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HEAL THE WORLD FOUNDATION and  
6 UNITED FLEET

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

**BY FAX**

11  
12 JOHN G. BRANCA, Special  
13 Administrator of the Estate of Michael  
J. Jackson; JOHN MCCLAIN, Special  
14 Administrator of the Estate of  
Michael J. Jackson; TRIUMPH  
15 INTERNATIONAL, INC., a California  
corporation,

16 Plaintiffs,

17 vs.

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

21 Defendants.

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

Honorable Dolly M. Gee  
Courtroom 7

**MEMORANDUM IN OPPOSITION  
TO PLAINTIFFS' EX PARTE  
APPLICATION**

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26 COME NOW Defendants Heal the World Foundation and United Fleet, by  
27 and through counsel, and hereby submit the following Memorandum in Opposition  
28 to Plaintiffs' Ex Parte Application

Smith | Campbell | Clifford | Kearney | Gore

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3 Defendants' counsel was retained after business hours on August  
4 26, 2011, and only received the ex parte documents on August 30, 2011. Decl. of  
5 Hughes, ¶ 3. Defendants oppose the Ex Parte Application on the grounds that  
6 Plaintiffs have failed to establish that their cause would be irreparably prejudiced if  
7 the underlying motion was heard according to regular noticed motion procedures.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. Ex parte applications are solely for extraordinary relief, and must be**  
10 **justified by a showing that the movant would be irreparably prejudiced if**  
11 **required to bring a regularly noticed motion.**

12 The standard in this Court for bringing an ex parte application is clear: "What  
13 showing is necessary to justify ex parte relief? First, the evidence must show that the  
14 moving party's cause will be irreparably prejudiced if the underlying motion is heard  
15 according to regular noticed motion procedures." Mission Power Eng'g Co. v.  
16 Continental Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995). Ex parte relief is a  
17 "drastic remedy," and in order to justify it a party must show that they are entitled to  
18 "emergency injunctive relief." Martinez v. Countrywide Home Loans, 2011 U.S.  
19 Dist. LEXIS 11694 (C.D. Cal. Jan. 28, 2011).<sup>1</sup>

20 **II. Plaintiffs have not shown any possibility of irreparable prejudice, and**  
21 **have failed to justify any extraordinary relief.**

22 Nowhere in Plaintiffs' papers, either in the Ex Parte Application or in the  
23 supporting Declaration, do Plaintiffs assert any justification for seeking ex parte  
24 relief. Plaintiffs make no mention of any harm—irreparable or not—that would  
25 result if they were required to seek the relief sought under a regularly noticed  
26 motion. Accordingly, Plaintiffs' are not entitled to ex parte relief, and their Ex Parte

27  
28 <sup>1</sup> The Court's procedures also specify that "[e]x parte applications are solely for extraordinary relief and should be used with discretion."

1 Application should be denied.

2 Additionally, Defendants currently intend to bring a motion under Rule 60 for  
3 relief from judgment. Decl. of Hughes, ¶ 4. It is anticipated that this motion will be  
4 heard on October 24, 2011, and will be based upon arguments that the Judgment is  
5 void because, inter alia, Melissa Johnson is not a party to this matter, and did not  
6 sign the Memorandum of Understanding in her individual capacity. Decl. of  
7 Hughes, ¶ 5.

8 There is more than enough time for Plaintiffs to prepare a regularly noticed  
9 motion for the relief requested in their Application, to consult with counsel thereon  
10 as required by Local Rule 7-3, and to have that motion filed to be heard along with  
11 Defendants' intended Rule 60 motion (and currently pending Motion for Extension  
12 of Time to File a Notice of Appeal). As is clear from the Ex Parte Application,  
13 Plaintiffs will not suffer any irreparable harm if they are forced to wait until October  
14 24, 2011 to get the relief sought.

15 **III. Conclusion**

16 Based upon the foregoing, Defendants respectfully request that the Court  
17 deny Plaintiffs' Ex Parte Application.

18  
19 Dated: September 1, 2011 SMITH CAMPBELL CLIFFORD KEARNEY GORE  
20 A Professional Law Corporation

21 By: 

22 STEVEN C. SMITH

23 Attorneys for Defendants HEAL THE WORLD  
24 And UNITED FLEET  
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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 September 1, 2011, I served the foregoing document(s):

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION**

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:

Vincent H. Chieffo, State Bar No. 49069 Nina D. Boyajian, State Bar No. 246415 <b>GREENBERG TRAUERIG, LLP</b> 2450 Colorado Avenue, Suite 400E Santa Monica, CA 90404-5524 Phone: (310) 586-7700 Fax: (310) 586-7800 <i>ChieffoV@gtlaw.com</i> <i>BoyajianN@gtlaw.com</i>	Attorneys for Plaintiffs John G. Branca and John McClain, Special Administrators of the Estate of Michael J. Jackson, Triumph International, Inc.
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**[X] By MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mail. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 September 1, 2011, at Santa Ana, California.

ANNETTE S. RAGONE  
(Print Name)

  
(Signature)

Smith | Campbell | Clifford | Keamey | Gore