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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10
11 CITY OF SUMMERSIDE, Prince Edward
12 Island, Canada

13 Plaintiff,

14 v.

15 KATRINA BERG SUSSMEIER, an
individual, STARLINK PRODUCTIONS,
16 LLC, STARLINK PRODUCTIONS, INC.

17 Defendants.

Case No. - 00338

HRL

COMPLAINT FOR FRAUD,
CONSPIRACY TO COMMIT FRAUD,
NEGLIGENT MISREPRESENTATION,
RESCISSION OF CONTRACT

DEMAND FOR JURY TRIAL

1 Plaintiff City of Summerside, Prince Edward Island, Canada, by and through its attorneys,
2 Kendall Brill and Klieger, LLP, hereby pleads and alleges as follows:

3 **NATURE OF ACTION**

4 1. This action is brought to redress the damage from a fraud and conspiracy. The plaintiff
5 City of Summerside (“Summerside” or “the City”), is a small city located in Prince Edward Island,
6 Canada. Summerside and its representatives were fraudulently or negligently induced by
7 defendants Katrina Berg Sussmeier (“Sussmeier”), StarLink Productions, LLP and Starlink
8 Productions, Inc. (collectively, “StarLink”), and her and their associates to pay \$1.3 million to
9 secure rights to a purported “Official Michael Jackson Celebration/Tribute Show” (the “Tribute
10 Show” or “Concert”). In reality, the Tribute Show did not exist: It was little more than an
11 elaborate con game orchestrated by Sussmeier and her co-conspirators.

12 2. Sussmeier is a concert booker and promoter based in San Jose, California. She
13 represents herself as an “Executive Producer” at StarLink (which she sometimes refers to as
14 “StarLink Productions, LLC” and sometimes as “StarLink Productions, Inc.”). On information
15 and belief, Sussmeier is the founder, manager, proprietor and owner of StarLink.

16 3. In or around July, 2009, Sussmeier presented the City with a remarkable offer: The City
17 could hold a massive summer concert, to be held in the summer of 2010. The Concert, which was
18 expected to generate revenues in the millions of dollars, would honor the late Michael Jackson,
19 and feature performances by internationally-famous pop stars such as Beyoncé, Usher, Ne-Yo and
20 Leona Lewis, all highly successful recording artists.

21 4. In July and August, 2009, Sussmeier pressured representatives of the City to act
22 immediately to book the Concert, and represented that she and StarLink had the authority to
23 arrange for such a mega-concert. As a result, the City entered into a so-called “binder agreement”
24 with Sussmeier and StarLink on or around July 24, 2009. In late July, 2009, Sussmeier sent an
25 email demanding an immediate wire payment of \$650,000 so that Beyoncé’s appearance at the
26 Concert would be, in Sussmeier’s words, “guaranteed.” Relying upon Sussmeier’s
27

1 representations, on or around July 31, 2009, the City made an initial wire payment of \$650,000 to
2 StarLink.

3 5. Eventually, the City and StarLink entered into a "Deal Memorandum and Binder
4 Agreement" (the "September Agreement") dated September 9, 2009. The September Agreement
5 claimed that StarLink was providing the "services" of "Artists" arranging the "Michael Jackson
6 Tribute Show." Sussmeier personally signed the Memorandum on behalf of both StarLink and the
7 purported "Artists" who would appear at the Concert.

8 6. Sussmeier told representatives of the City that she was working to produce the Tribute
9 Show with a well known record industry executive, Frank DiLeo ("DiLeo"), who had also served
10 as Michael Jackson's personal manager. Sussmeier told the City's representatives that entities
11 controlled by Dileo, "DLM Management Group / Dileo Entertainment & Touring Inc.," ("DLM")
12 and individuals affiliated with DiLeo and acting as agents of DLM, namely Mark Lamicka
13 ("Lamicka") and Quincy A. Krashna ("Krashna"), were arranging for the production of the
14 Concert (collectively, these persons and entities are referred to herein as the "Co-Conspirators").
15 The Co-Conspirators were directly involved in perpetrating the fraud against the City. Sussmeier
16 forwarded emails to representatives of the City from Krashna, on behalf of DLM, and
17 representatives of the City spoke with Lamicka and Krashna concerning the Concert.

