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

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16 **WESTERN DIVISION**  
17

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

24 Plaintiffs,

25 vs.

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

Defendants.

CASE NO. CV 09-07084 DMG (PLAx)

**DECLARATION OF NINA D.  
BOYAJIAN IN SUPPORT OF  
PLAINTIFFS' *EX PARTE*  
APPLICATION FOR AN ORDER  
EXCLUDING DEFENDANTS'  
EXHIBITS FOR FAILURE TO  
PROVIDE COMPREHENSIBLE  
EXHIBIT LIST AND EXHIBITS**

Trial Date: April 19, 2011  
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 (the "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 in support of Plaintiffs' *Ex Parte* Application for an Order Excluding Defendants' Evidence for Failure to Provide Comprehensive Exhibit List and Exhibits.

2. Defendants were given notice of this Application via an email sent to Defendants' counsel, Edgar B. Pease, III, Esq., Law Offices of Edgar B. Pease, III, 16255 Ventura Blvd., Suite 704, Encino, California 91436; Tel: 818.981.2200; Fax: 818.981.2201; edgarpease@gmail.com. Attached hereto as Exhibit A is a true and correct copy of my April 12, 2011 email sent to Edgar Pease.

3. In response to the *ex parte* notice, Mr. Pease left me a voicemail at 11:06 pm in which he once again indicated that a revised list is forthcoming, but that Plaintiffs "may go ahead and file their application if they please." Mr. Pease also failed to indicate when Defendants' documents would be provided to Plaintiffs.

4. The Rule 16 pre-trial documents, including a joint exhibit list, should have been filed on March 1, 2011. Although Plaintiffs were ready to file their portions of the required documents on that day, they agreed to stipulate to Defendants' request to extend the deadline for filing those documents to March 7, 2011. Attached hereto as Exhibit B is a true and correct copy of my February 23, 2011 email to Defendants' counsel Mr. Pease, agreeing to sign the Stipulation and attaching the Stipulation.

5. The week before the pre-trial documents were due, I sent to Defendants' counsel, Mr. Pease, drafts of the joint pre-trial documents. Attached hereto as Exhibit C

1 is a true and correct copy of my three emails to Mr. Pease dated March 3, 2011 and my  
2 two emails to Mr. Pease dated March 4, 2011 regarding the pre-trial documents.

3 6. I did not receive any response to the documents I circulated to Defendants  
4 until the evening of Sunday, March 6, 2011, at which time Mr. Pease left me a voicemail  
5 at my office in which he indicated that he would be sending Defendants' portions of the  
6 documents to me on March 7, 2011, the day they were due. Attached hereto as Exhibit D  
7 is a true and correct copy of my March 7, 2011 email to Mr. Pease.

8 7. As a result of Defendants' failure to communicate, and delay in circulating  
9 documents, Plaintiffs were under severe pressure to finalize and file all the required  
10 documents by the end of the day. In addition, Defendants' portions of the joint  
11 documents were ill-prepared and incomplete, particularly Defendants' exhibit list.

12 8. The exhibit list that Defendants provided to Plaintiffs listed 982 exhibits,  
13 described not by bates number or any other description that would allow Plaintiffs, the  
14 Court, or any person to determine what document the exhibit is referring to, but rather, by  
15 the filename, e.g., "vancalls-qwe.pdf," (Exhibit 1001) or some other meaningless  
16 description, e.g., "farming" (Exhibit 1129) or "mjquotes.com" (Exhibit 1148). Attached  
17 hereto as Exhibit E is a true and correct copy of the Pretrial Exhibit Stipulation filed on  
18 March 7, 2011.

19 9. This was done despite the fact that Plaintiffs undertook the burden and  
20 expense of bates-stamping Defendants' entire document production and producing to  
21 Defendants a hard drive containing their document production in order to facilitate the  
22 use of documents at trial. Attached hereto as Exhibit F is a true and correct copy of my  
23 letter to Mr. Pease dated February 23, 2011.

24 10. The parties filed an amended exhibit list on March 10, 2011. Plaintiffs had  
25 also intended to file a corresponding amended exhibit stipulation, but did not do so after  
26 Mr. Pease requested that I insert into that document (a document that was circulated to  
27 Mr. Pease in word format) Defendants' objections to Plaintiffs' exhibits. Attached hereto  
28 as Exhibit G is a true and correct copy of my March 10, 2011 email to Mr. Pease.

1 11. Mr. Pease had failed to make any objections to Plaintiffs' exhibits upon the  
2 filing of the exhibit stipulation on March 7, and was hoping that Plaintiffs would make  
3 Defendants' belated objections to their own exhibits. I declined to do so. *See*, Exhibit G.

4 12. On Tuesday, March 22, 2011, I sent Mr. Pease a letter stating:

5  
6 "Based on Defendants' listing, it is nearly impossible to determine what  
7 document is being identified by each exhibit number....Plaintiffs request  
8 that Defendants revise their portion of the exhibits lists prior to the pre-trial  
9 conference this Friday. Doing so will assist all parties and the Court in  
10 trying this case."

11 Attached hereto as Exhibit H is a true and correct copy of my March 22, 2011 letter to  
12 Mr. Pease.

13 13. In response, Mr. Pease called me and said "I agree 100% with your letter,"  
14 and indicated that Mel Wilson, an officer of both Defendants, was revising the exhibit list  
15 to include references to the bates number of the document, and that he should be done  
16 with that task by the following Monday, March 28, 2011.

