

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

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NAFEESHA MADYUN p/k/a ESNAVI,

Index No.:

Plaintiff,

v.

**COMPLAINT**

LATEEF A. SARNOR and KOLLIDEOSCOPE  
NETWORKS

Defendants.

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Plaintiff, Nafeesha Madyun (“Madyun” or “Plaintiff”) by her attorney Gregory H. Griffith, Esq., alleges as and for her Complaint against LATEEF A. SARNOR (“Sarnor”) and KOLLIDEOSCOPE NETWORKS, INC (“Kollide”) (collectively “Defendants”) as follows:

**SUMMARY OF ACTION**

1. This is an action by Plaintiff for: (i) fraud, (ii) fraudulent inducement, (iii) negligent misrepresentation, and (iv) violation of §§ 50-51 of the New York Civil Rights Law (“NYCRL”).

2. Defendants unlawfully used and/or licensed Plaintiff’s photographs, identity, persona, publicity rights and privacy rights (collectively, “Plaintiff’s Rights”) in connection with the Hyundai Smarter Campaign, a campaign aimed at women who are part of ethnic minority markets, in order to advertise, market, and promote Hyundai Motors America (“Hyundai”) and its automobiles (the “Infringing Campaign”).

3. At no time did Plaintiff ever give permission to Defendants to use or license Plaintiff's Rights to associate with, advertise, market, or promote Hyundai or its automobiles, or for any other commercial purpose.

4. Plaintiff has not received any compensation for such unauthorized commercial use of Plaintiff's Rights in the Infringing Campaign or otherwise to advertise, market and promote Hyundai or its automobiles.

### **NATURE OF THE PARTIES**

5. Plaintiff is an individual and a resident of the County of New York in the State of New York.

6. Plaintiff is an internationally recognized singer, songwriter, actress, model, and entrepreneur.

7. Plaintiff has been featured in dozens of popular and widely circulated publications as well as numerous websites, including: Ambition Magazine, Bronze Magazine, Fuzion Magazine, Huffington Post, thisis50.com, examiner.com, allhiphop.com, and urbangirlmag.com.

8. Plaintiff has performed at numerous venues including Madison Square Garden, the Essence Music Festival, the Apollo, Brooklyn Academy of Music, B.B. King's Blues Club, BET's Music Matters, and The Blue Note. She has also performed at various venues outside of the United States.

9. Plaintiff has approximately 40,000 "followers" on the social networking site Twitter and approximately 6,500 "likes" on Facebook.

10. Plaintiff has received and continues to receive offers requesting permission for, and seeking the use of Plaintiff's Rights for licensing, endorsing, marketing and promoting products, services and performances.

11. Plaintiff has selectively endorsed, and continues to selectively endorse, a variety of products and services.

12. Plaintiff is a celebrity endorser for Alison Raffaele Cosmetics.

13. Plaintiff is also a celebrity endorser for Dazzle Dry Nails.

14. Plaintiff has also entered into licensing deals with H&M, Old Navy, Abercrombie & Fitch, Nine West, Ann Taylor, and Arden B.

15. Plaintiff maintains strict control over the manner in which Plaintiff's Rights are used. Plaintiff exercises extreme discretion in selecting and approving products, services, or performances that she will permit to license or use Plaintiff's Rights.

16. Plaintiff restricts such use and licensing to products, services, and performances that are of a standard to Plaintiff's liking and for which compensation is commensurate with the exploitation and value thereof.

17. Upon information and belief, Defendant Sarnor is the founder and CEO of Kollide and was, and still is, an individual with a known addresses in the State of New York at 324 Pleasant Avenue, Apartment 1C, New York, New York 10035.

18. Upon information and belief, Kollide is, and at all times mentioned, a Delaware corporation with its principal place of business at 324 Pleasant Avenue, Apartment 1C, New York, New York 10035.

19. Upon information and belief, Kollide is a video platform dedicated to developing, delivering, discovering and distributing videos with a multicultural perspective across the digital landscape.

### **JURISDICTION AND VENUE**

20. Venue in this action is proper pursuant to New York Civil Practice Laws and Rules (“CPLR”) § 503(a) as New York is Plaintiff’s county of residence.

21. The Court has personal jurisdiction over Sarnor as he is a resident of New York County and is domiciled in this State.