18 7. Between October, 2009, and March, 2010, Sussmeier repeatedly assured officials from
19 the City that the Tribute Concert was moving forward, and scheduled calls between the officials,
20 herself, Krashna, and Lamicka.

21 8. By early March, 2010, Sussmeier informed representatives of the City that, despite the
22 agreement entered into in the September Memorandum, in order to ensure Beyoncé's appearance
23 at the Concert, the City would need to make a second payment of \$650,000 and sign an amended
24 "Deal Memo and Binder Agreement." Sussmeier told City officials that "Beyoncé is waiting for
25 your offer with deposit, but won't be waiting long" and that she could "absolutely confirm" that
26 other acts were "solid."
27

1 9. Based on Sussmeier’s representations that an additional payment was necessary to
2 secure the appearance of Beyoncé, and the previous representations of Sussmeier, Lamicka and
3 Krashna (acting on behalf of DLM) concerning the Concert, the City signed an amended “Deal
4 Memo and Binder Agreement” (the “March Agreement”) on or around March 4, 2010, which
5 confirmed that Beyoncé would be the “Headliner” at the Concert. Following this agreement, and
6 based on Sussmeier’s representations, Summerside wired an additional \$650,000, on March 10,
7 2010 to StarLink.

8 10. In reality, however, the “Michael Jackson Tribute Show” was, from start to finish, an
9 elaborate fraud. No such Concert existed. On information and belief, the artists whom Sussmeier
10 falsely represented would appear at the Tribute Show, including Beyoncé, Fergie from the Black-
11 Eyed-Peas, Ne-Yo and Leona Lewis had not agreed or ever committed to appear at any concert in
12 Prince Edward Island in the Summer of 2010. Moreover, on information and belief, the purported
13 organizers of the Concert had never obtained permission from the Michael Jackson estate or
14 Michael Jackson’s family to organize a tribute show for Michael Jackson, in Summerside or
15 elsewhere.

16 11. On information and belief, neither Beyoncé nor any of her agents or representatives
17 had ever sought the two payments of \$650,000 from the City that Sussmeier told the City would
18 “confirm” and “guarantee” Beyoncé’s appearance at the Concert. In fact, on information and
19 belief, the idea of performing at a concert in Prince Edward Island was first presented to
20 Beyoncé’s management on April 21, 2010, and definitively rejected by Beyoncé’s management on
21 April 28, 2010. In other words, when Sussmeier—in July 2009, and March, 2010—induced
22 payments of \$650,000 from the City to “confirm” Beyoncé’s appearance at a concert in Prince
23 Edward Island, Beyoncé had never even received a proposal for such a concert, much less
24 requested that the City or anyone else pay a deposit to secure such a concert.

25 12. Sussmeier knowingly or negligently misrepresented her authority to act on behalf of
26 the artists who would appear at the purported Concert. Sussmeier, despite her repeated
27

1 representations to the contrary, had no realistic ability to deliver on a promise to provide the
2 tribute Concert.

3 13. Sussmeier, Lamicka, Krashna, DLM, and, (on information and belief) DiLeo, all
4 knowingly agreed to commit the fraud and conspiracy against Summerside, as demonstrated by
5 actions including (but not limited to) conversations between Sussmeier, Lamicka, Krashna and
6 city officials concerning the Concert, emails and purported "Non-Disclosure" agreements issued
7 by DLM, false Concert announcements, and other actions demonstrating the joint design of these
8 parties to defraud the City.

