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DEPARTMENT 212

FILED
San Francisco County Superior Court

JUL 13 2007

GORDON PARK-LI, Clerk
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

SUMMONS ISSUED

11 TRANSITIONAL INVESTORS, LLC, a
12 California limited liability company,

13 Plaintiff,

14 vs.

15 MICHAEL J. JACKSON, an individual, MJ
16 PUBLISHING TRUST, a Delaware trust, MJ-
ATV PUBLISHING TRUST, a Delaware trust,
17 KATHERINE JACKSON, an individual, NEW
HORIZON TRUST, a Delaware trust, and DOES
1-50,

18 Defendants.

) Case No. **07-0465135**

) COMPLAINT FOR:

-) (1) BREACH OF WRITTEN CONTRACT;
) (2) NEGLIGENT MISREPRESENTATION;
) (3) INTENTIONAL MISREPRESENTATION;
) (4) QUANTUM MERUIT;
) (5) UNJUST ENRICHMENT; AND
) (6) FRAUDULENT TRANSFER.

20 Plaintiff Transitional Investors, LLC ("Transitional") brings this Complaint against

21 Defendants Michael J. Jackson ("Jackson"), MJ Publishing Trust, ("MJPT"), MJ-ATV Publishing Trust
22 ("MJ-ATV"), Katherine Jackson, New Horizon Trust ("New Horizon"), and DOES 1-50 (collectively
23 "Defendants") to recover over \$29 million in unpaid brokerage fees and damages:

24 **THE PARTIES**

25 1. Plaintiff Transitional is a California limited liability company with its principal place of
26 business in the City and County of San Francisco. Transitional is a private investment company
27 engaged in the business of lending through leveraged buyouts, recapitalizations, commercial mortgages
28 and bridge loans to medium sized companies, and debt restructuring in a variety of commercial settings.

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Complaint For Damages for Breach Of Contract, Misrepresentation, Fraudulent Transfer

1 2. Defendant Michael J. Jackson (hereinafter sometimes "Mr. Jackson") is a
2 singer/songwriter and investor with respect to certain publishing rights and other assets held in trusts he
3 created and controls, including Defendants MJPT, MJ-ATV and New Horizon. He developed and held
4 these assets in the course of his professional and commercial enterprises. Transitional is informed and
5 believes that Mr. Jackson was, at all relevant times, authorized to act on behalf of each of the trust
6 defendants, and enter into contracts on their behalf. Transitional is informed and believes that Mr.
7 Jackson maintains residences in Las Vegas, Nevada and Los Olivos, California, near Santa Barbara.

8 3. Defendant MJPT is, on information and belief, a trust formed by Mr. Jackson and
9 existing pursuant to the laws of the state of Delaware, with its principal place of business in California.
10 On information and belief, MJPT is beneficially owned by Mr. Jackson, owns title to certain intellectual
11 property (including songs professionally written by Mr. Jackson referred to as the MJAC Library), and
12 retains lawyers, accountants and other advisors within California.

13 4. Defendant MJ-ATV is, on information and belief, a trust formed by Mr. Jackson and
14 existing pursuant to the laws of the state of Delaware, with its principal place of business in California.
15 On information and belief, MJ-ATV is beneficially owned by Mr. Jackson and owns title to certain
16 intellectual property, including an interest in the commercially developed library of songs written by the
17 Beatles, a former musical group of note. MJ-ATV retains lawyers, accountants and other advisors
18 within California.

19 5. Defendant Katherine Jackson ("Ms. Jackson") is, on information and belief, a trustee of
20 MJPT, and a manager/trustee of MJ-ATV, along with Jackson. At all relevant times herein, Ms. Jackson
21 resided in Encino, California, and took instruction from Mr. Jackson and his advisors as to how the
22 assets of MJPT and MJ-ATV should be used and/or pledged. Defendant Katherine Jackson is sued
23 solely in her representative capacity as a trustee of MJPT and MJ-ATV, and not in her individual
24 capacity.

