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Co-Executors of the Estate of Michael J. Jackson

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

In re the Matter of the Estate of

MICHAEL JOSEPH JACKSON,

Deceased.

JOHN BRANCA AND JOHN MCCLAIN,
Co-Executors of the Estate of Michael Joseph
Jackson,

Petitioners,

v.
TOHME R. TOHME and DOES 1 through 10
inclusive,

Respondents.

CASE NO: BP117321

**PETITION FOR: 1) ACCOUNTING;
2) RECOVERY OF PROPERTY;
3) WRONGFUL TAKING; 4) BREACH OF
FIDUCIARY DUTY; 5) RESCISSION;
6) DECLARATORY RELIEF AGAINST
TOHME R. TOHME; 7) DAMAGES; AND
8) THE IMPOSITION OF A
CONSTRUCTIVE TRUST**

[Prob. §§ 850, 859; Civ. Code § 1689]

DATE: 3-28-12
TIME: 8:30 A.M.
DEPT: 5
JUDGE: Hon. Mitchell L. Beckloff

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OF ORIGINAL FILED
Los Angeles Superior Court

FEB 17 2012

John A. Clarke, Executive Officer/Clerk
BY *A. Watts*, Deputy
Andre Watts

1 property wrongfully taken, concealed or disposed of by Tohme or traceable to any property
2 wrongfully taken, concealed or disposed of by Tohme; and damages for the value of any
3 unauthorized gift or other disposal of any of Jackson's property.

4 **THE PARTIES**

5 3. Executors John Branca and John McClain are the Court appointed Executors under
6 the Will of Michael Joseph Jackson and bring this petition in their capacities as Executors and for the
7 benefit of the Estate of Michael Joseph Jackson (the "Estate"). Michael Jackson died testate on June
8 25, 2009, a resident of Los Angeles County. Michael Jackson's Will was admitted to probate by this
9 Court on August 8, 2009. This Court appointed the Executors on November 10, 2009 and letters
10 testamentary were issued on November 12, 2009.

11 4. Executors are informed and believe, and on that basis allege, that Respondent Tohme
12 is currently residing and doing business in the County of Los Angeles, State of California.

13 5. Executors are currently unaware of the true names and capacities, whether individual,
14 corporate, associate or otherwise, of Doe Respondents sued herein as Does 1 through 10, inclusive,
15 and therefore sues these Doe Respondents by such fictitious names. Executors will seek leave of this
16 Court to amend its complaint to allege the true names and capacities of the fictitiously named Doe
17 Respondents when their identities have been ascertained.

18 6. Executors are informed and believe, and on that basis allege, that each of the
19 fictitiously named Doe Respondents are liable to the Estate for the wrongful conduct herein alleged.
20 Executors are further informed and believe, and on that basis allege, that said Doe Respondents are
21 liable to the Estate as the agents, employees, representatives, partners, limited partners or principals
22 of Respondent Tohme, and were acting within the course and scope of such relationships at the time
23 of the acts described below. Executors are further informed and believe and thereon allege that each
24 of the fictitiously named Doe Respondents is responsible in some manner for the occurrences herein
25 allege, and that the damages alleged were proximately caused by such Doe Respondents.

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JURISDICTION AND VENUE

7. The acts and conduct herein occurred, in whole or in part, in or around the City of Los Angeles, Los Angeles County, California.

COMMON ALLEGATIONS

TOHME BECOMES JACKSON'S MANAGER AND TAKES CONTROL

8. Executors are informed and believe that in or about January of 2008, Respondent began serving as Michael Jackson's ("Jackson") personal manager and advisor, and that prior to that he had no experience whatsoever as a personal manager for any artist, let alone an artist of Jackson's prominence. As Jackson's personal manager and fiduciary, Respondent owed Jackson the highest duties of care, openness, honesty, loyalty and disclosure. In all of his transactions, Respondent was required to put Jackson's interests above his own and to disclose all material facts and information known to him in any way related to the services he was providing to Jackson. Jackson was entitled to, and did, place the highest level of trust and confidence in Respondent. Executors are informed and believe that from the beginning of Jackson's and Tohme's relationship until Jackson terminated him, Tohme assumed responsibility for, among other things, Jackson's finances, personal property, licensing and related activities and the general oversight and coordination of other professional advisors to Jackson.

