph 15, Noriega states that, "Defendants' PEG and Charpentier collected the vast majority of income, earnings, and compensation on my behalf, and placed themselves in a position where they exclusively **controlled at least 50% of the earnings from all of my performances**; and all of the earnings from my album sales, and song download." Emphasis added. The fact that Noriega **admits** in his Affidavit that PEG only controlled "50% of the earnings" from his performances is a tacit **admission** that the explicit allegations of his Complaint -- that PEG and I "exclusively controlled Adore's earnings" (Complaint, ¶ 28) and stole 50% "off the top" (*Id.*, ¶ 32) -- is completely false. In other words, Noriega's "Affidavit of Merit" proves just how meritless his Complaint actually is.

33. Not only does the Complaint intentionally conceal the fact that Noriega took fifty percent (50%) of the Performance Fees without accounting for any of those payments in the Complaint, Noriega's allegation (in Paragraph 31 of the Complaint) that he had a right to take 80% of all performance fees prior to PEG taking its 20% management fee and reimbursement for expenses is false and contrary to the express terms of the Agreement itself. The Agreement provides that PEG is entitled to "twenty percent (20%) of Artist's Gross Monthly Earnings" (as defined therein) and "[i]t is understood that, for purpose hereof, no expense, cost of disbursement

incurred by Artist in connection with the receipt of Gross Monthly Earnings shall be deducted therefrom prior to the calculation of Manager's compensation." See, Exh. A, Paragraphs 5(a)-(b). Moreover, the Agreement at Paragraph 6 specifically states that, "**In the event that Manager advances any of the foregoing fees or expenses** in direct connection with Artist's professional career or with the performance of Manager's services hereunder, **Manager will deduct said expenses from monthly/payout...**" Emphasis added.

34. Each of the accounting statements referenced in the Complaint accurately reflect all monies that passed through PEG and all monies paid by PEG to Noriega (after deducting Commissions and expenses pursuant to the parties' Agreement). What they do not reflect -- as Noriega well knows (and as reflected in the respective Artist Engagement Contracts (such as, for example, Exhibits B and F annexed hereto) -- are the other half of the touring revenues that promoters paid to Noriega directly.

35. I also understand that Noriega submitted additional Performance Contracts as Exhibits C and D to his Affidavit in support of his motion for default judgment. **Each and every one of those Artist Engagement Contracts confirm exactly what I have consistently stated herein**: that a 50% Deposit was provided to PEG and a 50% Balance was paid directly to Noriega at the time of performance "CASH ONLY or act will not perform." Annexed hereto as Exhibit D is a true and correct copy of "Exhibit C" which was annexed to the Noriega Affidavit, and annexed hereto as Exhibit E is a true and correct copy of "Exhibit D" annexed to the Noriega Affidavit.

36. In the Noriega Affidavit (at Paragraph 23), Noriega states that PEG has failed to provide him with his share of the "Deposit" for a show that was to occur on June 3, 2017 in Lima, Peru. Noriega's statement demonstrates a complete misunderstanding of how and when

he was to be paid. The Deposit was just that, a deposit, and it would not be touched until Noriega actually performed. In the case of the June 3, 2017 show in Lima, **Noriega cancelled that performance and PEG had to return the Deposit to the promotor.** Noriega's sworn testimony that he is entitled to that money is unequivocally false.

37. Thus, the Complaint only makes sense through Noriega's distorted version of the facts which intentionally conceal from this Court the other 50% Balance Payments that never passed through PEG (or any other Defendant), but were instead paid directly to Noriega from the promoters. The PEG Defendants did not take "50% off the top" (as alleged in Paragraph 33 of the Complaint). The complete opposite is true. **It was Noriega that took 50% off the top (in the form of 50% cash balances) -- and then intentionally concealed those Balance Payments in the Complaint.**

38. Noriega's allegations that "PEG Defendants" embezzled and converted his funds is factually baseless.

PEG Was Properly Reimbursed for its Expenses Pursuant to the Agreement

39. The Complaint alleges (at Paragraphs 43 through 50) that the "PEG Defendants" somehow "fraudulently concealed" and "converted" several hundred thousand dollars in travel expenses. This is yet another meritless claim.

40. In support of his allegation, Noriega only provides one example; travel expenses incurred on March 14, 2014 for "B-Bob's Mobile AL" (at Paragraph 43 of the Complaint), which Noriega claims are fraudulent.

41. Annexed hereto as Exhibit F is a true and correct copy of the Performance Contract for Noriega to perform on March 15, 2014 at "B-Bob's" located in Mobile, Alabama. First and foremost, the Court will notice that (as was typical with all such engagements, as

discussed above), an initial deposit of \$1,000 was paid to PEG and the balance was paid (in cash) directly to Noriega at the time of performance. Second, and as related to expenses, the contract specifically provides that B-Bob's was responsible for paying the performance fee of \$2,000 "[p]lus two (2) roundtrip flights on Delta Airlines as specified by Management, two (2) rooms of 4 star or better hotel accommodations, and local ground transportation between airport/hotel/venue."