25 6. Defendant New Horizon is, on information and belief, a trust formed and existing
26 pursuant to the laws of the state of Delaware with its principal place of business in California and
27 Delaware. On information and belief, New Horizon is beneficially owned by Defendants Mr. Jackson,
28 MJPT, and MJ-ATV, and retains lawyers, accountants and other advisors within California.

1 proposed refinancing structures contemplated the treatment of the Trust Defendants as a single pool of
2 assets to be mixed, matched, allocated and collateralized to best suit Mr. Jackson and their current cash
3 needs. Mr. Jackson completely controlled the Trust Defendants for his own purposes, including
4 directing the nominal trustee, Katherine Jackson, when to act and which documents to sign.

5 11. The Trust Defendants were mere shells, instrumentalities and conduits through which Mr.
6 Jackson carried on his business, exercising complete control and dominance of such business to the
7 extent that any individuality or separateness, between and among such Defendants, does not and, at all
8 relevant times herein mentioned, did not exist. Permitting any distinction between Jackson and the Trust
9 Defendants with respect to Transitional's claims would permit an abuse, sanction of fraud, promote
10 injustice, and cause an inequitable result and therefore, any corporate or other separateness between and
11 among said Defendants should be disregarded.

12 12. Transitional is informed and believe, and on that basis allege, that each of the
13 Defendants, at all relevant times herein, was the agent and/or employee of each of the other Defendants,
14 and in committing the acts herein alleged, was acting within the scope of his or their authority as such
15 agents and employees, and with the permission, consent and/or ratification of his or their co-Defendants.
16 On that basis, Transitional further alleges that each of the Defendants was responsible for, participated
17 in, or contributed to the conduct Transitional alleges herein.

18 JURISDICTION AND VENUE

19 13. Pursuant to Code of Civ. Proc. §§ 395 and 395.5, jurisdiction is proper in California and
20 venue is proper in San Francisco because much of the contract was performed by Transitional in the
21 County of San Francisco, because Defendants' failure to pay Transitional occurred in the County of San
22 Francisco, and because Transitional is a company with its principal place of business in this County
23 where it was solicited to perform services for Defendants.

24 GENERAL ALLEGATIONS

25 14. On or about September 29, 1999, Bank of America, N.A. ("BOA") made a loan to MJPT
26 which, after certain agreements and extensions, resulted in a loan with an aggregate principal amount of
27 \$72.5 million to MJPT (the "MJPT Loan"). To secure the MJPT Loan, MJPT pledged to BOA its right,
28 title and interest in the MIJAC Library and the right to receive payments for its administration.

1 15. On or about December 23, 1998, BOA made a loan to MJ-ATV, which, after subsequent
2 agreements and extensions, resulted in a loan in the aggregate principal amount of \$200 million to MJ-
3 ATV (the "MJ-ATV Loan"). To secure the MJ-ATV Loan, MJ-ATV pledged to BOA its right, title and
4 interest in and to MJ-ATV's 50% interest in Sony/ATV Music Publishing LLC ("Sony/ATV"), a 50-50
5 joint venture between Mr. Jackson, on the one hand, Sony Corporation of America and certain of its
6 affiliates, on the other hand. Sony/ATV holds a music publishing catalog colloquially known as the
7 Beatles Catalog, currently valued at over \$1 billion.

8 16. Collectively, the MJPT Loan and the MJ-ATV Loan are referred to herein as the "BOA
9 Loans." Both of the BOA Loans became due and payable in full on December 20, 2005.

10 17. As of the Fall of 2004, Defendants Jackson, MJPT and MJ-ATV owed approximately
11 \$272.5 million of principal on the BOA Loans. In the Fall of 2004, those Defendants wished to
12 refinance those loans. They also sought additional money to exercise an option they believed existed
13 that would permit the purchase of the other 50% interest in the Sony/ATV Library for \$200 million.