9. Executors are informed and believe that from early 2008, Tohme in fact did exercise control over all of Jackson's affairs, including the hiring, firing and supervising of other professionals and advisors and defining the scope of the services to be provided by such other professionals and advisors. As a result, Tohme avoided subjecting the numerous agreements Tohme obtained for his own benefit to the scrutiny of independent advisors.

TOHME'S COLONY FINDER'S FEE AGREEMENT

10. In or about early 2008, Jackson began attempts to refinance a loan secured by his real property located in Santa Ynez, California, commonly known as "Neverland Valley Ranch" (the "Ranch"). While acting as Jackson's personal manager and fiduciary, Respondent entered into an agreement with Jackson dated May 2, 2008, pursuant to which Respondent would earn a "finder's

1 fee” for introducing Jackson to Colony Capital LLC (“Colony”), a private real estate investment firm
2 with whom the Executors are informed and believe that Tohme had a preexisting relationship (the
3 “Finder’s Agreement”). Executors are further informed and believe that Tohme did not fully disclose
4 to Jackson the existence or nature of his relationship with Colony or its principals or related entities,
5 or the potential effect or consequences of such preexisting relationship on Tohme’s fiduciary duties to
6 Jackson.

7 11. Under the Finder’s Agreement, Tohme obtained Jackson’s agreement to pay Tohme
8 (a) 10% of the loan amount of the refinanced Ranch loan (the refinanced amount was
9 \$24,364,197.13); plus (b) 10% of the gross proceeds retained by Jackson (after payment of debts)
10 upon the sale of an interest in the Ranch; plus (c) 10% of any future transaction brought to Jackson
11 or his companies by or through Colony or its affiliates. The services Tohme performed for this
12 excessive compensation were simply to introduce Jackson to Colony.

13 12. Executors are informed and believe Jackson signed the Finder’s Agreement without
14 the benefit of any arms length negotiations, without receiving a full and complete explanation of the
15 terms and their legal effect; without a full understanding of the purpose and effect of the terms; and
16 without the advice of an independent legal advisor. Executors are informed and believe that
17 Jackson signed the Finder’s Agreement because he trusted and relied upon Tohme to act in
18 Jackson’s best interest, to not take advantage of Jackson and to ensure that the terms were fair and
19 customary in the industry. Executors are informed and believe that the compensation called for
20 under the Finder’s Agreement far exceeds normal and customary terms for brokers or finders
21 providing the limited service required of Respondent under the Finder’s Agreement. Executors are
22 informed and believe that Tohme misused his confidential and fiduciary relationship with Jackson
23 to exercise undue influence over him and unfairly persuade him to enter into the Finder’s
24 Agreement.

25 13. In addition to the unfair and excessive finder’s fee, as a direct result of Tohme’s
26 simultaneous and conflicting roles as a “finder” (motivated to close this particular transaction and
27 earn his fee) and Jackson’s personal manager and fiduciary (obliged to look out solely for Jackson
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1 and vigilantly protect his interests, and vested with power and authority to select and supervise
2 outside professional advisors, including lawyers), the terms of the transaction Jackson entered with
3 Colony were highly unfavorable to Jackson. Specifically, the final terms imposed upon Jackson
4 contained newly created restraints in connection with Jackson's use and control of the Ranch, along
5 with financial terms disproportionately favorable to Colony and inferior to those Jackson would have
6 been able to obtain had he been represented in negotiations at the outset by an independent advisor
7 without any financial interest in the transaction. Tohme placed his interest in closing any transaction
8 with Colony, in order to earn his lucrative finder's fee, over his fiduciary obligation to ensure that
9 Jackson was effectively represented in the negotiations and obtained the most favorable terms
10 possible under the circumstances.

