

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
CLERK, U.S. DISTRICT COURT
MAR - 1 2011
CENTRAL DISTRICT OF CALIFORNIA
BY SC DEPUTY

NOTICE OF DOCUMENT DISCREPANCIES

To: U.S. District Judge / U.S. Magistrate Judge Pregerson
From: Shan Bourgeois, Deputy Clerk Date Received: 2-24-11
Case No.: 11-584 DDP (PJW) Case Title: John Branca v. Howard Mann
Document Entitled: Notice of Motion & Motion to Dismiss, Request for Judicial Notice

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

- Local Rule 11-3.1 Document not legible
- Local Rule 11-3.8 Lacking name, address, phone and facsimile numbers
- Local Rule 11-4.1 No copy provided for judge
- Local Rule 19-1 Complaint/Petition includes more than ten (10) Does or fictitiously named parties
- Local Rule 15-1 Proposed amended pleading not under separate cover
- Local Rule 11-6 Memorandum/brief exceeds 25 pages
- Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- Local Rule 6.1 Written notice of motion lacking or timeliness of notice incorrect
- Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- Local Rule 56-2 Statement of genuine issues of material fact lacking
- Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- Local Rule 16-6 Pretrial conference order not signed by all counsel
- FRCvP Rule 5(d) No proof of service attached to document(s)

Other: per GO 10-07, case is designated for electronic filing

Note: Please refer to the court's Internet website at www.cacd.uscourts.gov for local rules and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

Date

U.S. District Judge / U.S. Magistrate Judge

- The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. *Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

MAR - 1 2011

Date

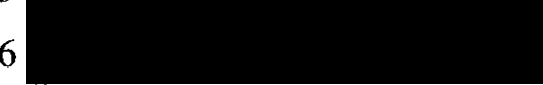
U.S. District Judge / U.S. Magistrate Judge

*The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

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CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
BY *sc* DEPUTY

7 Attorneys for Defendants Howard Mann, Vintage Pop Media Group LLC
& Vintage Pop, Inc.

8 BUT
9 NOT FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CENTRAL DIVISION

10 FEB 24 2011

11 CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

13 John Branca et al.

14 Plaintiffs,

15 vs.

17 Howard Mann, Vintage Pop Media
18 Group LLC, Vintage Pop, Inc., et al.,

19 Defendants.

Case No.: CV 11-00584 DDP (PJW)
Judge Dean D. Pregerson
(Magistrate Judge Patrick J. Walsh)
COURTROOM 3

NOTICE OF MOTION AND
MOTION TO DISMISS

Date: 3/28/2011
Time: 10:00 A.M.
CTRM. 3

Case Filed: 1/20/2011
Trial: NONE SET

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1 **TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on Monday, March 28, 2011 at 10:00 A.M. in
3 Courtroom 3 of the above-entitled court located at 312 N. Spring Street, Los
4 Angeles, California 90012, before the Honorable Dean D. Pregerson presiding,
5 Defendants Howard Mann, Vintage Pop Media Group LLC and Vintage Pop, Inc.
6 (collectively referred to as "Vintage Pop Media" or "VPM") will move to dismiss
7 Plaintiffs' Complaint. The grounds for Defendants' Motion to Dismiss are as
8 follows:

9 **FIRST CLAIM FOR RELIEF**

10 Plaintiffs' complaint fails to state a cause of action for copyright
11 infringement because the "This Is It" media has been posted on a social media site
12 and is not being sold or otherwise used by Defendants. Prior to filing any lawsuit,
13 Plaintiffs are required to make a demand for a cease and desist on Defendants so
14 that Defendants could remove it from the site, but Plaintiffs herein failed to do so.
15 Moreover, Plaintiffs herein did not give any written demand to cease and desist
16 until weeks after this lawsuit was filed. Plaintiffs therefore violated the safe harbor
17 provisions of the Digital Millennium Copyright Act. Pursuant to that act,
18 Defendants have complied with said act and have removed this material from their
19 website.