42. As is customary, and as was the case with B-Bob's, PEG booked and paid the out-of-pocket travel expenses (in order to ensure that Noriega received the precise travel arrangements (including specific flights and seat assignments) he wanted, which would not necessarily be the case if the promotor booked the travel arrangements). PEG was then reimbursed those expenses by B-Bob's pursuant to the contract. Thus, while Paragraph 45 of the Complaint is accurate in that most contracts provided for the payment of hotel accommodations and travel expenses, the Complaint fails to consider the logistics of how those expenses are incurred. They were incurred by PEG, for which it was then reimbursed by B-Bob's.

43. To be clear -- since the Complaint makes wild accusations without factual basis -- travel expenses that were reimbursable by venues/promotors (such as the B-Bob's performance) were not in any way charged to Noriega. Those expenses were reimbursed by PEG from the venues/promotors.

44. The accounting statements referenced in the Complaint merely reflect that PEG was being reimbursed (by the promotor) for the travel expenses that it advanced in connection with Noriega's touring schedules -- as permitted in the parties' Agreement.

The Accounting Statements Do Not Omit Noriega Performances

45. Paragraph 51 of the Complaint states that "... many shows Adore performed in, have not even been included in these accounting statements, so therefore, Adore most certainly made significantly more than what can be discerned from the statements provided by PEG Defendants', alone."

46. I am not aware of any shows that have been omitted from the accounting statements provided by PEG to Noriega -- nor does the Complaint provide any examples of such purportedly omitted shows.

47. Since PEG keeps detailed records of Noriega's performances and no examples of any such omitted show is contained in the Complaint, it is my understanding that Paragraph 51 of the Complaint is just another baseless allegation.

PEG Charged Noriega with Appropriate Credit Card Processing Fees Pursuant to the Parties' Agreement

48. The Complaint alleges at Paragraph 53 that PEG charged Noriega with "blatantly fraudulent" "credit card processing fees." This is another accusation of wrongdoing that is without any factual basis.

49. A great many reimbursable travel expenses and performance fee deposits paid by promoters were made via credit card. Pursuant to the parties' Agreement, the credit card processing fees incurred in connection with those transactions (and expenses generally) were all chargeable to Noriega -- and PEG was permitted to deduct said expenses from any payout to Noriega. *See*, Agreement, Exhibit A, ¶ 6 ("Artist shall be solely responsible for payment of all publicity costs, promotional or exploitation costs, travel expenses and/or wardrobe expenses and all other expenses, fees and costs incurred by Artist. **In the event that Manager advances any of the foregoing fees or expenses** in direct connection with Artist's professional career or with

the performance of Manager's services hereunder, **Manager will deduct said expenses from monthly/payout**... Without limiting the foregoing, such direct expenses, costs or fees incurred by Manager shall include promotional and publicity expenses, **credit card terminal fees, travel and accommodation expenses**, and costs whenever Manager, in Manager's opinion, with Artist's approval, shall deem it advisable to accompany Artist." Emphasis added.

50. As such, Noriega's allegation that PEG "fraudulently" charged him with credit card processing fees is baseless and contrary to the express terms of the Agreement.

51. Paragraph 53 of the Complaint also alleges that, "[f]or example, on May 23, 2014, a \$700 management fee is claimed, however, immediately below the manage fee, is an additional \$122.62 credit card processing fee; see also, June 6, 2014, where a management fee of \$800 is claimed, and immediately below an additional \$85.14 credit card processing fee is claimed." As discussed below, these allegations wrongfully imply that credit card processing fees were charged in connection with the management fees. That is not what occurred.

52. What Noriega (and his attorneys) intentionally omit from their representation to this Court, however, are the specific credit card transactions listed on those very accounting statements on those same dates. For example, in the May 2014 accounting statement (a true and correct copy of which is annexed hereto as Exhibit G), transactions listed on May 23, 2014 (in addition to the \$700 management fee, which was correctly calculated based on a total performance fee of \$3,500) is a 50% performance deposit of \$1,750. And to the right of that \$1,750 entry are notes that specifically state, "50% (\$1,750) **received via CC** 5/9).⁵ There is also an entry on May 23, 2014 for reimbursement of travel expenses in the amount of \$1,847.50 and indicates that such amount was paid "**via CC**" on May 9, 2014. As a result, also on May 23,

⁵ The "CC" in the accounting statements refers to payments made by credit card.

2014, is a credit card terminal fee of \$122.62, which is chargeable to Noriega under the Agreement.