11 14. Executors are informed and believe that Jackson entered into the "refinancing"
12 transaction with Colony without receiving a full and complete explanation of the terms and legal
13 effect of the transaction, without a full understanding of the purpose and effect of the terms and
14 without the timely services and advice of legal counsel independent from Respondent Tohme and not
15 subject to his control and authority. Executors are further informed and believe that Jackson signed
16 the Ranch Agreement because he trusted and relied upon Respondent to act in Jackson's best interest,
17 to not take advantage of Jackson, and to ensure that the terms were fair and customary in the industry.
18 Executors are additionally informed and believe that because of Tohme's personal financial interest
19 in closing a transaction with Colony, he failed to explore other alternatives that may have been more
20 favorable to Jackson and he failed to disclose to Jackson that other alternatives existed. Executors are
21 informed and believe that in fact other alternatives were available to Jackson. Executors are
22 informed and believe that however, due to his relationship with Colony and own interest in the
23 transaction, Respondent improperly influenced Jackson to close the Colony transaction (and thereby
24 claim his substantial finder's fee) and that Jackson suffered substantial harm as a result.

25 **TOHME REDUCES AN OVERREACHING MANAGEMENT AGREEMENT TO WRITING**

26 15. Executors are further informed and believe that several months after he began serving
27 as Jackson's fiduciary, and after securing his Finder's Agreement, Respondent caused Jackson to sign

1 a written Services Agreement dated as of July 2, 2008 (the “Services Agreement”). Executors are
2 informed and believe that Respondent caused Jackson to enter into the Services Agreement without
3 the benefit of independent legal advice, without any arms length negotiations, without receiving a full
4 and complete explanation of the terms and the legal effect of the transaction, and in particular without
5 an understanding as to the manner in which those terms would affect him specifically, and in
6 comparison to terms generally afforded artists of comparable stature. Executors are informed and
7 believe that Jackson signed the Services Agreement because he relied upon and trusted Respondent to
8 act in Jackson’s best interest, to not take advantage of Jackson and to ensure that the terms were fair
9 and customary within the industry.

10 16. While owing Jackson the highest fiduciary duty of care, loyalty and honesty, even
11 with respect to Respondent’s own compensation, Respondent obtained Jackson’s signature on the
12 Services Agreement. The Services Agreement provided that Respondent was guaranteed a fee of
13 \$35,000/month plus expenses, regardless of whether Jackson received any money as a result of
14 Respondent’s services or otherwise. On top of this guaranteed fee, the Services Agreement also
15 provided Respondent 15% of “all gross compensation received by [Jackson] for his services within
16 the entertainment industry, including, live performances, merchandising, electronic arts, recorded and
17 live telecasts, motion pictures, and animation projects.” (Emphasis added.) These terms, on their
18 own and in combination with the other agreements providing for compensation and benefits to
19 Tohme, far exceed normal and customary terms for personal managers, and particularly managers with
20 Tohme’s complete lack of experience for any artist, let alone an artist comparable to Jackson.

21 **TOHME CAUSES JACKSON TO GIVE HIM BROAD POWERS UNDER A POWER**
22 **OF ATTORNEY AND THEN ABUSES THOSE POWERS CAUSING SUBSTANTIAL**
23 **HARM TO JACKSON**

24 17. Executors are informed and believe that Respondent, as part of his exercise of control
25 through his position as a fiduciary and personal manager, additionally caused Jackson in August 2008
26 to sign two Power of Attorney documents, which purport to give Respondent extraordinary powers
27 wildly beyond what was customary. Executors are informed and believe that Respondent also caused

1 Jackson to sign an Indemnity Agreement dated August 6, 2008 which also purports to give Tohme
2 broad indemnities similarly beyond what was necessary or customary.