20
21 **SECOND CLAIM FOR RELIEF**

22 Plaintiffs' complaint fails to state a cause of action for copyright
23 infringement because the claim was already previously litigated against these
24 Defendants and Michael Jackson lost that case. Therefore the Plaintiffs' complaint
25 is barred by the doctrines of Collateral Estoppel and Res Adjudicata. Plaintiffs'
26 complaint fails to state a cause of action for copyright infringement because this
27 song was uploaded by one of Defendants' viewers and is covered by the Digital

1 Millennium Copyright Act. Pursuant to that act, prior to filing any litigation,
2 Plaintiffs are required to make a demand for a cease and desist on Defendants so
3 that Defendants could remove it from the site, however Plaintiffs herein failed to
4 do so. Plaintiffs did not issue any written demand to cease and desist until weeks
5 after this lawsuit was filed. Plaintiffs therefore violated the safe harbor provisions
6 of the Digital Millennium Copyright Act. Pursuant to that act, Defendants have
7 complied with said act and have removed this material from their website.
8 Additionally, the Doctrines of Laches and Statute of Limitations bar this claim.
9

10 THIRD CLAIM FOR RELIEF

11 Plaintiffs' complaint fails to state a cause of action for copyright
12 infringement because this song was uploaded by one of Defendants' viewers and is
13 covered by the Digital Millennium Copyright Act. Pursuant to that act, prior to
14 filing any litigation Plaintiffs are required to make a demand for a cease and desist
15 on Defendants so that Defendants could remove it from the site, but Plaintiffs
16 failed to do so. Plaintiffs did not issue any written demand to cease and desist
17 until weeks after this lawsuit was filed. Plaintiffs therefore violated the safe harbor
18 provisions of the Digital Millennium Copyright Act. Pursuant to that act,
19 Defendants have complied with said act and have removed this material from their
20 website.
21

22 FOURTH CLAIM FOR RELIEF

23 Plaintiffs' complaint fails to state a cause of action for copyright
24 infringement because Defendants have a right to use these drawings inasmuch as
25 they possess a written release/license obtained from Mr. Strong, co-owner of the
26 drawings in question, to use those drawings in Katherine Jackson's book. A true
27 and correct copy of Mr. Strong's license to use his material is attached hereto and

1 incorporated herein by this reference as a Declaration of Lee H. Durst to this
2 Motion to Dismiss.

3
4 **FIFTH CLAIM FOR RELIEF**

5 Plaintiffs' complaint fails to state a cause of action for false designation of
6 origin because the claim was already previously litigated against these Defendants
7 and Michael Jackson lost that case. Additionally, Michael Jackson was not the
8 inventor or creator of this dance move -- or look -- or pose. It has been around for
9 decades (or even longer) and has been used by countless dancers and musical
10 entertainers before Michael Jackson ever started using it in some of his routines.
11 That same dance move -- or look -- or pose was recently utilized in the
12 choreography showcased in the movie entitled "Step Up 2" by the cast of street
13 dancers featured in it.

14 Finally, even if the Estate of Michael Jackson *could* prove that Michael
15 Jackson is somehow the owner or originator of this dance move -- or look -- or
16 pose, then those property rights were already transferred by operation of law prior
17 to Michael's death; hence, the Estate of Michael Jackson does not own these rights.
18 All property rights, title and interest that Michael may have had at one time were
19 transferred to these Defendants by operation of law when Michael Jackson lost that
20 litigation previously cited herein and it is barred by the doctrine of *Res Adjudicata*.
21 Additionally, the Doctrines of Laches and Statute of Limitations bar this claim.

