

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN G. BRANCA, Special
Administrator of the Estate of Michael
J. Jackson; JOHN MCCLAIN, Special
Administrator of the Estate of Michael
J. Jackson; TRIUMPH
INTERNATIONAL, INC.,

Plaintiffs/Appellees,

vs.

HEAL THE WORLD
FOUNDATION, California
corporation and UNITED FLEET, a
California corporation,

Defendants/Appellants.

Case Number(s):
11-56926, 11-57048 (Consolidated)

C.D. No. 2:09-cv-07084-DMG
Central District of California,
Los Angeles

**APPELLEES' OPPOSITION TO
APPELLANTS' MOTION TO
EXTEND TIME TO FILE
OPENING BRIEF**

I. INTRODUCTION

This is an appeal from (1) the district court's June 27, 2011 Order enforcing a fully executed settlement agreement between the parties; (2) the October 27, 2011 Amended Judgment; and (3) the district court's October 27, 2011 Order denying Appellants' motion for relief from judgment. Appellants filed their appeal more than one year ago, but as a result of numerous delays caused by Appellants, including the withdrawal of three sets of attorneys during the course of the appeal alone, briefing on the appeal has not yet commenced.

Following the withdrawal of Appellants' prior counsel on September 11, 2012, the Court ordered Appellants to enter an appearance of new counsel by October 2, 2012, or risk having the appeal dismissed. Appellants did not comply with the Court's order, and further failed to submit any brief to the Court by November 9, 2012, the newly extended deadline for filing the opening brief.

Additionally, contrary to Appellants' current assertions, there is no "other information that should have been offered in the underlying matter but wasn't," as there was no trial in the matter. No "other information" can be offered regarding Appellants agreeing to and executing a settlement agreement upon which judgment was entered, particularly given the extensive

briefing that surrounded the enforcement of the Settlement Agreement and judgment. Furthermore, the matter of the sealed documents is a non-issue given that (1) Appellants are in possession of all documents that were filed under seal, as they were properly served with those documents; and (2) Appellants' prior counsel successfully obtained an order from the district court unsealing those documents on August 22, 2012.

Appellants' request for a 90-day extension constitutes the third request for an extension of time to file the opening brief, and is also untimely, given that Appellants' opening brief was due on November 9, 2012, and the instant request was not made until November 11, 2012. Appellants should not be permitted any further allowances, and this meritless appeal should be dismissed pursuant to Circuit Rule 42-1.

II. RELEVANT FACTS

A. The District Court Enforced The Parties' Fully Executed Settlement Agreement And Entered Judgment Thereon.

On April 19, 2011, the first day of trial, the district court held an in-chambers conference wherein the parties advised the court of the settlement that had been reached in the litigation. Declaration of Nina D. Boyajian ("Boyajian Decl."), ¶ 2. The conference was held in chambers as a result of the confidentiality provision in the Settlement Agreement. *Id.* The parties'

counsel also advised the court that they expected to submit a stipulated dismissal and permanent injunction and final judgment reflecting the terms of the Settlement Agreement. *Id.*

Notwithstanding these representations and the parties' execution of the binding Settlement Agreement, Appellants breached the Settlement Agreement and unsuccessfully argued, through their attorney at the time, that it should not be enforced. *Id.*, ¶ 3. After considering Appellants' numerous oppositions to Appellees' Motion to Enforce the Settlement Agreement, allowing for oral argument on the motion, and providing Appellants an opportunity to participate in the drafting of an order enforcing the Settlement Agreement, the district court ultimately rejected Appellants' arguments and enforced the agreement by Order dated June 27, 2011, and by a Judgment and injunction of the same date. *Id.*, ¶ 4. The court also ordered that as a result of the confidentiality provision in the Settlement Agreement, all motions or briefing relating to the agreement must be filed under seal. *Id.*, ¶ 5. In accordance with the court's order, Appellants filed the June 27, 2011 Order, the October 27, 2011 Amended Judgment, and the October 27, 2012 Order denying Appellants' Motion for Relief from Judgment under seal when they filed their Notices of Appeal. *Id.*, ¶ 6, Ex. A.

B. Appellants' Unsuccessfully Sought To Vacate The Judgment, And Requested An Extension Of Time To File A Notice Of Appeal.