3 18. Like the Services Agreement, Executors are informed and believe that Jackson signed
4 the Power of Attorney documents and Indemnity Agreement without any arms length negotiation,
5 without receiving a full explanation of the terms and the legal effect of the document, without a full
6 understanding of the purpose and effect of the terms and without the advice of an independent legal
7 counsel or advisor. Executors are also informed and believe that Jackson signed the Power of
8 Attorney and Indemnity Agreement because he relied upon and trusted Tohme to act solely in
9 Jackson's best interest, to not take advantage of Jackson, and to ensure that there was nothing unfair
10 or inappropriate in or about them.

11 19. Executors are informed and believe that Tohme made substantial gifts of Jackson's
12 property without the right to do so. For example, Executors are informed and believe that Tohme
13 signed a November 17, 2008 letter allegedly transferring Jackson's copyright interests in numerous
14 pieces of artwork authored by Jackson as gifts to Brett-Livingstone Strong. Tohme asserts he had the
15 power to make the gifts pursuant to the Powers of Attorney that were allegedly executed by Jackson.
16 However, neither of these powers of attorney provide Tohme with the power to make any gifts, and
17 they provide no power to Tohme to sign a document purportedly transferring Jackson's copyrights in
18 drawings to a third party.

19 **RESPONDENT NEGOTIATES AN AGREEMENT WITH AEG FOR THE "THIS IS IT"**
20 **CONCERTS, AND GIVES HIMSELF ANOTHER SIGNIFICANT FEE**

21 20. Executors are informed and believe that Respondent, acting as Jackson's agent,
22 manager and fiduciary, assisted Jackson in negotiating a touring agreement with AEG Live for
23 Jackson to perform 50 concerts at the O2 arena in England (the "AEG Agreement").

24 21. In addition to the Finder's Agreement, and on top of the commissions described under
25 the Services Agreement, included in the AEG Agreement is a provision calling for further
26 compensation to Respondent of \$100,000 for each month of the concert series, described as a
27 "producer fee." This fee was to be first advanced by AEG to Respondent, but included as a

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1 production expense that AEG would recoup from Jackson. Executors are informed and believe that
2 this compensation to Tohme exceeds normal and customary terms for a manager/producer who is also
3 receiving management commissions (under the Services Agreement) in the form of a guaranteed
4 fixed monthly payment plus a percentage of gross proceeds.

5 22. Executors are informed and believe that Jackson signed the AEG Agreement without
6 receiving a full explanation of the terms regarding Respondent's compensation, without a full
7 understanding of the purpose and effect of those terms and without the advice of an independent legal
8 counsel or advisor. Executors are informed and believe that Jackson signed the AEG Agreement
9 giving Respondent additional compensation because he relied upon and trusted Respondent to act in
10 Jackson's best interest, to not take advantage of Jackson, and to ensure that the terms were fair and
11 customary in the industry. Executors are informed and believe that there were no arms-length
12 negotiations between Jackson and Respondent with respect to the terms of Respondent's
13 compensation in the AEG Agreement.

14 **TOHME TOOK POSSESSION AND CONTROL OF PROPERTY BELONGING TO**
15 **JACKSON AND REFUSES TO ACCOUNT AND RETURN THE PROPERTY TO THE**
16 **EXECUTORS IN BAD FAITH**

17 23. Using his powers as Jackson's fiduciary and agent under the powers of attorney he
18 caused Jackson to sign, Respondent Tohme took possession and control of substantial amounts of
19 money (in the millions), tangible personal property and other property belonging to Jackson.
20 Executors are informed and believe that in violation of his fiduciary duties and in bad faith, Tohme
21 commingled Jackson's funds with his own, used Jackson's funds and property for his own purposes
22 and benefit, including for payment of Respondent's personal expenses, travel and entertainment, and
23 to purchase other property. Tohme has refused to account for the money and property he held for the
24 benefit of Jackson or for his acts and transactions as Jackson's fiduciary and agent.