53. The second example provided in Paragraph 53 (relating to the June 2014 accounting statement) is equally misleading and without factual basis. A true and correct copy of the June 2014 accounting statement is annexed hereto as Exhibit H. Therein, it is disclosed (on entries dated June 6, 2014) that: (i) a \$2,000 performance deposit was received “via CC” on May 22, 2014 (which represented “50%” of the full \$4,000 performance fee); and (ii) an additional \$1,535 was received “via CC” on May 22, 2014 (for reimbursed travel expenses). As such, and pursuant to the Agreement, there is also a “credit card processing fee” charged to Noriega of \$85.14 for “deposit/travel.” Noriega’s representation that PEG’s accounting statement indicates that this credit card fee was in connection with the \$800 management fee is intentionally misleading. While on the subject, I should also note that the \$800 management fee was deducted from the \$2,000 Deposit received by PEG (but was calculated based on 20% of the full performance fee of \$4,000 -- because the \$2,000 Balance was paid directly to Noriega by the promotor).

54. As a result of Noriega and his attorneys’ blatant misrepresentations to the Court, Paragraphs 54 through 63 are absolutely false. Those conclusions are based on Noriega’s concealment from the Court of the 50% payments he received directly from promoters and his intentional failure to include all relevant information contained in PEG’s accounting statements and the terms of the parties’ Agreement, which specifically allows for PEG to make the very deductions that Noriega alleges are fraudulent.

**Noriega Has Received All Monies of Which he is Entitled
in Connection with his Album Sales**

55. There are numerous allegations contained in Paragraphs 103 through 125 of the Complaint that are without any factual basis. I will address them in kind herein.

56. Paragraph 105 of the Complaint alleges that, “Adore has not been compensated for any of the sales and incomes generated by [his] album sales, and downloads.” This allegation is a complete fabrication. Noriega’s total album purchases (for both his first and second albums) is a combined 19,569 units, and the combined number of “singles” sold is 133,387 units -- and he has been fully compensated for these sales. With respect to YouTube music videos, all revenues collected from YouTube are made directly to Noriega (*i.e.*, no such revenues pass through PEG), and as stated above, Noriega currently owes PEG a 20% Commission under Paragraph 5 of the Agreement (which he has yet to pay in breach thereof).

57. Paragraphs 106 and 107 of the Complaint allege that “Adore never entered into a separate agreement for his album, the sale of his songs, or to license his music, with any of the Defendants” and that “no record label exists between the parties’, however, PEG Defendants’, without Adore’s prior written consent and absent legal authority; formed a record label to control every aspect of Plaintiff’s album sales and collections of revenues, which were similarly misappropriated...” Again, this allegation is untrue. Paragraph 5(b) of the parties’ Agreement, which defines the term “Gross Monthly Earnings” (of which PEG is entitled to its 20% Commission) plainly includes any record/album sales, as the definition provides that, “the total of all earnings” ... “which is reasonably related to Artist’s career in the entertainment, amusement, **music recording**, motion picture, television, radio, literary, theatrical and advertising fields and all similar areas whether now known or hereafter devised, in which Artist’s artistic talents are developed and exploited (“Entertainment Industry”)...” *See,*

Agreement, Exh. A., ¶ 5(b) (emphasis added). There was thus no need for any new contract, or for the creation of any new record label; as PEG has an account with the digital distribution service TuneCore for the purpose of distributing music by artists that it manages (including Noriega).

58. The numbers contained in Paragraph 109 are correct -- but contrary to the Complaint's allegations, the payout to Noriega is also correct. This is because Noriega was one of four songwriters/composers on his first album, with all writers splitting the royalties equally as is industry standard. Therefore, of the \$119,065.77 album revenues, PEG is entitled to its 20% Commission under the Agreement, and then four writers (one of which is Noriega) split the royalties equally, thus they each received \$23,813.15. Twenty percent of \$119,065.77 is exactly \$23,813.15, the amount stated in Paragraph 109 of the Complaint.

59. Although Paragraph 109 of the Complaint is correct, Paragraph 110 is not, and in fact it makes no sense whatsoever. PEG took a 20% Commission on the \$119,065.77 in revenues on Noriega's first album because that is exactly what PEG is contractually entitled to under Paragraph 5 of the Agreement (which explicitly does **not** limit the Commission to Noriega's "royalties" or "shares of profits").

60. As stated above, the reason why Defendants Tomas Costanza, Ashley Levy and Paul Coutrup also received a split of the royalties on Noriega's first album -- as Noriega well knows -- is because they were the other three songwriters/composers that created the album.

61. In addition, Tomas Costanza was paid an additional \$32,000 (which was paid up front by PEG, and thus a reimbursable expense) because -- again, as Noriega well knows -- in addition to being a writer, Costanza was also the producer of the album.