Citing attorney error, Appellants missed their deadline to file a notice of appeal and sought an extension of time, which was granted by the district court. *Id.*, ¶ 7. Shortly thereafter, Appellants filed a Motion for Relief from Judgment, which largely regurgitated the arguments Appellants had made in opposition to Appellees' Motion to Enforce the Settlement Agreement. *Id.*, ¶ 8. Appellants' motion was denied by the district court on the basis, *inter alia*, that there was no newly discovered evidence warranting relief, and finding that the Settlement Agreement could not be more clear as to its legal effect. *Id.*

C. Appellants Have Abused The Litigation And Appellate Process By Continually Seeking To Delay The Proceedings.

As set forth in Appellees' Response to Appellants' Motion to Withdraw as Counsel of Record and Request to Extend Time in Order to Obtain Substitute Counsel (Dkt. 21-1), Appellants have, in both the district court and in this Court, requested and been granted numerous extensions of time for various items, including to submit responses to discovery, file a notice of

appeal, and to file their opening brief. *See*, Dkt. 21-1. By way of summary:

1. On March 23, 2010, Appellants' former counsel in the trial court, Newman & Newman, filed a motion to withdraw as attorney of record, citing non-payment of fees as the reason for withdrawal. The motion was granted on May 10, 2010. Boyajian Decl., ¶ 10.

2. On July 19, 2010, the Cohen I.P. Law Group, P.C. appeared on behalf of Appellants in the trial court. *Id.*, ¶ 11.

3. On October 4, 2010, the Cohen I.P. Law Group, P.C. filed a motion to withdraw as counsel, citing non-payment of fees as the reason for withdrawal. *Id.*, ¶ 12.

4. On November 1, 2010, the Law Offices of Edgar B. Pease III appeared on behalf of Appellants in the trial court. *Id.*, ¶ 13.

5. On May 16, 2011, Mr. Pease requested to withdraw as counsel for Appellants. *Id.*, ¶ 14.

6. On May 31, 2011, the Law Office of Scott Barbag appeared on behalf of Appellants in the trial court. *Id.*, ¶ 15.

7. On August 29, 2011, the law firm of Smith Campbell Clifford Kearney Gore requested to be substituted as counsel of record for Appellants in the trial court, and also requested an extension of time to file Appellants' notice of appeal. Both the substitution request and the extension were

granted. *Id.*, ¶ 16.

8. On January 13, 2012, the law firm of Smith Campbell Clifford Kearney Gore filed a motion to withdraw as counsel, citing non-payment of fees as the reason for the withdrawal. *See* Dkt. 10-2. The order was granted on January 20, 2012. *See* Dkt. 11.

9. On February 8, 2012, Eveland & Associates, appeared on behalf of Appellants. *See* Dkt. 13.

10. On May 23, 2012, Mr. Eveland filed a motion to extend the time to file Appellants' opening brief, which was then due on June 1, 2012. *See* Dkt. 17-2. Mr. Eveland cited difficulties in obtaining the transcript as the primary reason for the requested extension. The 90-day extension requested by Mr. Eveland was granted on June 11, 2012. *See* Dkt. 19.

11. On July 25, 2012, Mr. Eveland filed a motion in the district court requesting that documents be unsealed with respect to Appellants' counsel. That motion was granted on August 22, 2012. Boyajian Decl., ¶ 20.

12. Mr. Eveland filed a motion to withdraw as counsel on August 28, 2012, citing non-payment of fees as the reason for the withdrawal. *See* Dkt. 20-1.

This Court granted Mr. Eveland's motion to withdraw as counsel on September 11, 2012 (Dkt. 22) and ordered that "[w]ithin 21 days after the

date of this order, appellants *shall* enter an appearance of new counsel.” (emphasis added). Dkt. 22 at 2. Appellants were therefore required to enter an appearance of new counsel by no later than October 2, 2012. Boyajian Decl., ¶ 22. The Court’s order further provided that “[f]ailure to enter an appearance of new counsel may result in the automatic dismissal of this appeal,” and extended Appellants’ time to file an opening brief to November 9, 2012. *Id.*, ¶ 23.

Appellants did not enter an appearance of new counsel until November 8, 2012, more than a month after the Court’s deadline, and, far from complying with the Court’s order to file an opening brief by November 9, 2012, Appellants did not even file their (third) motion for extension until November 11, 2012. *Id.*, ¶ 24; Dkt. 26.

III. ARGUMENT

A. Appellants Have Not Provided A Valid Reason For Their Failure To Comply With The Court’s Rules And Orders.

None of Appellants’ excuses for failing to comply with the Court’s orders warrants granting a further extension of time to file the opening brief.