25 24. Executors are informed and believe that Tohme has possession and control of
26 property belonging to the Estate which he wrongfully and in bad faith took, concealed or disposed of.
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1 Therefore, pursuant to Probate Code Section 859, Tohme is liable to the Estate for twice the value of
2 such property.

3 **TOHME IS TERMINATED**

4 25. Executors are informed and believe that Jackson terminated Tohme in March 2009,
5 and formalized this termination on April 14, 2009 in a formal revocation of Tohme's Powers of
6 Attorney. Tohme did not return to Jackson all of the property that Jackson had entrusted to him and
7 which Tohme was holding in his fiduciary capacity for the benefit of Jackson.

8 **JACKSON'S DEATH**

9 26. Sadly for millions of fans across the globe, Jackson unexpectedly passed away on
10 June 25, 2009. Since then, Respondent has continued to take advantage of his prior control over
11 Jackson by requesting significant funds from the Estate and refusing to return to the Executors
12 property in his possession and control that belongs to the Estate.

13 27. Executors have demanded, and continue to demand, that Tohme return and deliver to
14 them all books, records and other property of Jackson's and the Estate's maintained in the possession,
15 custody or control of Respondent. Tohme refuses to do so. Executors are informed and believe that
16 Respondent continues to wrongfully withhold, conceal and dispose of property belonging to the
17 Estate.

18 28. This lawsuit is necessary to finally put a stop to Respondent's abuse of the fiduciary
19 obligations owed to Jackson and seeks to unwind the self-serving and unconscionable agreements
20 Respondent encouraged Jackson to enter into, compensate the Estate for Respondent's egregious
21 conduct and compel the return of any and all Estate funds and property in Respondent's possession
22 and control.

23 **FIRST CAUSE OF ACTION**

24 **(Accounting)**

25 29. Executors incorporate by reference paragraphs 1 through 28, above, as though fully
26 set forth herein.

1 30. As stated above, Respondent was Jackson's manager and trusted advisor, as well as
2 his agent under a power of attorney, and, at all times mentioned herein, Respondent owed Jackson the
3 fiduciary duties of loyalty, care, disclosure and good faith and fair dealing.

4 31. Executors are informed and believe that Respondent, through his position as trusted
5 advisor and fiduciary, took control and possession of Jackson's assets and wrongfully diverted and/or
6 spent Jackson's funds and property for his own benefit, including for payment of Respondent's
7 personal expenses, travel and entertainment.

8 32. The amount that Respondent collected and disbursed is unknown to Executors and
9 cannot be ascertained without an accounting.

10 33. Executors, through this pleading, demand that Respondent fully account for and
11 deliver to Executors all monies and property belonging to the Estate, and to account for all actions
12 and transactions Respondent took while Jackson's fiduciary, which Respondent has failed and
13 refused, and continues to fail and refuse, to do.

14 **SECOND CAUSE OF ACTION**

15 **(Recovery of Property)**

16 34. Executors incorporate by reference paragraphs 1 through 33, above, as though fully
17 set forth herein.

18 35. As stated above, Tohme was Jackson's manager and trusted advisor, as well as his
19 agent under a power of attorney. In that capacity, Tohme took possession and control of money and
20 property that belonged to Jackson. Tohme did not return to Jackson and refuses to deliver to the
21 Executors all of the property and cash belonging to Jackson that Tohme has in his possession and
22 control.

23 36. The Executors are informed and believe that Jackson died having a claim to property,
24 title to or possession of which is held by Tohme.

25 37. The Executors, through this pleading, request that the Court order Tohme to transfer,
26 convey and deliver to the Executors all property in his possession or control which belongs to
27 Jackson and his Estate.