14 18. In or about November 2004, Plaintiff Transitional was contacted to assist with the
15 refinancing of the BOA Loans and obtain additional funding to fund the purchase of the other half of the
16 Sony/ATV Library. Transitional's managing director, Stuart Shelly, spoke with Darien Dash and Don
17 Stabler of Stabler & Associates, both of whom held themselves out as authorized representatives of Mr.
18 Jackson and his Trust. These representatives informed Transitional, in November and December 2004,
19 that Mr. Jackson had a trust called the Michael Jackson Trust, or MJT, that held various assets such as
20 the MIJAC Library and a 50% interest in Sony/ATV, and that Mr. Jackson was authorized to act on
21 behalf of his trust.

22 19. On or about December 30, 2004, Transitional sent a Letter of Intent to Mr. Jackson via
23 Don Stabler (the "LOI"). The LOI was signed by Stuart Shelly, the managing director of Transitional.
24 The purpose of the LOI was to document the parties' agreement that Transitional would provide
25 specified services and that Defendants would pay a fee, pursuant to the agreed upon contractual formula.
26 Specifically, the parties agreed that Transitional would "provide senior and subordinated debt and equity
27 financing in support of the Michael Jackson Trust's [sic] ("MJT") refinancing of its existing debt and
28 exercise of its option to acquire the 50% (50%) of Sony/ATV which it does not currently own. . . ." The

1 LOI contemplated that a new, bankruptcy remote, special purpose entity would be formed to hold the
2 entire Sony/ATV Music Library upon consummation of the financing. The Michael Jackson Trust was
3 to be the sole 100% owner of that special purpose entity. The total transaction value contemplated in the
4 LOI was \$537,500,000. Of this amount, \$272,500,000 would be used to "refinance existing debt of
5 MJT" while another \$200,000,000 was to be used to "exercise option to purchase of Sony/ATV."

6 20. The essential payment terms of the LOI are set forth in Paragraph 6 of the LOI, which
7 provided in pertinent part:

8 Initial Break-Up Fee

9 In the event that TI and its financing partners provides MJT with a
10 Commitment letter of financing that will provide MJT the Five Hundred
11 and Thirty Seven Million Five Hundred Thousand Dollars (\$537,500,000)
12 subject to specified deliverables required under this agreement within
13 thirty (30) to ninety (90) days of this LOI, which is verifiable by MJT, and
14 MJT chooses to cancel or withdraw from this financing, MJT shall pay to
15 TI a break-up fee as liquidated damages in the amount of **Three Million
16 Dollars (3,000,000)**.

17 Breakup fee in the event Sony ATV Assets are sold by MJT.

18 After TI has provided its Commitment letter to MJT to provide the
19 financing contemplated by this agreement and are working to complete all
20 necessary closing conditions, and MJT chooses alternative financing or
21 sale arrangements,... MJT shall pay to TI a total break-up fee as liquidated
22 damages of nine% (9%) of the entire transaction value contemplated. This
23 break-up fee will be payable at the closing of any alternative financing or
24 sale. This provision will remain in effect 360 days after the expiration or
25 the termination by MJT of this agreement.

26 21. On or about January 20, 2005, Mr. Jackson signed the LOI as an individual and as the
27 "authorized representative MJT Trust." Neither Transitional, Mr. Jackson nor the Trust Defendants ever
28 terminated the LOI, nor did it ever expire.

29 22. From December 2004 to March 2005, Transitional spent numerous hours conducting due
30 diligence with respect to income, expenditures and overall financial situation of Mr. Jackson and his
31 trusts. This included analyzing dozens of boxes of financial records regarding Defendants, as well as the
32 assets in his trusts, including the MIJAC Library and Sony/ATV Library. Transitional met with
33 numerous representatives of Mr. Jackson and his trusts, including California-based financial advisers
34 and accountants. Transitional also worked with lawyers to help structure a transaction to suit
35 Defendants' needs and requests.

1 23. During December 2004 and January 2005, Transitional contacted a number of lenders
2 with the ability to finance a transaction of this complexity, size and risk. Ultimately, Transitional chose
3 Fortress Investment Group, LLC ("Fortress") to provide working capital through its lending group.