With respect to failing to enter an appearance of new counsel by October 2, 2012, Appellants claim that they were “hampered by lack of funds to hire an attorney and the immense record of this matter, including some 35

documents and other information that should have been offered in the underlying matter but wasn't." Dkt. 26 at 2. First, Appellants' prior counsel filed his motion to withdraw on August 28, 2012 (Dkt. 20-1), providing Appellants at least five weeks to retain a new attorney. Second, the purported "immense record of this matter" has no relevance whatsoever to Appellants' ability to retain new counsel, or to their ability to file an opening brief more than one year after filing a notice of appeal: the "immense record" has not changed in the past year. Similarly, Appellants' contention that there was "other information that should have been offered in the underlying matter but wasn't," is irrelevant: there is no other information that could be offered regarding the parties' execution of the Settlement Agreement, or the district court's enforcement of the Settlement Agreement. Even if there were such "other information that should have been offered," which is unlikely given the extensive briefing surrounding the enforcement of both the Settlement Agreement and the Judgment, if that information was not considered by the district court judge in enforcing the Settlement Agreement and entering judgment thereon, it cannot be considered on appeal.

As to Appellants' failure to file even their motion for extension of time by the deadline for filing their opening brief, they argue that new counsel was unable to file the request by November 9, 2012 because he did not "return to

the office until after 5:30 p.m.” following a deposition that “took all day.” Dkt. 26 at 2. Appellants’ instant motion comprises less than two pages of substance, and with any reasonable diligence could have been filed on either November 8, 2012, when counsel entered his appearance, or on November 9 when counsel returned to his office. This Court’s e-filing system would certainly have accepted a filing after 5:30 p.m.

Finally, Appellants offer the following reason for their request to further extend the deadline to file the opening brief: “Undersigned counsel has commenced to accumulate the extensive record, including a determination of how many of the 35 or so sealed documents have been unsealed thus far and how many still remain so and require motions to unseal. That effort will require some time before a draft of the opening brief can be constructed.”

Dkt. 26 at 2-3. First, as noted above, Appellants were served with all documents filed in this action, including those that were filed under seal pursuant to court order. Indeed, Appellants attached to their November 1, 2011 Notice of Appeal three of the sealed documents at issue, the June 27, 2011 Order, the October 27, 2011 Amended Judgment, and the October 27, 2012 Order denying Appellants’ Motion for Relief from Judgment. Second, Appellants’ prior counsel moved the district court to unseal the documents with respect to Appellants’ counsel, and that order was granted on August 22,

2012 -- *12 weeks ago*. Boyajian Decl., ¶ 20. Thus there is no justifiable basis to grant Appellants yet another extension of time to file the opening brief.

B. This Appeal Should Be Dismissed Pursuant To Circuit Rule 42-1.

Based on the facts set forth above, and the record on this appeal, the Court should, respectfully, dismiss this appeal for failure to prosecute. Circuit Rule 42-1 provides that “[w]hen an appellant fails to file a timely record...file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal.” Circuit Rule 42-1.

More than one year has passed since the filing of this appeal, and Appellants have yet to file an opening brief. Appellants have also failed to comply with this Court’s orders and rules “requiring processing the appeal for hearing,” by failing to timely enter appearance of new counsel and neglecting to file an opening brief by the date ordered by this Court -- a date that was already twice extended. Such circumstances warrant a dismissal.

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IV. CONCLUSION

Appellants respectfully urge this Court to deny Appellants' motion to further extend their time to file the opening brief, and dismiss the appeal for failure to comply with the Court's rules and orders.

Dated: November 14, 2012

GREENBERG TRAURIG, LLP

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Co-Executor of the Estate of Michael J.
Jackson; Triumph International, Inc.

**Certificate of Compliance Pursuant to 9th Circuit Rules 28-4, 29-2(c)(2)
and (3), 32-2 or 32-4**

This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Dated: November 14, 2012

GREENBERG TRAURIG, LLP

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G. Branca, Co-Executor of the Estate
of Michael J. Jackson; John McClain,
Co-Executor of the Estate of Michael J.
Jackson; Triumph International, Inc.

9th Circuit Case
Number(s)

11-56926, 11-57048 (Consolidated)

CERTIFICATE OF SERVICE

All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing **APPELLEES' OPPOSITION TO APPELLANTS' MOTION TO EXTEND TIME TO FILE OPENING BRIEF** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 14, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to the following party(ies):

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Counsel for Defendants-Appellants Heal the World Foundation and United Fleet

Signature

/s/ Nina D. Boyajian

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN G. BRANCA, Special
Administrator of the Estate of Michael
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INTERNATIONAL, INC.,

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vs.