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THIRD CAUSE OF ACTION

(Wrongful Taking)

38. Executors incorporate by reference paragraphs 1 through 37, above, as though fully set forth herein.

39. As stated above, Tohme was Jackson's manager and trusted advisor, as well as his agent under a power of attorney. In that capacity, Tohme took possession and control of money and property that belonged to Jackson. Tohme did not return to Jackson and refuses to deliver to the Executors all of the property and cash belonging to Jackson that Tohme had taken possession and control of.

40. The Executors are informed and believe that Tohme in bad faith wrongfully took, concealed, or disposed of property belonging to the Estate and should therefore be held liable to the Estate for twice the value of the property taken in addition to all other remedies available to the Executors under Probate Code Section 859.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

41. Executors incorporate by reference paragraphs 1 through 40, above, as though fully set forth herein.

42. As Jackson's manager and trusted advisor, at all times mentioned herein, Respondent owed Jackson a fiduciary duty to treat him with the highest degree of good faith, care, loyalty and honesty, to zealously protect Jackson's interest and to accurately disclose all facts relating to all matters in which the two were involved.

43. Executors are informed and believe that Respondent took advantage of the complete trust and confidence Jackson placed in him and breached his fiduciary duty to Jackson by, among other things: (a) inducing Jackson to sign the Finder's Agreement, Services Agreement, Ranch Agreement, Powers of Attorney, Indemnity Agreement and the AEG Agreement, all of which gave Respondent substantial benefit at Jackson's expense in amounts that exceed those customary in the industry; (b) failing to provide timely and independent legal counsel to Jackson in connection with

1 the Finder's Agreement, Services Agreement, Ranch Agreement, Powers of Attorney, Indemnity
2 Agreement and AEG Agreement; (c) failing to disclose the full nature and extent of Respondent's
3 relationship with Colony prior to entering into the Finder's Agreement and Ranch Agreement, and
4 failing to disclose all other opportunities to refinance or restructure the financing relating to the
5 Ranch and other material facts; (d) encouraging Jackson to enter into the Ranch Agreement, by which
6 Respondent stood to gain a substantial benefit, rather than fully explain to Jackson and explore other,
7 non-self-dealing alternatives; (e) diverting Jackson's funds and property without Jackson's
8 knowledge through improper use of the Power of Attorney and otherwise; (f) improperly using
9 Jackson's funds for Respondent's personal expenses, travel and entertainment; (g) disposing of
10 Jackson's property without consideration; (h) improperly commingling Jackson's funds with his own;
11 and (i) failing and refusing to immediately return and account for all property and money entrusted to
12 him once he was terminated by Jackson.

13 44. Jackson was damaged as a result of Respondent's breaches of his fiduciary duties to
14 him in an amount to be proven at trial and that exceeds the jurisdictional minimum of this Court.
15 Executors presently cannot ascertain the exact amount of damages which were sustained as a direct
16 and proximate result of Respondent's various breaches, but will seek leave of Court to amend this
17 complaint to state the exact amount of damages when it has been ascertained.

18 45. Respondent's actions were malicious, fraudulent and oppressive, and undertaken in
19 conscious disregard of Executors' rights and in bad faith. Executors are therefore entitled to an award
20 of punitive and exemplary damages in an amount sufficient to punish Respondent and deter him from
21 similar future conduct.

22 FIFTH CAUSE OF ACTION

23 (Rescission Based On Breach of Fiduciary Duty)

24 46. Executors incorporate by reference paragraphs 1 through 45, above, as though fully
25 set forth herein.

26 47. As Jackson's manager and trusted advisor, at all times mentioned herein, Respondent
27 owed Jackson a fiduciary duty to treat him with the highest degree of good faith, care, loyalty and
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1 honesty, to zealously protect Jackson's interest and to accurately disclose all facts relating to all
2 matters in which the two were involved.

3 48. Respondent took advantage of the complete trust placed in him by Jackson and has
4 breached his fiduciary duty to Jackson as described above.