22
23 **SIXTH CLAIM FOR RELIEF**

24 Plaintiffs' complaint fails to state a cause of action for false endorsement
25 because Katherine Jackson (mother of Michael Jackson) wrote her book, *Never*
26 *Can Say Goodbye*, using her own material -- including photos, recollections and
27 mementos formerly lost in prior litigation to these Defendants. Because the Estate

1 is paying Katherine mere *pennies* on the *millions of dollars* the executors of
2 Michael Jackson's estate are taking – and keeping -- all for themselves, to
3 themselves, she wanted to thank them for letting her preserve her memoirs as
4 Michael's mother for all of Michael's fans. But apparently the "Estate" did not
5 want Katherine Jackson to preserve her memories of her son and her family
6 between the covers of a book and make it available for purchase by Michael's fans.
7 So the Estate's trustees have stooped to filing suit against Mrs. Jackson's business
8 partners for what they deem 'damages' due the Estate of Michael Jackson arising
9 from Michael's own mother's book sales.

10 What is most germane in this case is that the Estate of Michael Jackson is
11 supposed to exist and operate for the benefit of its **beneficiaries**, to wit: Katherine
12 Jackson and Michael Jackson's three children – not for the benefit and unjust
13 enrichment of the Plaintiffs (trustees) who brought this suit on behalf of the Estate
14 of Michael Jackson. Katherine Jackson has every right to use the materials in her
15 book for money she desperately needs to protect and provide for herself and the
16 children's upkeep, since the Trustees are not adequately providing for her and
17 Michael's children.

18 According to the Probate Court records, EACH Trustee has taken
19 \$38,000,000+ to date, while paying Katherine Jackson the paltry sum of \$160,000
20 since her son's death. The Trustees have also formed corporations and taken
21 business positions in those companies, receiving money that should have been part
22 of the Estate of Michael Jackson and should have been accounted for to the
23 Probate Court. Such actions as these deliberately taken by the Trustees constitute a
24 breach of their fiduciary duties owed to the beneficiaries of Michael Jackson's
25 Estate. Additionally, the Doctrines of Laches and Statute of Limitations bar this
26 claim.

27

1 SEVENTH CLAIM FOR RELIEF

2 Plaintiffs' complaint fails to state a cause of action for Federal
3 Cybersquatting because that claim was already previously litigated against these
4 parties and Michael Jackson lost that case. Therefore, the Estate of Michael
5 Jackson is barred under the doctrines of Res Adjudicata and Collateral Estoppel in
6 this litigation. All property rights, title and interest that Michael may have had at
7 one time were transferred to these Defendants by operation of law when he lost
8 that prior litigation. Doctrines of Res Adjudicata and Collateral Estoppel do not
9 only apply to actual names, but also to all possible names that could have been
10 listed at that time or now. Additionally, the Doctrines of Laches and Statute of
11 Limitations bar this claim.

12
13 EIGHTH CLAIM FOR RELIEF

14 Plaintiffs' complaint fails to state a cause of action for California Piracy
15 because the claim was already previously litigated against these parties and
16 Michael Jackson lost that case; hence, the Estate of Michael Jackson is barred
17 under the doctrines of Res Adjudicata and Collateral Estoppel in this litigation. All
18 web domains being used by these Defendants were litigated in the prior litigation
19 in which they won against Michael Jackson. All property rights, title and interest
20 that Michael may have had at one time were transferred to these Defendants by
21 operation of law when he lost that litigation and it is barred by the doctrine of Res
22 Adjudicata. Additionally, the Doctrines of Laches and Statute of Limitations bar
23 this claim.

24
25 NINTH CLAIM FOR RELIEF

26 Plaintiffs' complaint fails to state a cause of action for misappropriation of
27 likeness because the claim was already previously litigated against these parties

1 and Michael Jackson lost that case; therefore, the Estate of Michael Jackson is
2 barred under the doctrines of Res Adjudicata and Collateral Estoppel in this
3 litigation. All property rights, title and interest that Michael may have had at one
4 time were transferred to these Defendants by operation of law when he lost that
5 litigation and it is barred by the doctrine of Res Adjudicata. Additionally, the
6 Doctrines of Laches and Statute of Limitations bar this claim.