22. Upon information and belief, the Court has personal jurisdiction over Kollide as Kollide is a foreign corporation and has its principal place of business in the State of New York.

### **FACTUAL BACKGROUND**

23. In or about mid to late August 2014, Plaintiff and Plaintiff’s personal manager were approached by Mr. “Sekou Writes” (hereinafter “Sekou”) the owner of [www.simplyrides.com](http://www.simplyrides.com)<sup>1</sup> to do a celebrity interview for [www.simplyrides.com](http://www.simplyrides.com). The purpose of the interview was for Plaintiff to share her life story, her career, and to highlight some of her favorite places to frequent in her neighborhood, Harlem, New York.

24. According to Sekou, the interview was only going to be featured on the [simplyrides.com](http://www.simplyrides.com) website.

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<sup>1</sup> Simplyrides.com is an online magazine which specializes in presenting interesting, innovative, and aspirational cars. The magazine also covers restaurant reviews, celebrity interviews, and has a travel section.

25. Sekou asked Plaintiff if she would be okay with conducting the interview in a car of her choice.

26. Plaintiff and Plaintiff's personal manager informed Sekou that Plaintiff wanted to do the interview in a Mercedes Benz. Sekou informed Plaintiff that he could not secure a Mercedes Benz for the interview, but had access to a late model Hyundai Sonata. Plaintiff agreed to do the interview in the Hyundai Sonata.

27. Several weeks after their initial discussion regarding the interview, Sekou contacted Plaintiff and Plaintiff's personal manager and informed them that simplyrides.com was partnering with Kollide to produce a new web series entitled "The Drive."<sup>2</sup>

28. Plaintiff was unfamiliar with Kollide prior to Sekou discussing simplyrides.com partnership with them.

29. Sekou subsequently arranged for Sarnor and Plaintiff to speak to schedule the interview for The Drive.

30. Sarnor contacted Plaintiff and Plaintiff's manager and informed them that Kollide was stepping into simplyrides.com place and he assured them that the interview would be the same as had been discussed with Sekou and it would only be available to be viewed on [www.kollidetv.com](http://www.kollidetv.com) ("KollideTV").

31. Based on Sarnor's representations that the interview for The Drive would focus on Plaintiff and would only be featured on KollideTV, And would be the same format as Sekou had previously discussed with Plaintiff of riding around Harlem and discussing her career and life journey, Plaintiff again consented to do the interview.

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<sup>2</sup> The Drive is a web series profiling successful and dynamic multicultural women in various fields sharing their journey of where they are now, how they got there and where they are headed next.

32. At no time did Sarnor or Kollide inform Plaintiff or Plaintiff's manager that any portion of the interview for The Drive would be licensed, assigned or sold to any other party.

33. At no time did Sanor or Kollide inform Plaintiff that Hyundai was a sponsor for The Drive.

34. On or about September 11, 2014, Plaintiff did the interview for The Drive. The interview was moderated by Sekou and it was conducted in a Hyundai Sonata while Plaintiff drove around Harlem New York answering questions and discussing her life and career journey and visiting some of her favorite places to frequent in Harlem.

35. Kollide's personnel videotaped the interview. Sarnor also arranged for a photo shoot of Plaintiff to take place on the same day of the interview.

36. Neither Sarnor nor Kollide offered Plaintiff any compensation for the interview and Plaintiff did not expect Kollide or Sarnor to compensate her since she had been led to believe, by Sarnor and Kollide's representations that she was simply performing an interview for KollideTV and not endorsing any particular product or service.

**A. THE INFRINGING CAMPAIGN**

37. Upon information and belief, Fuse Advertising, a Missouri based advertising agency (hereinafter "Fuse"), was hired by Hyundai to create, produce or otherwise be involved with the Infringing Campaign.

38. Upon information and belief, Fuse obtained video, digital, and/or other moving and still photographic images of Plaintiff (collectively the "Images") in connection with the Infringing Campaign from Defendants.

39. Upon information and belief the Infringing Campaign was scheduled to run from October 17, 2014 through November 21, 2014.

40. Upon information and belief, a central element of the Infringing Campaign was a “Smarter Living” video series which profiled the stories of 22 women who are trendsetters and game changers in their chosen fields.

41. Upon information and belief, the Infringing Campaign included a 60-second broadcast and radio ad, a 90-second internet only ad called, “Time to Shake Up The World,” an online web series, and a limited edition Smarter Living brand book.