9 14. DLM, DiLeo, Lamicka, and Krashna have been sued for fraud in similar
10 circumstances. In 2010, DLM, DiLeo, and Lamicka, among others, were sued in the Superior
11 Court, State of California, County of Alameda, for breach of contract and false representations
12 about the right to bring a supposed "Eddie Griffin & Jamie Foxx Comedy Tour" that did not exist.
13 On information and belief, in 2007, Lamicka was sued for falsely representing that he had the
14 ability to stage a concert featuring the rock band KISS. In 2010, DiLeo and Lamicka have been
15 involved in litigation in the Southern District of New York related to separate false promises to
16 put on a Michael Jackson-related concert. Summerside and its officials did not know of the prior
17 accusations of fraud against these individuals at the time of the September and March Memoranda
18 and the wire transfer payments.

19 15. Summerside brings this action to recover the \$1.3 million it transferred to StarLink
20 based on the false and misleading representations of Sussmeier, StarLink, and the Co-Conspirators
21 and the other costs and damages suffered in connection with the loss of the Concert.

22 JURISDICTION

23 16. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332
24 because Defendants are citizens of California, Summerside is a foreign city located in Prince
25 Edward Island, Canada, and the matter in controversy exceeds \$75,000.

1 VENUE

2 17. Venue for this action properly lies in this District pursuant to 28 U.S.C. §
3 1391(b)(1) and (2) because the Defendants reside in this District and a substantial part of the
4 events giving rise to Plaintiff's claims, including telephone negotiations conducted by Sussmeier,
5 occurred in this District.

6 AMOUNT IN CONTROVERSY

7 18. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

8 PARTIES

9 19. Plaintiff City of Summerside is, and was at all times mentioned herein, a city
10 located in the province of Prince Edward Island, Canada.

11 20. Defendant Sussmeier is an individual and self-proclaimed "Executive Producer" at
12 StarLink Productions. StarLink's website claims that "Katrina Berg Sussmeier has been
13 producing concerts since 1991, and worked with wonderful and impressive people such as Tony
14 Bennett, James Earl Jones, Stevie Wonder, Brian McKnight, Gregory Hines, Beverly Sills and
15 countless others." On information and belief, Sussmeier is a citizen of California and has a place
16 of residence at 1026 Redmond Avenue, San Jose, CA 95120. On information and belief,
17 Sussmeier acts and acted at all relevant times herein as the principal, chief executive, and/or sole
18 proprietor of StarLink Productions, Defendant StarLink Productions, LLC and/or StarLink
19 Productions, Inc.

20 21. On information and belief, Defendant StarLink Productions, LLC is a California
21 Limited Liability Company, registered with the California Secretary of State on May 20, 2010,
22 with its address and principal place of business at 1026 Redmond Avenue, San Jose, CA 95120.
23 On information and belief, Sussmeier is the founder, and chief executive officer of StarLink
24 Productions, LLC.

25 22. Defendant StarLink Productions, Inc. is a corporate entity identified by Sussmeier as a
26 party to the March and September Memoranda, with its principal place of business listed at 1026
27 Redmond Avenue, San Jose, CA 95120. Plaintiff has been unable to ascertain whether StarLink

1 Productions, Inc. is in fact a registered corporation in California or in any other state. It appears
2 that Sussmeier uses the names "StarLink Productions, LLC" and "StarLink Productions, Inc."
3 interchangeably to refer to a single entity which she operates from her home address.

4 **GENERAL ALLEGATIONS**

5 23. In 2009, Summerside hosted a major concert featuring the artist John Fogerty. In so
6 doing, representatives from the City were introduced to, and worked with, Sussmeier who, along
7 with several Canadian partners, served as a promoter for the Fogerty concert. The arrangements
8 for the Fogerty concert, including an advance deposit, were similar to those used for the Tribute
9 Show. The Fogerty concert was staged on or about May 17, 2009 and was a success, substantially
10 as understood by the City in its dealings with Sussmeier. As a result, the City reposed its trust and
11 faith in Sussmeier's integrity, and in her capacity to deliver major concerts to the City.

