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10 McClain, Special Administrators of the Estate of
11 Michael J. Jackson; Triumph International, Inc.

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

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

21 Plaintiffs,

22 vs.

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

CASE NO. CV 09-07084 DMG (PLAx)

**DECLARATION OF NINA D.
BOYAJIAN RE: PLAINTIFFS'
STATUS REPORT REGARDING
SETTLEMENT**

Complaint Filed: September 29, 2009

Hon. Dolly M. Gee

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 John G. Branca and John McClain, Co-Executors of the Estate of Michael J. Jackson ("Estate") and Triumph International, Inc. (collectively, "Plaintiffs"). 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 regarding Plaintiffs' Status Report Regarding Settlement.

2. As counsel for Plaintiffs and Defendants advised the Court at the in chambers conference on the morning of the first day of trial, Tuesday, April 19, 2011, the parties had signed a binding Settlement Agreement embodying the material terms of their agreement. The parties had negotiated those terms over the prior three days starting on Saturday, May 16, 2011. Melissa Johnson, as president of both Defendant entities, signed on Defendants' behalf. The Court ordered the parties to "file a joint status report no later than May 19, 2011, unless a stipulation for dismissal is submitted to the Court by the above date." *See*, Civil Minutes, Document 166.

3. The Settlement Agreement called for each of the parties to draft certain documents, provide information, and sign certain documents in order to effectuate the terms of the agreement. Accordingly, on April 20, 2011, my colleague, Vincent Chieffo, sent to Defendants' counsel, Edgar Pease, a "to do list" of items arising from the Settlement Agreement, and an assignment of the various tasks. Immediately thereafter, we began to draft the documents required of Plaintiffs. With no response from Mr. Pease, on April 21, I sent a follow-up email to Mr. Pease regarding his availability to discuss the items.

4. On Sunday, April 24 (Easter Sunday), Mr. Pease left me a voicemail at my office regarding his "concern" with certain terms of the Settlement Agreement, and his desire to discuss those and other terms. That same day, I emailed Mr. Pease and advised

1 him that I would be available to discuss the issues he raised in his voicemail on Monday,
2 and requested a time that he would be available to do so. Mr. Pease neither returned my
3 email nor did he respond in any way.

4 5. On April 26, 2011, Mr. Chieffo sent to Mr. Pease one of the documents¹
5 required by the Settlement Agreement and requested that he provide it to Ms. Johnson for
6 her signature, as she was required to do pursuant to the terms of the Settlement
7 Agreement she executed. Mr. Chieffo also asked Mr. Pease when Defendants would be
8 sending to Plaintiffs the documents they were required to draft in order to comply with
9 the Settlement Agreement.

10 6. Mr. Pease replied not by responding to the April 20, 2011 email or having
11 Ms. Johnson sign the document sent on April 26, but rather, with an email: (1) requesting
12 that Plaintiffs draft a document that was not required by the Settlement Agreement, (2)
13 attempting to limit the scope of one of the documents Defendants were required to
14 prepare, and (3) raising other issues non-essential to the effectuation of the Settlement
15 Agreement. Moreover, Mr. Pease copied Howard Mann (who is currently being sued by
16 the Estate in another lawsuit) on the email, violating the confidentiality provision of the
17 Settlement Agreement.

18 7. Mr. Chieffo responded to Mr. Pease's email by clarifying what was required
19 by the Settlement Agreement, requesting an explanation as to why Mr. Mann was copied
20 on a confidential email, and inquired, once again, as to the status of the documents
21 Defendants were obligated to draft and circulate. Finally, Mr. Chieffo advised: "It has
22 been more than a week since the litigation was resolved. However, to date, your clients
23 have completed none of the tasks needed to perform the settlement. I encourage you to
24 have them do so forthwith, including, but not limited to, the return of the two executed

25 _____
26 ¹ I am intentionally vague as to what that document was in order to comply with the
27 confidentiality provision of the Settlement Agreement, and have also intentionally
28 refrained from attaching the physical correspondence referencing the terms of the
agreement in this Declaration. For the same reason, Plaintiffs will request that their
motion to enforce the Settlement Agreement₂ be filed under seal.

DECLARATION OF NINA D. BOYAJIAN RE:
PLAINTIFFS' STATUS REPORT REGARDING SET

1 [documents] I sent you yesterday morning. While I do not wish to seek Judge Gee's
2 assistance in having the settlement performed by your clients, we will not hesitate doing
3 so if we believe it is needed."

4 8. Mr. Pease's response to Mr. Chieffo's email can best be described as lacking
5 candor, misstating the record, and impressive in its lack of understanding as to the
6 settlement negotiation process. Mr. Pease's letter of the following day, April 28, can be
7 similarly characterized. In addition, however, the April 28 letter attempts to create a
8 false record as to the parties' respective contribution to the progress of the settlement: "I
9 do not want to create a 'Check Point Charlie,' but we are requesting progress on matters
10 of importance to both sides to proceed jointly." As of that time, ***Defendants had not sent***
11 ***to Plaintiffs a single document*** called for by the Settlement Agreement; indeed, ***as of***
12 ***this writing***, Defendants have still not circulated any documents to Plaintiffs.