5 49. As a direct and proximate result of Respondent's breaches of his fiduciary duties,
6 Executors are entitled to rescind the Finder's Agreement, Services Agreement and Indemnity
7 Agreement.

8 **SIXTH CAUSE OF ACTION**

9 **(Rescission Based On Unconscionability)**

10 50. Executors incorporate by reference paragraphs 1 through 49, above, as though fully
11 set forth herein.

12 51. As Jackson's manager and trusted advisor, at all times mentioned herein, Respondent
13 owed Jackson a fiduciary duty to treat him with the highest degree of good faith, care, loyalty and
14 honesty, to zealously protect Jackson's interest and to accurately disclose all facts relating to all
15 matters in which the two were involved.

16 52. Despite his duties of loyalty, care, honesty and good faith and fair dealing, Executors
17 are informed and believe that Respondent wrongfully induced Jackson to enter into the Services
18 Agreement, Finder Agreement and Indemnity Agreement, the details of which are set forth above and
19 incorporated herein.

20 53. Executors are informed and believe that the Services Agreement, Finder Agreement
21 and Indemnity Agreement are procedurally unconscionable because: (1) Respondent did not suggest
22 or ensure that Jackson seek independent legal advice or speak to anyone about the terms of the
23 transactions and knew that Jackson did not do so; (2) Respondent knew or should have known
24 Jackson was relying on Respondent to honor his fiduciary responsibilities; (3) there was a gross
25 imbalance in the understanding and acumen of the parties; and (4) there were no arms-length
26 negotiations between Jackson and Respondent with respect to the transactions.

1 54. The Services Agreement, Finder Agreement and Indemnity Agreement are
2 substantively unconscionable because they unfairly favor Respondent, are highly detrimental to
3 Jackson and include terms that exceed those customary in the industry, as set forth in detail above and
4 incorporated by reference herein.

5 55. Executors are informed and believe that Jackson could not, and did not, know the
6 unconscionable nature of these transactions.

7 56. As a direct and proximate result of the unconscionable nature of these transactions,
8 Executors are entitled to rescind the Services Agreement, Finder Agreement and Indemnity
9 Agreement and have all consideration received by Tohme under these agreements returned to
10 Executors.

11 **SEVENTH CAUSE OF ACTION**
12 **(Rescission Based On Undue Influence)**

13 57. Executors incorporate by reference paragraphs 1 through 56, above, as though fully
14 set forth herein.

15 58. Executors are informed and believe that Respondent exercised undue influence over
16 Jackson to induce him to enter the Services Agreement, Finder Agreement and Indemnity Agreement,
17 the details of which are set forth above and incorporated herein.

18 59. Executors are informed and believe that Tohme utilized undue influence by (1)
19 misusing the confidence reposed in him by Jackson to obtain an unfair advantage over Jackson; and
20 (3) taking a grossly oppressive and unfair advantage over Jackson's financial distress.

21 60. The Services Agreement, Finder Agreement and Indemnity Agreement are all unfair,
22 are highly detrimental to Jackson and include terms that exceed those customary in the industry, as
23 set forth in detail above and incorporated by reference herein.

24 61. As a direct and proximate result of the undue influence used by Respondent to obtain
25 these agreements, Executors are entitled to rescind the Services Agreement, Finder Agreement and
26 Indemnity Agreement and have all consideration received by Tohme under these agreements returned
27 to Executors.

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EIGHTH CAUSE OF ACTION

(For Declaratory Relief)

62. Executors incorporate by reference paragraphs 1 through 61 above, as though fully set forth herein.

63. An actual controversy has arisen between Executors and Respondent regarding Respondent's rights to any money and personal property belonging to Jackson now in his possession, as well as any rights to further compensation.