42. On or about October 21, 2014, Hyundai held its #SmarterLiving event at the Estate in Atlanta, Georgia which premiered the Infringing Campaign.

43. The Images were prominently on display at the #SmarterLiving event.

44. In addition to the Images being prominently featured at the #SmarterLiving event, copies of the Smarter Living brand book, which also contained photographs of Plaintiff, were distributed to the attendees.

45. Segments of the interview Plaintiff did for The Drive were embodied in the Infringing Campaign as well as photographs of Plaintiff from the photo shoot Kollide did in connection with The Drive interview.

46. Plaintiff did not authorize Kollide or Sarnor, or any other person the right to use or license the Images or any reproductions thereof for any purpose, especially in connection with the Infringing Campaign.

47. In or about October 2014, Hyundai launched the Infringing Campaign, for commercial purposes.

48. Hyundai's broadcast, displayed and otherwise publicized the Infringing Campaign which prominently featured some of the Images.

49. The Infringing Campaign was repeatedly broadcast and prominently displayed and distributed in various media outlets, including in social media, the internet, and in print.

50. The Infringing Campaign falsely represents that Plaintiff sponsors, endorses, or is associated with Hyundai.

51. Plaintiff did not authorize Defendants to use Plaintiff's Rights in connection with the Infringing Campaign or otherwise.

52. Plaintiff was not contacted by Defendants to seek or to obtain her permission, nor was she compensated by Defendants for the use of Plaintiff's Rights.

**B. SARNOR'S AND KOLLIDE'S WRONGFUL CONDUCT**

53. Upon information and belief, Sarnor and Kollide erroneously and fraudulently purported to license or otherwise assign to Fuse and/or Hyundai the right to use the Images in connection with the Infringing Campaign.

54. Both Sarnor and Kollide knew or should have known that Plaintiff's express written authorization was required for any usage of the Images outside of The Drive interview.

55. Both Sarnor and Kollide have profited from their unlawful and intentional misappropriation of the Images.

## COUNT I

### VIOLATION OF NYCRL §§50-51

56. Plaintiff incorporates by reference paragraphs 1 through 55 as though fully set forth herein.

57. In doing the acts alleged herein, Defendants have used, for commercial purposes, Plaintiff's Rights without her consent.

58. In doing the acts alleged herein, Defendants have knowingly, willfully, and unlawfully used and misappropriated Plaintiff's Rights in connection with the Infringing Campaign for their own commercial purposes.

59. Plaintiff did not give her consent or in any way authorize the use of Plaintiff's Rights in connection with the Infringing Campaign.

60. The use by Defendants of Plaintiff's Rights in connection with the Infringing Campaign was for advertising purposes and for purposes of trade and commercial benefits as Defendants have profited the Infringing Campaign which includes the Images.

61. Such use was wholly unauthorized and was without the consent, written or oral, of Plaintiff or anyone authorized by her to give such consent.

62. Upon information and belief, the unauthorized use of Plaintiff's Rights in connection with the Infringing Campaign has occurred within the State of New York.

63. Defendants have acted knowingly, willfully and in bad faith such that Plaintiff should be awarded exemplary damages.

64. By reason of the foregoing, as a direct and proximate result of Defendants conduct, Plaintiff has been damaged in an amount to be determined at trial.

## COUNT II

### FRAUD

65. Plaintiff incorporates by reference the allegations of paragraphs 1 through 66 as though fully set forth herein.

66. Upon information and belief, Sarnor and Kollide knowingly misrepresented and concealed their intention to use Plaintiff's Rights for purposes of the Infringing Campaign.

67. Upon information and belief, Sarnor and Kollide fraudulently intended to use and/or sell or otherwise assign the use of the Images to the other Defendants without compensating Plaintiff.

68. In or about November 9, 2014, Sarnor sent an email acknowledging that he and Kollide gave a 2-minute snippet of the interview Plaintiff did for The Drive to Hyundai.

69. In the same November 9, 2014 email, Sarnor acknowledges that the 2-minute snippet he and Kollide gave to Hyundai was posted on Hyundai's African American microsite, [www.hyundaismarter.com](http://www.hyundaismarter.com).