12 24. Following the May, 2009, concert, in early July, 2009, James Paterson, one of
13 Sussmeier's Canadian associates who had worked on the John Fogerty concert, presented to J.P.
14 Desrosiers ("Desrosiers"), an Events and Program Development official employed by the City, an
15 idea for the new Concert: a "Michael Jackson Tribute" show, substantially larger than the Fogerty
16 concert, with internationally known superstars such as Justin Timberlake, Usher, Ne-Yo, and the
17 Michael Jackson dancers. On July 21, 2009, Patterson sent an email to Desrosiers stating "Dileo
18 Entertainment is who we are dealing with."

19 25. Desrosiers, acting on behalf of the City, soon learned that Sussmeier was the primary
20 contact for the new, much larger, Concert. On July 22, 2009, a telephone conference was
21 scheduled between Sussmeier, Desrosiers, Paterson, and Quincy Krashna (acting on behalf of
22 DLM). During that telephonic conference or shortly thereafter, Sussmeier represented that she
23 had the ability to bring the Tribute Show to Summerside, and that she was working with Krashna,
24 DiLeo, and DLM to promote and book the Concert.

25 26. On July 24, 2009, Sussmeier forwarded to Desrosiers an email to her from Krashna,
26 confirming the line-up and indicating that, in addition, Beyonce could be confirmed following a
27 payment by the City. The email stated as follows:

1 Confirmed are the following artists for Tribute tour;

2 Justin Timberlake, Usher, Ne-Yo, Leona Lewis, pending artist that will be added to
3 certain markets on will be of equal or greater statue for tour (Beyonce, Ciara,
4 Whitney Houston, Janet Jackson, and others).

5 Other artist [sic] will be add / substituted for markets pending confirmation. If your
6 clients can get there binder /deposit In by next week we will be able to confirm
7 Beyonce for their date for summer of 2010. Call me tomorrow before you send off
8 so we can talk. I will be free around 10am.

9 Quincy A Krashna

10 27. Sussmeier also included the following statement in her July 24, 2009 email to

11 Desrosiers:

12 OK guys, looks like IF we want Beyonce confirmed for Summerside, we need offer
13 Friday or Monday and binder Monday or Tuesday.

14 28. On or about July 24, 2009, Sussmeier sent a copy of a "Preliminary Binder Invoice" to
15 the City. The Preliminary Binder Invoice stated that "This binder invoice constitutes an agreement
16 for the services of StarLink Productions to provide The Michael Jackson Tribute Tour and lock in
17 your market exclusivity. . . Total package forthcoming in final contract, and show above will
18 include Justin Timberlake, Beyoncé, Usher, Ne-Yo, Leona Lewis, and others to be confirmed."

19 29. Sussmeier and the Co-Conspirators then stepped up their efforts to induce the City to
20 immediately part with its money. On July 27, 2009, Sussmeier wrote an email to Desrosiers
21 explaining, "You'll have Justin Timberlake, Ne-Yo, Usher, Beyonce if we get that wire. It's a
22 touring show that will have the smaller acts plugged in by the management." She sent an
23 additional email on July 27, 2009, stating "there are 5 acts guaranteed." When Desrosiers emailed
24 Sussmeier asking for more information regarding what would be provided for the Concert, stating
25 "As I am sure you can appreciate 650k is a lot of money and [we] need to be more comfortable
26 before we wire," Sussmeier responded "I am only pushing to make sure Beyoncé is on your show.
27 She wanted everything sewn up for her last Friday and Frank [DiLeo]got her to agree to today.
28 Dang."

29 30. On July 28, 2010, Sussmeier sent an email stating "JP, this is seriously hurting
30 Summerside's reputation in the big leagues. Fax me the signed NDA by lpm my time (5 yours).