17 14. I sent Mr. Pease a word document of the exhibit list to facilitate Mr.  
18 Wilson's work. Attached hereto as Exhibit I is a true and correct copy of my March 24,  
19 2011 email to Mr. Pease.

20 15. Not having received any revised list from Defendants, on March 31, I once  
21 again inquired as to the status of the list:

22 "Also recall that Judge Gee ordered that the parties meet and confer  
23 regarding stipulating to exhibits. Obviously, we cannot do this until we  
24 receive Defendants' revised exhibit list, which identifies documents by bates  
25 number. Last we spoke, you indicated that Mel Wilson expected to have the  
26 revised list completed by Monday. Has that happened? If so, please send us  
27 the revised document at your earliest convenience so we may assess the  
28 need for any objections."

29 Attached hereto as Exhibit J is a true and correct copy of my March 31,  
30 2011 email to Mr. Pease

31 16. Another week passed, and Defendants still failed to produce a revised  
32 exhibit list.

1 17. On April 9, 2011, in an email noting the deficiencies with Defendants'  
2 witness statement of Katherine Jackson, I once again raised the issue of the exhibit list:

3 "We also note that Katherine Jackson's statement is missing page 5, and  
4 makes reference to exhibits that have not been provided to us. I have been  
5 asking you for weeks now, for a witness list that is usable (e.g., provides the  
6 name of the document and the bates number, rather than simply providing  
7 the file name) so we may meet and confer as to the admissibility of the  
8 exhibits. You have indicated to me that you/your clients are working on it,  
9 but have failed to produce to us a revised list. Please do so immediately."

10 Attached hereto as Exhibit K is a true and correct copy of my April 9, 2011  
11 email to Mr. Pease.

12 18. Once again, no response from Defendants, and no revised exhibit list.  
13 Despite Plaintiffs' counsel's comments regarding Mrs. Jackson's witness statement  
14 referencing exhibits without providing copies of those exhibits, the witness statements  
15 filed by Defendants on April 12, 2011 also referenced exhibits without providing copies  
16 of those exhibits. Moreover, the exhibits referenced in the witness statements are not  
17 identified by the trial exhibit numbers on Defendants' deficient trial exhibit list (to the  
18 extent that Plaintiffs are able to guess as to what document is referenced in Defendants'  
19 list). Attached hereto as Exhibit L are true and correct copies of the witness statements  
20 filed by Defendants on April 12, 2011.

21 19. On April 11, 2011, in an email attempting to meet and confer regarding  
22 proposed stipulated facts, I again expressed concern as to the status of the exhibit list:

23 "I am becoming very concerned that we have not yet seen a revised exhibit  
24 list from Defendants, and accordingly do not have any idea as to the exhibits  
25 Defendants intend on using at trial. As I mentioned in Saturday's email,  
26 even the exhibits mention in Mrs. Jackson's statement were not provided nor  
27 identified in an appropriate manner. As you are well aware, trial starts in  
28 eight days. It is imperative that you provide us with a workable exhibit  
list that allows us to identify Defendants' proposed exhibits. This should  
have been provided many weeks ago. I reserve all of Plaintiffs' objections  
to all proposed Defendant exhibits, including seeking to preclude  
introduction of those exhibits for failure to follow the applicable Rules."



1 Attached hereto as Exhibit M is a true and correct copy of my April 11, 2011 email  
2 to Mr. Pease.

3 20. Notwithstanding my express statement advising of the possibility of seeking  
4 the precise relief sought by this Application, Defendants once again failed to provide to  
5 Plaintiffs a revised exhibit list

6 21. On April 12, 2011, Plaintiffs sent to Defendants their complete set of  
7 exhibits and again requested information regarding the status of Defendants' lists.  
8 Attached hereto as Exhibit N is a true and correct copy of my April 12, 2011 letter to Mr.  
9 Pease.

10 22. In contrast to Defendants' conduct, Plaintiffs provided Defendants an  
11 exhibit list prior to the filing of the pre-trial documents, and have kept Defendants  
12 apprised of any revisions made to that list. *See, Exhibit C.*

13 23. In addition, Defendants have the luxury of reviewing Plaintiffs' witness  
14 statements while having, in their possession Plaintiffs full set of exhibits. *See, Exhibit N.*

15 24. Plaintiffs, on the other hand, have neither an exhibit list nor Defendants'  
16 documents. With less than a week before trial, Defendants have failed to provide a  
17 comprehensible exhibit list to Plaintiffs or this Court.

18 25. In response to my *ex parte* notice, Mr. Pease responded that he expects to  
19 have a revised exhibit list to Plaintiffs by noon, April 13, 2011, which will "give  
20 [Plaintiffs] five days to get at the documents." Such a representation not only lacks  
21 credibility, given counsel's prior broken promises, but is also too little, too late. Even if  
22 Defendants do in fact provide a revised list today, Plaintiffs would still be severely  
23 prejudiced by Defendants' failure to follow the requirements of the rules.

24 I declare under penalty of perjury under the laws of the United States of America  
25 that the foregoing is true and correct and that this Declaration was executed this 13th day  
26 of April, 2011 at Santa Monica, California.

27 /s/ NINA D. BOYAJIAN

28 NINA D. BOYAJIAN