64. As a result, and specifically, Executors seek a judicial declaration that Respondent is not entitled to commission any monies "received by" Jackson after Tohme was terminated (and certainly not on monies received by the Estate after Jackson's death); a judicial declaration that Respondent's "Services Agreement" is void or otherwise entitles him to no additional money; a judicial declaration that Respondent's Finder's Agreement entitles him to no further compensation and is void; and that Tohme immediately and fully account for and return to the Estate all money and personal property entrusted to him at any time by Jackson.

PRAYER FOR RELIEF

WHEREFORE, Executors pray for relief as follows:

ON THE FIRST CAUSE OF ACTION

(Accounting)

For an order compelling Tohme to account for all monies and other property of Jackson's in his possession and control at any time, all monies and property of Jackson's misappropriated by Tohme, and all actions and transactions taken by Tohme with respect to Jackson's assets.

ON THE SECOND CAUSE OF ACTION

(Recovery of Property)

For an order directing Tohme to transfer, convey and deliver to the Executors all monies and other property belonging to Jackson or the Estate which he has in his possession or control.

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ON THE THIRD CAUSE OF ACTION

(Wrongful Taking)

For an award against Tohme in favor of the Estate in the amount of twice the value of all property wrongfully taken by Tohme.

ON THE FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

For damages in an amount to be determined at trial, according to proof and for punitive damages.

ON THE FIFTH CAUSE OF ACTION

(Rescission Based On Breach of Fiduciary Duty)

For rescission of the Services Agreement, Finder Agreement and Indemnity Agreement and of any obligation thereunder to pay money to Respondent. For an order of restitution of any money or thing owing.

ON THE SIXTH CAUSE OF ACTION

(Rescission Based On Unconscionability)

For rescission of the Services Agreement, Finder Agreement and Indemnity Agreement and of any obligation thereunder to pay money to Respondent. For an order of restitution of any money or thing owing.

ON THE SIXTH CAUSE OF ACTION

(Rescission Based On Undue Influence)

For rescission of the Services Agreement, Finder Agreement and Indemnity Agreement and of any obligation thereunder to pay money to Respondent. For an order of restitution of any money or thing owing.

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ON THE SEVENTH CAUSE OF ACTION

(Declaratory Relief)

For a judicial declaration that:

- (a) Respondent is not entitled to commission any monies "received by" Jackson after Tohme was terminated (and certainly not on monies received after Jackson's death);
- (b) Respondent's "Services Agreement" is void or otherwise entitles him to no additional money; and
- (c) The Finder's Agreement entitles him to no further compensation and is void.

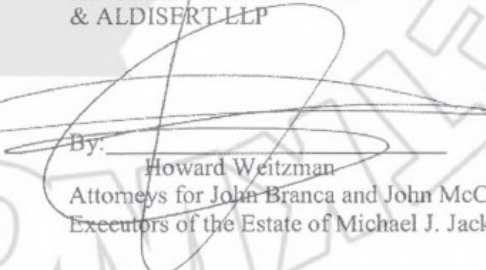
ON ALL CAUSES OF ACTION

- 1. For damages;
- 2. For interest on all amounts at the maximum legal rate;
- 3. For an order imposing a constructive trust on all property wrongfully taken, concealed or disposed of by Tohme and all property traceable to property wrongfully taken, concealed or disposed of by Tohme;
- 4. For attorneys' fees and costs of suit incurred herein; and
- 5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: February 16, 2012

KINSELLA WEITZMAN ISER KUMP
& ALDISERT LLP

By: 
Howard Weitzman
Attorneys for John Branca and John McClain,
Executors of the Estate of Michael J. Jackson

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VERIFICATION

I, John Branca, a party in the above-entitled matter, declare that I have read the foregoing Petition for: 1) Accounting; 2) Recovery of Property; 3) Wrongful Taking; 4) Breach of Fiduciary Duty; 5) Rescission; 6) Declaratory Relief Against Tohme R. Tohme; 7) Damages; and 8) the Imposition of a Constructive Trust, and know its contents. It is true of my knowledge, except to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document is executed on February 15, 2012 at Los Angeles, California.

JOHN BRANCA