1 These guys don't kid around, this isn't a game. I'm trying to bring you a huge show and bring you
2 in to the big leagues, but I won't bring you another show if you can't conduct business at this level.
3 I *AM* AEG/Live Nation for all Dileo's acts. We're handling these large tours now.”

4 31. Later that day, on July 28, 2009, David Morgan (“Morgan”), director of community
5 services for Summerside, signed a non-disclosure agreement concerning the Concert. The non-
6 disclosure agreement was entered into between Morgan and “D.L.M. Management Group / Dileo
7 Entertainment & Touring Inc.” Summerside never received a fully executed version of the non-
8 disclosure agreement and has no belief that it was ever counter-signed. Moreover, Morgan lacked
9 authority or authorization to bind the City through the non-disclosure agreement.

10 32. Relying on the above representations by Sussmeier, Krashna, and others relating to the
11 Concert, on July 31, 2009 the City wired \$650,000.00 USD to StarLink in order to secure their
12 purported right to the Concert and to the appearance of star performers, including Beyoncé.

13 33. In addition to the \$650,000 wire, on July 31, 2009, Morgan signed the one-page
14 “Preliminary Binder Invoice” (dated July 24, 2009) on behalf of Summerside.

15 34. Following the initial wire transfer payment of \$650,000.00 and entry into the
16 “Preliminary Binder Invoice,” the parties began negotiations over the specific financial terms of
17 the Concert. On or about September 7, 2009, the City signed the September Agreement, which
18 was dated “As of” August 25, 2009. The September Agreement purported to be between the City
19 and “StarLink Productions, Inc., for the services of Official Michael Jackson Tribute show
20 (PERFORMANCE)/(hereinafter referred to as the ARTIST).” The September Agreement stated
21 that the City had “contracted said artists (Michael Jackson Tribute Show) for a period that is
22 binding and agreeable by both parties for a time period in Q3 2010 (most likely July 24 or 31).”
23 The September Agreement also contained a representation and warranty, made by Sussmeier and
24 Starlink on behalf of “Artists,” that “ARTIST/S is under no disability, restriction or prohibition,
25 whether contractual or otherwise, with respect to ARTISTS/S’ right to execute this contract and
26 perform its terms and conditions.”

1 35. The September Agreement contemplated the Concert as the exclusive appearance of
2 the tour for Atlantic Canada, to be held in Summerside in July, 2010, with an attendance of 35,000
3 and ticket sales of \$5 million Canadian dollars, and an option to stage a concert on a second day.

4 36. In October, November, and December, 2009, representatives from the City made
5 numerous attempts to schedule organizational calls with Sussmeier, Krashna, and Lamicka, many
6 of which were postponed without reasonable explanation by Sussmeier. However, Sussmeier
7 continued to represent that things were "solid" and, on January 20, 2010, Sussmeier confirmed
8 that the Concert would take place on July 24, and informed Murphy, Morgan, and Desrosiers by
9 email that "You'll be the tour launch."

10 37. Between December, 2009 and March, 2010, Summerside officials became
11 increasingly concerned about the status of the Concert, while still relying on Sussmeier's
12 representations that the Concert would occur. Finally, on March 1, 2010, the City sent Sussmeier
13 a request, demanding that Sussmeier "ensure that we have five acts including Beyonce and four
14 others including Ne-Yo Leona Lewis and Rihanna and one more from the ones listed in the
15 potential acts along with the dancers and laser light show or please return our deposited funds."

16 38. On March 1, 2010, Sussmeier sent an email to Summerside representatives Terry
17 Murphy, J. DesRosiers, Malcolm Millar and David Morgan confirming that certain acts would
18 appear. However, Sussmeier also indicated that a second payment of \$650,000 was necessary to
19 confirm the Concert and to secure the appearance of Beyoncé, and that Beyoncé was "waiting" for
20 the City's "offer with deposit." The email stated:

21 OK The laser show and dancers ARE there- and the guaranteed 3 opening acts are
22 there- this is negotiating I've done on your behalf . . . I can absolutely confirm
23 Beyonce is waiting for your offer with deposit, but won't be waiting long. I can
24 absolutely confirm Leona and Ne-yo have been deposited on already and are solid.
25 I can absolutely confirm the laser show and MJ dancers are signed and solid.