4 24. In January 2005, Mr. Jackson decided that the refinance of the \$272.5 million BOA
5 Loans, as well as his desire for cash payments, were far more pressing matters than the effort to
6 purchase the Sony/ATV Library. Mr. Jackson and his representatives therefore instructed Transitional
7 not to secure funds for the purchase of the Sony/ATV Library, which funds were initially contemplated
8 to be \$200 million. They instead instructed Transitional to secure funds sufficient to refinance the BOA
9 Loans and provide Mr. Jackson with \$20 million in cash.

10 25. On January 27, 2005, Transitional delivered to Mr. Jackson's authorized representative,
11 Don Stabler, a commitment letter "to confirm our intention to provide you the bridge loan for
12 refinancing the entire Bank of America debt" (the Commitment Letter"). The Commitment Letter called
13 for funding of approximately \$330,000,000 to Mr. Jackson and his Trust, which included \$20 million to
14 go to Mr. Jackson.

15 26. Attached to the Commitment Letter were three term sheets which outlined the terms of
16 the sources of financing. The collateral was to be "All of the assets of the MJ Publishing Trust,
17 including the 50% interest in the Sony/ATV owned by the MJ Publishing Trust, the MIJAC Catalog, and
18 the BMI royalty rights payable to Michael Jackson."

19 27. Each of the term sheets stated that "By execution hereof, the undersigned [Don Stabler]
20 represents that he is authorized to act on behalf of MJ Publishing Trust and Michael J. Jackson."
21 Each of these term sheets was signed as "accepted" on February 28, 2005 by Don Stabler as the
22 "authorized representative of MJ Publishing Trust and Michael J. Jackson."

23 28. During February and March 2005, Transitional continued its work in structuring the
24 refinance as requested by Defendants, working extensively with Defendants' representatives and other
25 financial and legal advisors. Additionally, Transitional developed presentations to outline the
26 transaction for Mr. Jackson so he would fully understand it. Transitional shared with Defendants
27 confidential and proprietary work product – information that Defendants subsequently utilized when
28 they refinanced the Trust debt.

1 29. In May, 2005, BOA sold the BOA Loans to Fortress, so that Fortress took the place of
2 Bank of America. The sale of the BOA Loans themselves did not substantially alter the debt owed by
3 Jackson, MJPT and/or MJ-ATV, which loans remained intact and with the original security and terms.

4 30. Transitional is informed and believes that, in or about March 2006, Fortress refinanced
5 the BOA Loans. Transitional is informed and believes that the refinancing was accomplished with the
6 creation of a special purpose entity (dubbed a "Bankruptcy Remote Transaction Structure") into which
7 the assets previously held in the MJPT and MJ-ATV Trust would be transferred for no cash payment to
8 the entity known as the New Horizon Trust. Transitional is informed and believes that MJPT and MJ-
9 ATV have an ownership interest of New Horizon Trust. Both MJPT and MJ-ATV remained 100%
10 owned by Mr. Jackson.

11 31. As a result of Transitional's delivery of the Commitment Letter, Transitional became
12 entitled to a minimum breakup fee of \$3 million, which was earned even if Defendants decided not to
13 complete the funding that had been committed. However, because Defendants actually completed a
14 refinancing of the BOA Loans through Fortress (the very lender procured by Transitional), Transitional
15 became entitled to a fee of 9% of the \$330 million contemplated by the Commitment Letter.

16 32. Notwithstanding its entitlement to be paid for its valuable services, Transitional has been
17 paid none of its fees. There remains due and owing to Transitional an amount not less than \$29 million.

18 **FIRST CAUSE OF ACTION**
19 **Breach of Written Contract**
20 **(Against All Defendants)**

21 33. Transitional hereby incorporates and realleges each and every allegation contained in
22 Paragraphs 1-32, inclusive, as though set forth fully in this cause of action.