62. In fact, the great irony of Noriega's claims is that PEG actually overpaid Noriega by paying his full royalty share of \$23,813.15 on the first album. PEG should have (and was contractually entitled to) deduct the production expenses off the top before calculating its Commissions, and had it done so, Noriega would have only been paid approximately \$9,000 for the first album. On this point, it is worth reiterating that, at Noriega's request, PEG advanced over \$200,000 in production costs for Noriega's two albums and eleven music video productions.

63. With respect to Noriega's second album (After Party), PEG was able to negotiate a more favorable royalty for Noriega due to the establishment of his first album. Defendant Killingsworth Recording Company ("Killingsworth"), of which Costanza, Levy and Coutrup are associated, thus received only a 25% royalty, with Noriega receiving 75% (payable after PEG's Commission and reimbursable expenses pursuant to the Agreement). While Noriega received a larger royalty percent on After Party, however, that album's overall sales were a mere fraction than that of his first album.

64. The \$28,534.91 referenced in Paragraph 116 of the Complaint was production costs paid to Killingsworth in order to produce Noriega's second album -- a cost that was advanced by PEG. It is truly remarkable that Noriega (who specifically asked PEG to advance all production costs) is now complaining that PEG was reimbursed for those costs.

65. Contrary to the allegations contained in Paragraph 117 of the Complaint, the accounting statement dated December 13, 2016 does not indicate that Costanza, Levy and Coutrup received "50% from any and all revenues from Adore's albums, including all records sales, sales from individual songs/I-tunes, and streams, after PEG's 20% commission."

66. Paragraph 119 does not reflect any wrongdoing whatsoever. The “Killingsworth Defendants” (as defined in the Complaint) have correctly been paid royalties and production costs. Again, it is incomprehensible that Noriega actually believes that he did not have to provide compensation to the songwriters and composers that created his songs and the producers and recording studios that produced his albums; or that he did not have to provide reimbursement of any such costs to PEG -- which advanced over \$200,000 in production costs for his albums and music video at Noriega’s request.

67. Paragraph 122 completely ignores all of the royalties and reimbursable expenses paid out. Noriega was only entitled to receive 25% royalties on the first album and 75% on the second (but far less lucrative) album, and only after PEG is paid its Commission and is reimbursed all production expenses. That Noriega’s albums did not yield the kind of return he may have hoped for is not indicative of any wrongdoing. It is the economic realities of the costs and fees associated with making recording albums -- particularly albums that were only mildly successful in terms of industry standards.

68. Paragraph 122 also alleges that “Defendants illegally withdrew [monies in order to pay the Killingsworth Defendants] from Plaintiff’s bank account.” For the reason stated above, the Killingsworth Defendants were appropriately paid for their services on the respective albums; but I must also note that at no time did any defendant open or control “Plaintiff’s bank account.” That allegation is a complete fabrication with no basis in fact.

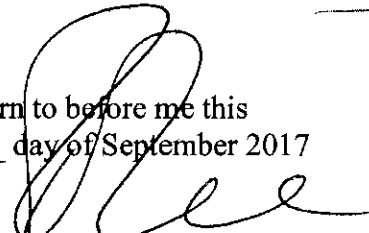
Noriega’s RICO Allegations are False and Absurd

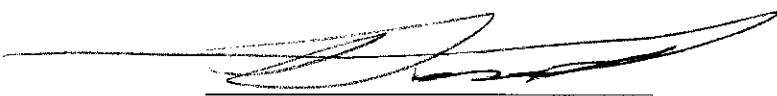
69. Finally, I wish to briefly respond to Noriega’s allegation that Defendants are some kind of “criminal enterprise” engaged in a fraudulent scheme to “embezzle” Noriega’s money “through a pattern of racketeering.” Not only is the allegation baseless, it is completely and totally absurd.

70. PEG (of which I am the President) is a legitimate artist management company, and Tomas Costanza, Ashley Levy and Paul Coutrup are songwriters, composers and producers that created and produced Noriega’s songs and albums. Each of the Defendants performed legitimate services for Noriega to which they are entitled to compensation. PEG has also provided detailed accounting statements that confirm all monies that were received by PEG and all monies that have been paid from PEG to Noriega (including, of course, PEG’s Commissions, reimbursable expenses, production costs and royalties).

71. Through the filing of a frivolous Complaint, Noriega and his attorneys have inflicted significant harm to the personal and professional reputations of each of the Defendants.

The allegations contained in the Complaint are fabricated and false, and it is my sincere hope that this Court will not condone such vexatious and bad-faith conduct.

Sworn to before me this
21 day of September 2017

Notary Public


David Charpentier

RICHARD ROTH
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02R05075155
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES MAR 31, 2019