13 9. On May 6, 2011, I sent to Mr. Pease an email indicating that we would be
14 sending additional documents to him the following week, and inquired as to when
15 Defendants would be sending their drafts. In response, Mr. Pease left me a voicemail
16 inquiring as to one of the terms of the Settlement Agreement, but not responding as to the
17 status of the documents. Although I responded with a return phone call on the same
18 (business) day, Mr. Pease did not respond until Saturday, May 7, at which time he left me
19 a message indicating that Ms. Johnson was preparing the necessary documents, but that
20 he was under "strict orders" not to turn anything over to Plaintiffs until they were
21 "perfect." Note that May 6 (the day before Mr. Pease made this statement) was the date,
22 according to Mr. Wilson's letter, on which the Defendants' respective boards met and
23 purportedly voted to rescind the Settlement Agreement. In his message, Mr. Pease also
24 indicated that he wanted to discuss other issues regarding a term in the Settlement
25 Agreement. I returned Mr. Pease's call on Monday morning and left him a voicemail
26 indicating her availability to discuss the issues he raised in his message.

27 10. The next communication from Mr. Pease was on May 11, 2011, when he
28 called Mr. Chieffo and myself regarding two issues: (1) asking us to send him a copy of

1 the fully executed Settlement Agreement (this would later be attached to Mr. Wilson's
2 letter of "rescission"); and (2) inquiring as to whether Defendants may provide a copy of
3 the Settlement Agreement to the California Attorney General's office as part of that
4 office's investigation of Melissa Johnson. Mr. Chieffo immediately sent Mr. Pease a
5 copy of the executed Settlement Agreement and advised that we have no objection to him
6 providing a copy to the Attorney General's office.

7 11. On the same day, Mr. Chieffo sent to Mr. Pease five documents required to
8 effectuate the terms of the Settlement Agreement, including a draft stipulation for
9 judgment and permanent injunction and proposed final judgment. Mr. Chieffo advised
10 Mr. Pease that the language of the proposed stipulation and judgment reflected the
11 discussions that Plaintiffs' counsel had with the Secretary of State's office regarding the
12 corporate records of Defendant HTWF and Mr. Jackson's 1991 Heal the World
13 Foundation. Among the five documents were documents that Defendants were in fact
14 charged with preparing, but, as a result of their complete lack of cooperation, Plaintiffs
15 prepared. Given Defendants' failure to participate in the drafting of the documents, Mr.
16 Chieffo proposed that the parties jointly request another month from the Court in order to
17 comply with the terms of the settlement. Mr. Pease never responded to Mr. Chieffo's
18 email.

19 12. On Friday, May 13, 2011, at 9:52 p.m., Mel Wilson, an officer of both
20 Defendant entities, sent to Mr. Chieffo and myself a letter indicating that "both
21 Corporations [Defendants HTWF and United Fleet] rejected and rescinded the
22 [Settlement] agreement." Their purported basis for breaching the Settlement Agreement
23 was that "Ms. Johnson did not have the permission, nor authority to act on behalf of the
24 Board of Directors of either Corporation," and that neither board had enough time to
25 "approve" the agreement. Attached hereto as Exhibit A is a true and correct redacted
26 copy of the letter, without the attached Settlement Agreement. The portions that have
27 been redacted excerpt from the Settlement Agreement, which is subject to a
28 confidentiality provision.

13. Mr. Wilson's letter stated that the Board of Directors of both Heal the World Foundation and United Fleet held board meetings on May 6, 2011, and "voted to reject and rescind" the Settlement Agreement "signed by Ms. Johnson on 4-18-11 on behalf of both Corporations. There was a vote concerning each of the terms of the agreement and all were rejected and rescinded according to the majority vote of the Board of Directors of Heal the World Foundation and United Fleet." See, Exhibit A. As part of a five member board of directors, it is likely that Ms. Johnson herself voted to "rescind" the agreement that she voluntarily signed.

14. Unsure of whether or not Mr. Pease still represented Defendants (given that the email came directly from Mr. Wilson) on Saturday, May 14, 2011, the day after receiving the “rescission” letter, Mr. Chieffo forwarded to Mr. Pease the letter and inquired as to whether or not Mr. Pease continues to represent Defendants and Ms. Johnson.

15. The following day, Mr. Pease responded: "Dear Vince: Please forward to me your stipulation to continue the May 19th date to a June 16th date as per your phone message; or a date hearest [sic] to that date. I am representing the Defendants until relieved by the Court, as per the Rules. Thank you." Mr. Pease did not respond in anyway to the "rescission" letter.

16. Mr. Chieffo will be out of the country from June 17, 2011 through July 5, 2011, and I will be out of the country from May 19, 2011 through June 1, 2011. Accordingly, we will request that Plaintiff's motion to enforce the terms of the Settlement Agreement be heard on shortened notice, on June 13, 2011, or sometime early in that week.

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 16th day of May, 2011 at Santa Monica, California.