23 34. The compensation terms of the contract between Transitional and Defendants were
24 memorialized in the December 27, 2004 LOI signed by Mr. Jackson on behalf of his trusts on January
25 20, 2005. The written terms of that contract require Defendants to pay Transitional a minimum breakup
26 fee of \$3 million, which was earned even if Defendants decided not to go through with the funding that
27 had been committed.

28 35. Transitional fully performed the contract by, among other things: (1) conducting an
intensive analysis of the income, expenses, assets, liabilities and financial situation of Defendants

1 Jackson, MJPT and MJ-ATV; (2) locating and securing a lender willing and able to handle a financing
2 of this size, complexity, and risk; (3) delivering a Commitment Letter sufficient to refinance the BOA
3 Loans and provide Jackson with the additional funds he requested; and (4) developing a refinancing
4 structure involving bridge loans, subordinated bridge notes and preferred bridge stock.

5 36. Defendants have breached the contract with Transitional by failing and refusing to pay
6 Transitional the fees called for by the LOI or any other amount after refinancing the BOA Loans on
7 terms similar to those initially structured by Transitional. Because Defendants refinanced the \$330
8 million as contemplated by the Commitment Letter, the fee to which Transitional is entitled is 9% of the
9 \$330 million, or \$29.7 million.

10 37. Transitional has performed all of the terms of the contract, except any terms which have
11 been excused by Defendants' breach of contract and failure to perform.

12 38. As a direct and proximate result of Defendants' breaches of the contract with
13 Transitional, Transitional has been damaged in an amount not less than \$29.7 million.

14 39. Transitional is also entitled to prejudgment interest in accordance with Civil Code
15 §§ 3287 and 3302.

16 Wherefore Transitional seeks judgment as requested in the Prayer for Relief below.

17 **SECOND CAUSE OF ACTION**
18 **Deceit/Omission—Civ. Code § 1710(3)**
19 **(Against Defendant Michael Jackson)**

20 40. Transitional hereby incorporates and realleges each and every allegation contained in
21 Paragraphs 1-39, inclusive, as though set forth fully in this cause of action.

22 41. At the time Michael Jackson signed the LOI contract attached on January 20, 2005, Mr.
23 Jackson and his authorized agents had given information to Transitional's managing director, Stuart
24 Shelly, including information that Mr. Jackson owned and was the trustee of the Michael Jackson Trust,
25 that the Trust had been formally created, that the Trust owned significant assets (including assets
26 actually owned by the MJPT and MJ-ATV Trusts), and that Mr. Jackson and his Trust intended to
27 proceed with debt restructuring through Transitional.

28 42. Both by entering into a written contract with Transitional, and by providing certain facts
to Transitional which were likely to mislead because of the lack of communication of additional facts,

1 Mr. Jackson had a personal and non-contractual duty to disclose to Transitional whether the Michael
2 Jackson Trust in fact existed, whether Mr. Jackson own the Trust, whether the Trust in fact owned or
3 controlled the assets of the MJPT and MJ-ATV Trusts, and whether he in fact intended to proceed with
4 debt restructuring through Transitional.

5 43. Mr. Jackson and his agents failed to disclose to Transitional material facts in late 2004
6 and early 2005. These omissions included whether Mr. Jackson had in fact executed any formal trust
7 documents to create formally the Michael Jackson Trust, whether he owned and was the trustee of the
8 Michael Jackson Trust, whether the Michael Jackson Trust in fact owned and controlled the assets of the
9 MJPT and MJ-ATV Trusts, and whether Mr. Jackson intended to pursue debt restructuring through
10 Transitional.

11 44. The suppression and omission of these material facts constitutes actionable fraud
12 pursuant to Civil Code § 1710. The fraud damages to Transitional according to proof, including interest
13 pursuant to Civil Code § 3288. Mr. Jackson, having suppressed material information at the time he
14 signed the LOI and having directed his agents in conscious disregard of the rights of Transitional, is
15 personally liable for actual damages and exemplary damages, according to proof.