HEAL THE WORLD
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corporation and UNITED FLEET, a
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Defendants/Appellants.

Case Number(s):
11-56926, 11-57048 (Consolidated)

C.D. No. 2:09-cv-07084-DMG
Central District of California,
Los Angeles

**DECLARATION OF NINA D.
BOYAJIAN IN SUPPORT OF
APPELLEES' OPPOSITION TO
APPELLANTS' MOTION TO
EXTEND TIME TO FILE
OPENING BRIEF**

DECLARATION OF NINA D. BOYAJIAN

I, Nina D. Boyajian, declare and state:

1. I am an associate with the law firm of Greenberg Traurig, LLP, counsel of record for Plaintiffs-Appellees John G. Branca and John McClain, Co-Executors of the Estate of Michael J. Jackson (“Estate”) and Triumph International, Inc. (collectively, “Appellees”). I am licensed to practice law in the State of California and before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto. I submit this Declaration in support of Appellees’ Opposition to Defendants-Appellants Heal the World Foundation and United Fleet’s (“Appellants”) Motion to Extend Time to File Opening Brief.

2. On April 19, 2011, the first day of trial, the district court held an in-chambers conference wherein the parties advised the court of the settlement that had been reached in the litigation. The conference was held in chambers as a result of the confidentiality provision in the Settlement Agreement. The parties’ counsel also advised the court that they expected to submit a stipulated dismissal and permanent injunction and final judgment reflecting the terms of the Settlement Agreement.

3. Notwithstanding these representations and the parties’ execution

of the binding Settlement Agreement, Appellants breached the Settlement Agreement and unsuccessfully argued, through their attorney at the time, that it should not be enforced.

4. After considering Appellants' numerous oppositions to Appellees' Motion to Enforce the Settlement Agreement, allowing for oral argument on the motion, and providing Appellants an opportunity to participate in the drafting of an order enforcing the Settlement Agreement, the district court ultimately rejected Appellants' arguments and enforced the agreement by Order dated June 27, 2011, and by a Judgment and injunction of the same date.

5. The court also ordered that as a result of the confidentiality provision in the Settlement Agreement, all motions or briefing relating to the agreement must be filed under seal.

6. In accordance with the court's order, Appellants filed the June 27, 2011 Order, the October 27, 2011 Amended Judgment, and the October 27, 2011 Order denying Appellants' Motion for Relief from Judgment, under seal when they filed their Notices of Appeal. Attached hereto as Exhibit A is a true and correct copy of Appellants' Notices of Appeal.

7. Citing attorney error, Appellants missed their deadline to file a notice of appeal and sought an extension of time, which was granted by the

district court.

8. Shortly thereafter, Appellants filed a Motion for Relief from Judgment, which largely regurgitated the arguments Appellants had made in opposition to Appellees' Motion to Enforce the Settlement Agreement. Appellants' motion was denied by the district court on the basis, *inter alia*, that there was no newly discovered evidence warranting relief, and finding that the Settlement Agreement could not be more clear as to its legal effect.

9. As set forth in Appellees' Response to Appellants' Motion to Withdraw as Counsel of Record and Request to Extend Time in Order to Obtain Substitute Counsel (Dkt. 21-1), Appellants have, in both the district court and in this Court, requested and been granted numerous extensions of time for various items, including to submit responses to discovery, file a notice of appeal, and to file their opening brief. *See*, Dkt. 21-1.

10. For instance, on March 23, 2010, Appellants' former counsel in the trial court, Newman & Newman, filed a motion to withdraw as attorney of record, citing non-payment of fees as the reason for withdrawal. The motion was granted on May 10, 2010.

11. On July 19, 2010, the Cohen I.P. Law Group, P.C. appeared on behalf of Appellants in the trial court.

12. On October 4, 2010, the Cohen I.P. Law Group, P.C. filed a

motion to withdraw as counsel, citing non-payment of fees as the reason for withdrawal.

13. On November 1, 2010, the Law Offices of Edgar B. Pease III appeared on behalf of Appellants in the trial court.

14. On May 16, 2011, Mr. Pease requested to withdraw as counsel for Appellants.

15. On May 31, 2011, the Law Office of Scott Barbag appeared on behalf of Appellants in the trial court.

16. On August 29, 2011, the law firm of Smith Campbell Clifford Kearney Gore requested to be substituted as counsel of record for Appellants in the trial court, and also requested an extension of time to file Appellants' notice of appeal. Both the substitution request and the extension were granted.