26 39. On March 8, 2010, Sussmeier forwarded purported "Letters of Intent" between the
27 artists Ne-Yo and Leona Lewis and "DLM Management Group." The Letters of Intent appeared
28 to represent that these artists had signed a written commitment to a "M.J.
CELEBRATION/TRIBUTE TOUR" with "INTERNATIONAL and DOMESTIC DATES LATE

1 SUMMER/ Q4 2010 (POSSIBLE 2011). Based on an examination of these documents, however,
2 they appear to be highly questionable. Notably, the "Letters of Intent" were purportedly signed by
3 two individuals representing "Management for Ne-Yo" and "Management for Leona Lewis," but
4 the full names of the management representatives who signed the documents were blacked out
5 with ink, as were other terms in the document. Moreover, the letters of intent mention nothing
6 about a July, 2010 concert in Prince Edward Island, Canada.

7 40. On March 10, 2010, based on the assurances and representations of Sussmeier and the
8 Co-Conspirators that an amended agreement and additional deposit was necessary to secure the
9 Concert, the City made another wire transfer of \$650,000 to StarLink and entered into the March
10 Agreement. As with the September Agreement, Sussmeier signed the March Agreement both on
11 behalf of StarLink and "on behalf of Artist/s." The March Agreement stated that StarLink was
12 "ARTIST/S representative.").

13 41. The March Agreement provided that Beyoncé would be the "Headliner" of the Tribute
14 Show. It further stated, in connection with Beyoncé's appearance that "If artist is unavailable for
15 legitimate reasons such as medical, death, act of God, or other force majeure, a comparable and
16 mutually agreed upon headliner will be substituted." Finally, the March Agreement stated that
17 Ne-Yo and Leona Lewis were "CONFIRMED OPENING ACTS" and that Rhianna, Fergie, or a
18 third, mutually agreed-upon artist would appear as another potential opening act.

19 42. Following the March Agreement, Sussmeier continued to be evasive in setting up
20 meetings concerning final confirmation of the acts, scheduling, and arrangements for the Concert.
21 On April 12, 2010, an official from Summerside had a conversation with Krashna and Sussmeier,
22 in which Krashna provided only vague answers about the upcoming Concert and would not
23 confirm the availability of any artist.

24 43. Finally, on April 16, 2010, the City again requested written confirmation of the artists
25 involved in the tour. When no confirmation was forthcoming, on April 23, 2010, and again on
26 May 7, 2010, the City provided Sussmeier with written notice of breach of their agreements, and
27 requested a refund of the money wired. Since that time, despite repeated correspondence,
28

1 Sussmeier has neglected refused to refund the \$1.3 million paid to StarLink and has provided no
2 credible explanation as to the total failure of the Concert.

3 44. The Concert was never held in Summerside. To the best of the City's knowledge, no
4 "Michael Jackson Tribute Show" similar to that promoted by Sussmeier has appeared anywhere in
5 the world.

6 45. In reality, the purported "Michael Jackson Tribute Show" was, at all relevant times, a
7 fraud. According to published reports, "multiple members of the Jackson family" including
8 Michael Jackson's father, Joe Jackson, "had no idea" that DiLeo or Lamicka were promoting a
9 Michael Jackson tribute show. At all relevant times, Sussmeier and the Co-Conspirators lacked
10 the authority and ability to produce or promote the Tribute Concert, and thus each representation
11 to the effect that they had such authority or ability, or that a Tribute Concert would occur, was
12 false.