/s/ NINA D. BOYAJIAN
NINA D. BOYAJIAN

5

DECLARATION OF NINA D. BOYAJIAN RE:
PLAINTIFFS' STATUS REPORT REGARDING SET

Exhibit A

Boyajian, Nina D. (Assoc-LA-LT)

From: mel wilson [melwilsonesq@hotmail.com]
Sent: Friday, May 13, 2011 9:52 PM
To: Boyajian, Nina D. (Assoc-LA-LT); Chieffo, Vincent H. (Shld-LA-IP-Tech-ENT-LT)
Cc: Melissa Johnson; edgar pease; ed pease
Subject: re: memorandum of understanding
Attachments: notice-to-estate-mou.pdf

Dear Mr. Chieffo, this is Mel Wilson, Vice President and board member of Heal the World Foundation, and also 100% owner of United Fleet, co-defendants in a lawsuit with the Estate of Michael Jackson. As an officer of both corporations I have attached a letter concerning the notice of memorandum of understanding.

Mel Wilson
Vice President
Heal the World Foundation



44489 Town Center Way,
Ste. D425 Palm Desert,
CA 92260
www.htwf.org



The Office of Heal the World Foundation
44489 Town Center Way Ste. D425
Palm Desert, Ca 92260

May 11, 2011

Vincent H. Chiefo
Greenberg Traurig
2450 Clorado Avenue, Ste. 400E
Santa Monica, Ca 90404
310-586-6587
310-586-0587
Email: ChieffoV@gtlaw.com

Re: Special Administrator(s) of the
Estate of Michael Jackson, et. al. v.
Heal the World Foundation, et. al. and United Fleet
Case No. CV09-07084-MMM(Plax)
NOTICE OF BOARD RULING TO RESCIND
MEMORANDUM OF UNDERSTANDING.

Dear Mr. Chieffo,

(1) I am including 2 documents, twelve (12) pages, which consist of two versions of the "memorandum of Understanding agreement", one is signed, but not dated by Mr. Branca and the other is not signed.

(2) The signed version was first received by Heal the World Foundation, by way of email, on 5-11-11 and did not have a date next to Mr. Branca's signature, however all versions of the same material terms have been duly rejected and rescinded by the majority vote of the Board of Directors.

(3) As an officer of both Defendants' Heal the World Foundation and 100% share holder in Untied Fleet, I hereby, give notice, on behalf of both Corporations, that the Board of Directors of both Heal the World Foundation and Untied Fleet held a Board meeting on 5-06-11 and voted to reject and rescind the "memorandum of understanding" agreement that was signed by Ms. Johnson on 4-18-11 on behalf of both Corporations.

(4) There was a vote concerning each of the terms of the agreement and all were rejected and rescinded according to the majority vote of the Board of Directors of Heal the World Foundation and United Fleet.

(5) In particular, the Paragraph 2 section b, was rejected and rescinded according to the majority of the vote of the Board of Directors of Heal the World Foundation and United Fleet.

(7) Further, since Melissa Johnson, was not named in this litigation and is therefore not a defendant and did not sign on behalf of herself, as an individual, there is no authority to you or your clients to act on her behalf, or have the Power of Attorney for Melissa Johnson.

(8) Concerning the permission for President Melissa Johnson, to act and sign this document on behalf of HTWF and United Fleet, in the transaction concerning the "Memorandum of Understanding" between the HTWF Corporation and the Estate of Michael Jackson and its affiliates:

(9) HTWF by-laws Section 4.10 of the HTWF by-laws states: Action Without a Meeting. Any action that may be taken by the board of directors at a meeting may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before such action by all of the directors or by the written authorization from the president.

(10) It was determined that nothing was put forward in writing to the Board, by Ms. Johnson prior to the signing of the "Memorandum of Understanding" and no approval was signed by the members of the Board, prior to this "Memorandum of Understanding" being signed, and the Board maintained in Majority, that approval therefore, was not given and thereby, was rejected completely.

REDACTED

(11) *TUF By-laws Section 2.8 of the TUF by-laws states: Action by Directors without a Meeting. Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or of such committee, as the case may be, shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceeding of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.*

(12) It was determined that nothing was put forward in writing to the Board, by Ms. Johnson prior to the signing of the "Memorandum of Understanding" and no approval was signed by the members of the Board, prior to this "Memorandum of Understanding" and the Board maintained in Majority, that approval therefore, was not given and thereby, was rejected completely.

The "Memorandum of Understanding"

(13) The "Memorandum of Understanding" was provided to all Board Members and the terms were discussed at length by all present, and the Board voted in the majority, to completely reject and rescind the agreement, as it would irreparably harm the Heal the World Foundation and Untied Fleet Corporations.

(14) Please be advised that this letter stands as notice to all parties, that:

- Both Corporations rejected and rescinded the agreement and notify all parties that Ms. Johnson did not have the permission, nor authority to act on behalf of the Board of Directors of either Corporation.
- All attorneys involved, on both sides, knew that both Board approval would be needed as well as notification to the Attorney General, in order to
() but Defendants' were not properly advised by its counsel, nor given any time consideration by Plaintiff's to obtain Board Approval.

Sincerely,



Mel Wilson
Vice President
Heal the World Foundation
& United Fleet

REDACTED