17. On January 13, 2012, the law firm of Smith Campbell Clifford Kearney Gore filed a motion to withdraw as counsel, citing non-payment of fees as the reason for the withdrawal. *See* Dkt. 10-2. The order was granted on January 20, 2012. *See* Dkt. 11.

18. On February 8, 2012, Eveland & Associates, appeared on behalf of Appellants. *See* Dkt. 13.

19. On May 23, 2012, Mr. Eveland filed a motion to extend the time

to file Appellants' opening brief, which was then due on June 1, 2012. *See* Dkt. 17-2. Mr. Eveland cited difficulties in obtaining the transcript as the primary reason for the requested extension. The 90-day extension requested by Mr. Eveland was granted on June 11, 2012. *See* Dkt. 19.

20. On July 25, 2012, Mr. Eveland filed a motion in the district court requesting that documents be unsealed with respect to Appellants' counsel. That motion was granted on August 22, 2012.

21. Mr. Eveland filed a motion to withdraw as counsel on August 28, 2012, citing non-payment of fees as the reason for the withdrawal. *See* Dkt. 20-1.

22. This Court granted Mr. Eveland's motion to withdraw as counsel on September 11, 2012 (Dkt. 22) and ordered that "[w]ithin 21 days after the date of this order, appellants shall enter an appearance of new counsel." Dkt. 22 at 2. Appellants were therefore required to enter an appearance of new counsel by no later than October 2, 2012.

23. The Court's order further provided that "[f]ailure to enter an appearance of new counsel may result in the automatic dismissal of this appeal," and extended Appellants' time to file an opening brief to November 9, 2012.

24. Appellants did not enter an appearance of new counsel until

November 8, 2012, more than a month after the Court's deadline, and, far from complying with the Court's order to file an opening brief by November 9, 2012, Appellants did not even file their (third) motion for extension until November 11, 2012. *See* Dkt. 2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 14th day of November, 2012 at Los Angeles, California.

/S/ NINA D. BOYAJIAN

NINA D. BOYAJIAN

GREENBERG TRAURIG, LLP

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9th Circuit Case
Number(s)

11-56926, 11-57048 (Consolidated)

CERTIFICATE OF SERVICE

All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing **DECLARATION OF NINA D. BOYAJIAN IN SUPPORT OF APPELLEES' OPPOSITION TO APPELLANTS' MOTION TO EXTEND TIME TO FILE OPENING BRIEF** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 14, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to the following party(ies):

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Signature

/s/ Nina D. Boyajian

www.TeamMichaelJackson.com

Exhibit A

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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

JOHN G. BRANCA, et al.

PLAINTIFF(S),

v.

HEAL THE WORLD FOUNDATION, et al.

DEFENDANT(S).

CASE NUMBER:

CV-09-07084 DMG [PLAx]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants: Heal the World Foundation and United Fleet hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]
☐ Conviction and Sentence
☐ Sentence Only (18 U.S.C. 3742)
☐ Pursuant to F.R.Cr.P. 32(j)(2)
☐ Interlocutory Appeals
☐ Sentence imposed:

☐ Bail status:**Civil Matter**

- ☒ Order (specify):
 Filed under seal June 27, 2011 (#220)
☒ Judgment (specify):
 Filed under seal October 27, 2011(#292)
☐ Other (specify):

Imposed or Filed on October 27, 2011. Entered on the docket in this action on October 28, 2011.

~~XX copy of Judgment or Order attached hereto XX~~

A copy of Order and Judgment are NOT attached as Exhibits A and B respectively, but filed separately under seal.

November 1, 2011

Date

/s/ Steven C. Smith

Signature

☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

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 9 HEAL THE WORLD FOUNDATION and
 10 UNITED FLEET

11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

15 JOHN G. BRANCA, Special
 16 Administrator of the Estate of Michael
 17 J. Jackson; JOHN MCCLAIN, Special
 18 Administrator of the Estate of
 19 Michael J. Jackson; TRIUMPH
 20 INTERNATIONAL, INC., a California
 21 corporation,

22 Plaintiffs,

23 vs.