70. The information concerning Sarnor's and Kollide's intention to sell, assign or otherwise license Plaintiff's name, image and likeness to Fuse and Hyundai was within Sarnor's and Kollide's knowledge and was not such that could have been discovered by Plaintiff.

71. Sarnor and Kollide made these materially false and misleading statements and omissions for the purpose of inducing Plaintiff to conduct the interview for The Drive and obtain the Images.

72. Sarnor and Kollide knew or recklessly disregarded that Plaintiff would rely upon their representations that the interview for The Drive would only be featured on Kollide TV and was solely for the purpose of Plaintiff to discuss her life and career.

73. By reason of the foregoing, Plaintiff was damaged in an amount to be determined at trial.

### **COUNT III**

#### **NEGLIGENT MISREPRESENTATION**

74. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 73 as though fully set forth herein.

75. At all times, and pursuant to applicable law, Defendants owed a duty to Plaintiff not to use Plaintiff's Rights in the Infringing Campaign or otherwise to associate with, advertise, market or promote Hyundai or Hyundai's automobiles.

76. Defendants breached that duty by using Plaintiff's Rights in the Infringing Campaign and otherwise to associate with, advertise, market, or promote Hyundai and Hyundai's automobiles.

77. Plaintiff did reasonably rely on the false statements of Sarnor, Kollide and Hyundai to her detriment.

78. As a direct and proximate result of the aforesaid wrongful acts of Defendants, Plaintiff has been damaged in an amount that is not yet fully ascertainable, but which exceeds the jurisdictional minimum of the Court.

## COUNT IV

### FRAUDULENT INDUCEMENT

79. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 78 as though fully set forth herein.

80. Sarnor and Kollide intentionally misled Plaintiff by assuring her that The Drive interview would only be aired on Kollide TV.

81. Sarnor's and Kollide's material misrepresentations were made with the intention of inducing Plaintiff to agree to do the interview for The Drive.

82. Plaintiff, in agreeing to do the interview for The Drive, reasonably relied on Sarnor's and Kollide's material misstatements that the contents of The Drive interview and the Images would only be aired on KollideTV and would be for the purpose of Plaintiff discussing her life and her career.

83. Sarnor and Kollide knew, or recklessly disregarded, that Plaintiff was relying on Sarnor's and Kollide's material misstatements. Sarnor and Kollide were in a position of unique and superior knowledge regarding the true facts concerning the material misrepresentations.

84. It was only by making such representations that Sarnor and Kollide were able to induce Plaintiff to do the interview for the Drive. Plaintiff would not have participated in the Interview for the Drive or otherwise allowed Sarnor and Kollide to use the Images had Plaintiff know that the Images were going to be used as part of the Infringing Campaign.

85. Plaintiff justifiably, reasonably, and foreseeably relied upon Sanor's and Kollide's representations and false statements regarding the use of the contents of the interview for The Drive.

86. By virtue of Sarnor's and Kollide's false and misleading statements as alleged herein, Plaintiff suffered substantial damages.

**WHEREFORE**, Plaintiff respectfully requests judgment against the Defendants as follows:

(i) an award of damages to Plaintiff in an amount to be determined at trial, but not less than One Hundred and Thousand Dollars (\$100,000.00), plus punitive damages;

(ii) On the Second Claim for Fraud, an award of damages to Plaintiff in an amount to be determined at trial, but not less than One Hundred Thousand Dollars (\$100,000.00), and punitive damages;

(iii) On the Third Claim for Negligence, an award of damages to Plaintiff in an amount to be determined at trial, but not less than Fifty Thousand Dollars (\$50,000.00), and punitive damages;

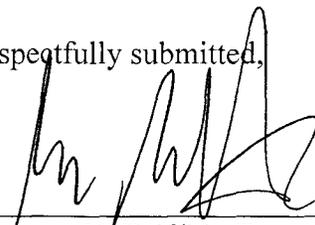
(iv) On the Fourth Claim for Fraudulent Inducement, an award of damages to Plaintiff in an amount to be determined at trial, but not less than Fifty Thousand Dollars (\$50,000.00);

(v) An award to Plaintiff of the costs and disbursements incurred in this action; and

(vi) Any other such relief as the Court deems just and proper.

ated: New York, New York  
October 20, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Griffith', written over a horizontal line.

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## General Information

<b>Court</b>	New York Supreme Court, New York County
<b>Docket Number</b>	160758/2015
<b>Status</b>	Open