13 46. Moreover, despite Sussmeier and the Co-Conspirators' representations to the contrary,
14 none of the promised artists had committed to perform at such a Tribute Show in Summerside or
15 elsewhere in Prince Edward Island in the summer of 2010.

16 47. Indeed, despite Sussmeier and the Co-Conspirators' representations to the contrary,
17 Beyoncé had not even been presented with the notion of performing at a summer concert in Prince
18 Edward Island at the time the City made either of its payments of \$650,000 to StarLink. In fact,
19 on information and belief, the notion of performing at such a concert was never even suggested to
20 Beyoncé or her management until April 21, 2010, and was almost immediately rejected seven days
21 later, on April 28, 2010. The representations by Sussmeier and the Co-Conspirators that payments
22 by the City were necessary to secure or "confirm" Beyoncé's appearance at the Concert, or that
23 Beyoncé had demanded such payments, were complete falsehoods.

24 **CLAIMS FOR RELIEF**

25 **FIRST CLAIM FOR RELIEF – FRAUD AND CIVIL CONSPIRACY TO COMMIT**
26 **FRAUD**

27 (Against all Defendants)

1 48. Plaintiff incorporates by reference each and every allegation in the foregoing
2 paragraphs as though fully set forth herein.

3 49. From the first telephonic meeting between Sussmeier and representatives of the City,
4 on July 22, 2009, through at least April 23, 2010, Sussmeier, acting at all times on behalf of
5 defendants StarLink Productions LLC, made intentional, material misrepresentations and
6 concealments of fact concerning the Concert, including but not limited to:

7 (a) False or misleading representations that an organized Michael Jackson Tribute
8 Concert existed, and had been approved by the relevant parties, including the Jackson family;

9 (b) False or misleading representations that Sussmeier and/or StarLink had the ability
10 and authority to promote the Concert and bring it to the City of Summerside in the summer of
11 2010;

12 (c) False or misleading representations that certain artists, including Ne-Yo and Leona
13 Lewis had "confirmed" that they would appear at the Concert in the City of Summerside in 2010;

14 (d) False or misleading representations that an initial payment or a deposit by the City
15 of \$650,000 would "secure" or "guarantee" the appearance of Beyoncé at the Concert

16 (e) False or misleading representations that a further payment or deposit by the City of
17 \$650,000 would be effective to secure the Concert in Prince Edward Island in the Summer of 2010
18 and the appearance of Beyoncé.

19 50. The material misrepresentations and concealments of fact were made by Sussmeier,
20 acting on behalf of StarLink, in the manner described in the above paragraphs, including but not
21 limited to the following instances:

22 (a) The telephonic conference held on July 22, 2009, in which Sussmeier described the
23 overall nature of the Concert.

24 (b) The July 24, 2009 email, forwarded from Krashna, confirming the Concert's
25 "lineup."

26 (c) The July 24, 2009 preliminary binder invoice provided by Sussmeier and StarLink.
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1 (d) The July 27, 2009 emails from Sussmeier confirming the appearance of Justin
2 Timberlake, Ne-Yo, Usher, confirming Beyonce "if we get that wire" and stating that "there are 5
3 acts guaranteed."

4 (e) The July 28 email stating that "this is seriously hurting Summerside's reputation in
5 the big leagues."

6 (f) The July 28, 2009 Non Discloure Agreement between David Morgan and "D.L.M.
7 Management Group / Dileo Entertainment & Touring Inc."

8 (g) The September Agreement, including its representations that Summerside had
9 contracted a Michael Jackson Tribute show, that StarLink and/or Sussmeier had the authority to
10 enter into a contract for such a Tribute Show, and its representation and warranty in the that
11 "ARTIST/S is under no disability, restriction or prohibition, whether contractual or otherwise,
12 with respect to ARTISTS/S' right to execute this contract and perform its terms and conditions."

13 (h) The January 20, 2010 confirmation by Sussmeier that the Concert would take place
14 on July 24, 2010, and be the "tour launch."