24 HEAL THE WORLD FOUNDATION,
 25 a California corporation; UNITED
 26 FLEET, a California corporation; and
 27 DOES 1-10, inclusive,

28 Defendants.

CASE NO: CV-09-07084 DMG [PLAx]

Honorable Dolly M. Gee
 Courtroom 7

**EX. A TO NOTICE OF APPEAL
 FILED BY DEFENDANTS ON
 NOVEMBER 1, 2011– SEALED
 DOCUMENT: ORDER RE
 PLAINTIFFS' MOTION TO
 ENFORCE PARTIES' FULLY
 EXECUTED SETTLEMENT
 AGREEMENT FILED JUNE 27, 2011**

EX. A TO NOTICE OF APPEAL FILED BY DEFENDANTS NOV. 1, 2011

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Attorneys for Defendants
 HEAL THE WORLD FOUNDATION and
 UNITED FLEET

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

JOHN G. BRANCA, Special
 Administrator of the Estate of Michael
 J. Jackson; JOHN MCCLAIN, Special
 Administrator of the Estate of
 Michael J. Jackson; TRIUMPH
 INTERNATIONAL, INC., a California
 corporation,

Plaintiffs,

vs.

HEAL THE WORLD FOUNDATION,
 a California corporation; UNITED
 FLEET, a California corporation; and
 DOES 1-10, inclusive,

Defendants.

CASE NO: CV-09-07084 DMG [PLAx]

Honorable Dolly M. Gee
 Courtroom 7

**EX. B TO NOTICE OF APPEAL
 FILED BY DEFENDANTS ON
 NOVEMBER 1, 2011– SEALED
 DOCUMENT: AMENDED
 JUDGMENT ENTERED OCTOBER
 28, 2011**

EX. B TO NOTICE OF APPEAL FILED BY DEFENDANTS NOV. 1, 2011

PROOF OF SERVICE
Branca et al. vs. Heal the World Foundation, et al.

I declare that I am employed in the City of Santa Ana, County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 1800 North Broadway, Suite 200, Santa Ana, California 92706

On November 1, 2011, I served the foregoing document(s):

**NOTICE OF APPEAL; REPRESENTATION DOCUMENT;
SERVICE LIST**

on all interested parties in this action by placing [] the original [X] a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

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Attorneys for Plaintiffs John G. Branca and John McClain, Special Administrators of the Estate of Michael J. Jackson, Triumph International, Inc.

[X] By ELECTRONIC FILE TRANSFER TO ECF FILE & SERVE:
By transmitting a true copy of the document(s) listed above for service on all parties in this case pursuant to applicable statutes, local rules and/or order of the Court.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 1, 2011, at Santa Ana, California.

/s/ Kaylene Canaan
Kaylene Canaan

SERVICE LIST***Branca et al. vs. Heal the World Foundation, et al.***

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☐ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☒ Retained

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN G. BRANCA, et al.

CASE NUMBER:

PLAINTIFF(S),

CV-09-07084 DMG [PLAx]

v.

HEAL THE WORLD FOUNDATION, et al.

DEFENDANT(S).

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants: Heal the World Foundation and United Fleet hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]
☐ Conviction and Sentence
☐ Sentence Only (18 U.S.C. 3742)
☐ Pursuant to F.R.Cr.P. 32(j)(2)
☐ Interlocutory Appeals
☐ Sentence imposed:

☐ Bail status:**Civil Matter**

- ☒ Order (specify):
 Filed under seal October 27, 2011 (#291)
☐ Judgment (specify):
☐ Other (specify):

Imposed or Filed on October 27, 2011. Entered on the docket in this action on October 28, 2011.

~~XX copy of said judgment or order is attached hereto XX~~

A copy of the Order is NOT attached hereto, but has been filed separately under seal.

November 22, 2011

Date

/s/ Steven C. Smith

Signature

☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

SERVICE LIST
Branca et al. vs. Heal the World Foundation, et al.

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PROOF OF SERVICE
Branca et al. vs. Heal the World Foundation, et al.

I declare that I am employed in the City of Santa Ana, County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 1800 North Broadway, Suite 200, Santa Ana, California 92706

On November 22, 2011, I served the foregoing document(s):

NOTICE OF APPEAL

on all interested parties in this action by placing [] the original [X] a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

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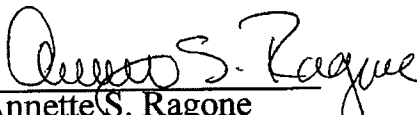
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[X] By ELECTRONIC FILE TRANSFER TO ECF FILE & SERVE:
By transmitting a true copy of the document(s) listed above for service on all parties in this case pursuant to applicable statutes, local rules and/or order of the Court.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 22, 2011, at Santa Ana, California.


Annette S. Ragone