16 Wherefore Transitional seeks judgment as requested in the Prayer for Relief below.

17 **THIRD CAUSE OF ACTION**
18 **Negligent Misrepresentation**
19 **(Against All Defendants)**

20 45. Transitional hereby incorporates and realleges each and every allegation contained in
21 Paragraphs 1-44, inclusive, as though set forth fully in this cause of action.

22 46. Between November 2004 and February 2005, Defendants represented to Transitional's
23 managing director, Stuart Shelly, that the Michael Jackson Trust was an actual and formally-created
24 trust, that Mr. Jackson owned and was the trustee of the Trust, that the Trust owned significant assets
25 (including assets actually owned by the MJPT and MJ-ATV Trusts), and that Mr. Jackson and his Trust
26 intended to proceed with debt restructuring through Transitional. Such representations included
27 statements by Darien Dash and Don Stabler in late December 2004, as authorized representatives of Mr.
28 Jackson and his trust, by Mr. Jackson on January 20, 2005.

47. Transitional reasonably relied on the representations of Defendants and entered in the

1 January 20, 2005 LOI Contract and provided significant services and proprietary information to
2 Defendants in reliance on the representations.

3 48. Transitional is informed and believes, and thereon alleges, that at the time Defendants
4 made these representations to Transitional, Defendants knew or should have known that the
5 representations were untrue.

6 49. Defendants' misrepresentations, even if negligently made, proximately caused harm to
7 Transitional. The harm includes the reasonable value of the services provided, best measured by the
8 valuation formula in the LOI of approximately \$29.7 million, plus interest, according to proof at trial.

9 Wherefore Transitional seeks judgment as requested in the Prayer for Relief below.

10 **FOURTH CAUSE OF ACTION**

11 **Quantum Meruit
(Against All Defendants)**

12 50. Transitional hereby incorporates and realleges each and every allegation contained in
13 Paragraphs 1-49, inclusive, as though set forth fully in this cause of action.

14 51. Transitional rendered work, labor and services to Defendants at their request and
15 Defendants promised to pay Transitional the reasonable value of such work, labor and services.

16 52. The reasonable value of Transitional's services for which Defendants have not paid is
17 approximately \$29.7 million, plus prejudgment interest.

18 53. No part of the above sum has been paid, although Transitional has demanded payment
19 therefore, and there is now due and owing and unpaid from Defendants the sum of \$29.7 million, plus
20 prejudgment interest from the date the refinancing closed until paid in full.

21 Wherefore Transitional seeks judgment as requested in the Prayer for Relief below.

22 **FIFTH CAUSE OF ACTION**

23 **Unjust Enrichment
(Against All Defendants)**

24 54. Transitional hereby incorporates and realleges each and every allegation contained in
25 Paragraphs 1-53, inclusive, as though set forth fully in this cause of action.

26 55. By virtue of the services provided by Transitional to Defendants, and by the failure of
27 Defendants to pay Transitional its fees, Defendants have been unjustly enriched in a sum exceeding
28 \$29.7 million, such sum to be precisely determined according to proof at trial.

1 transfer occurred shortly after a substantial debt was incurred.

2 61. As a result of the fraudulent transfers, Transitional is entitled to provisional relief
3 sufficient to satisfy its claim as a creditor, including an attachment under California law, Civil Code
4 §3439.07, in addition to damages and prejudgment interest as hereinafter prayed for.

5 Wherefore Transitional seeks judgment as requested in the Prayer for Relief below.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Transitional demands judgment against Defendants as follows:

- 8 1. For damages to be proven at trial, but not less than \$29.7 million;
- 9 2. For prejudgment interest;
- 10 3. For attorneys' fees;
- 11 4. For punitive damages;
- 12 5. For costs of suit;
- 13 6. For such provisional remedies as may be appropriate; and
- 14 7. For such other and further relief as this Court deems just, proper and equitable.

15
16 Dated: July 13, 2007

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
BRENDAN F. MACAULAY

17
18
19 By: 

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