15 (i) The March 1, 2010 email stating that Sussmeier could "absolutely confirm" the
16 appearance of Leona and Ne-Yo and that Beyoncé "is waiting for your offer with deposit."

17 (j) The March Agreement, including its representations that Summerside had
18 contracted a Michael Jackson Tribute show, that StarLink and/or Sussmeier had the authority or
19 ability produce or promote such a Tribute Show, that Beyoncé would be the "Headliner" of the
20 Concert, and that certain other acts at the Concert were "Confirmed."

21 51. Each and every one of these misrepresentations and concealments of fact was false,
22 was misleading, was made with the intent to deceive the City, and was material to the City.
23 Defendants Sussmeier, StarLink LLC and StarLink, Inc., knew the misrepresentations and
24 concealments of fact were false and/or misleading when they made them or were reckless in
25 making the representations and concealments.

1 60. Defendants made the misrepresentations and concealments described above
2 negligently, without any reasonable ground for believing them to be true, and with the intent to
3 induce actions by the City, including inducing the payment by the City of \$1.3 million. When
4 making the misrepresentations and concealments, Defendants knew that the City would rely on the
5 representations.

6 61. The City did, in fact, reasonably and justifiably rely on Defendants' false
7 representations to the City's detriment as heretofore alleged. Had the City known the true facts
8 and the actual intentions of defendants, the City would not have acted as it did.

9 62. As a direct and proximate result of Defendants' negligent misrepresentations, as
10 alleged herein and above, the City has been damaged in an amount which is presently unknown,
11 but which includes at a minimum the \$1.3 million payment already made by the City to StarLink.

12 **THIRD CLAIM FOR RELIEF – RESCISSION**

13 (Against All Defendants)

14 63. Plaintiff incorporates by reference each and every allegation in the foregoing
15 paragraphs as though fully set forth herein.

16 64. Defendants fraudulently induced the City into forming the September and March
17 Agreements, and, therefore, the City is entitled to rescission of the September and March
18 Agreements pursuant to California Civil Code § 1689(1).

19 65. The consideration to be provided by Defendants under the September and March
20 Agreements to the City has failed, in whole or in part, due to the actions of Defendants, and,
21 therefore, the City is entitled to rescission of the September and March Agreements pursuant to
22 California Civil Code § 1689(2).

23 66. The consideration to be provided by Defendants to the City under the September and
24 March Agreements has become entirely void, and, therefore, the City is entitled to rescission of
25 the September and March Agreements pursuant to California Civil Code § 1689(3).

26 67. The consideration to be provided by Defendants to the City under the September and
27 March Agreements has failed in a material respect before being rendered to the City, and therefore

1 the City is entitled to rescission of the September and March Agreements pursuant to California
2 Civil Code § 1689(4).

3 68. The September and March Agreements are unlawful for causes which do not appear in
4 their terms and conditions, and therefore the City is entitled to rescission of the September and
5 March Agreements pursuant to California Civil Code § 1689(5).

6 69. By service of this Complaint, the City hereby provides notice under Cal. Civil Code
7 § 1691 of its intention and right to rescind the September and March Agreements.

8 70. The City therefore requests rescission of the September and March Agreements and
9 restitution to the City's former position.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the City prays for judgment against Defendants as follows:

- 12 1. Damages in an amount to be proven at trial, but no less than \$1,300,000;
- 13 2. Exemplary and punitive damages;
- 14 3. Prejudgment interest;
- 15 4. Costs of suit incurred herein, including attorneys' fees;
- 16 5. Rescission of the September and March Agreements and restitution to the City's
17 former position; and
- 18 8. Such other relief as the Court may deem just and proper.


19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby requests a trial by jury on all issues so triable.

21
22 Dated: January 24, 2011

Respectfully submitted,

23 KENDALL BRILL & KLIEGER LLP

24
25 By: 
26 Bert H. Deixler
27 Attorneys for City of Summerville