7
8 **TENTH CLAIM FOR RELIEF**

9 Plaintiffs' complaint fails to state a cause of action for Declaratory Relief
10 because the claim was already previously litigated against these parties and
11 Michael Jackson lost that case; therefore, the Estate of Michael Jackson is barred
12 under the doctrines of Res Adjudicata and Collateral Estoppel in this litigation. All
13 property rights, title and interest that Michael may have had at one time were
14 transferred to these Defendants by operation of law when he lost that litigation and
15 it is barred by the doctrine of Res Adjudicata. Additionally, the Doctrines of
16 Laches and Statute of Limitations bar this claim.

17
18 **ELEVENTH CLAIM FOR RELIEF**

19 Plaintiffs' complaint fails to state a cause of action for Violation of B&P
20 Code §17200 because the facts upon which Plaintiffs herein have based their claim
21 have already been previously litigated against these parties and Michael Jackson
22 lost that case. All property rights, title and interest that Michael may have had at
23 one time were transferred to these Defendants by operation of law when he lost
24 that prior litigation and it is barred by the doctrine of Res Adjudicata.
25 Additionally, the Doctrines of Laches and Statute of Limitations bar this claim.

TWELFTH CLAIM FOR RELIEF

1
2 Plaintiffs' complaint fails to state a cause of action for an accounting
3 because the claim was already previously litigated against these parties and
4 Michael Jackson lost that case; therefore, the Estate of Michael Jackson is barred
5 under the doctrines of Res Adjudicata and Collateral Estoppel in this litigation. All
6 property rights, title and interest that Michael may have had at one time were
7 transferred to these Defendants by operation of law when he lost that litigation and
8 it is barred by the doctrine of Res Adjudicata. Additionally, the Doctrines of
9 Laches and Statute of Limitations bar this claim.

10 This motion is made following the conference of counsel pursuant to L.R. 7-3,
11 which took place on January 31, 2011.

12 The motion is based on this notice, the Memorandum of Points and
13 Authorities, the Complaint, the Request for Judicial Notice, and on Defendants'
14 argument at the hearing on the motion.

15
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **PRELIMINARY STATEMENT**

18
19 Defendants, Howard Mann, Vintage Pop Media and Vintage Pop Inc. are all
20 successors-in-interest to Henry Vaccaro, Sr. Vaccaro controlled HVV Corp. which
21 owned Kramer Guitar Company (hereinafter referred to as "HVV.") The
22 Jackson's had endorsed and used Kramer Guitars on tour. In 1992 HVV filed for
23 protection in the Federal Bankruptcy Court of the District of New Jersey and was
24 attempting to reorganize. The Jackson Family, consisting of Joseph and Katherine
25 Jackson and their nine children (Rebbie, La Toya, Jackie, Marlon, Randy, Tito,
26 Jermaine, Michael and Janet) formed a Delaware corporation known as Jackson
27

1 Communications Inc. (hereinafter referred to as "JCI.") JCI entered into an
2 agreement to fund the plan of reorganization of HVV, a plan which was ultimately
3 approved by the Federal Bankruptcy Court. However JCI did not live up to its
4 contract and forced HVV into a Chapter 7. HVV was then liquidated with no
5 funds going to Vaccaro. While still under the control of the Bankruptcy Court,
6 HVV filed a lawsuit against JCI. The Federal Bankruptcy Judge permitted HVV to
7 pierce the corporate veil on the theory that the Jackson Family had never
8 capitalized JCI, yet declared dividends for themselves. HVV then obtained
9 personal judgments against all family members that could be served. A copy of the
10 judgment is attached to the request for judicial notice and incorporated herein by
11 this reference as Exhibit 1 to the request for judicial notice filed concurrently with
12 this motion. When HVV commenced execution on assets here in California, all of
13 the Jacksons, except Michael, Jackie and Janet filed for bankruptcy.

14 Prior to certain family members having filed individual bankruptcies, JCI
15 had planned a subsidiary called Jackson Street, slated to be the name of a
16 restaurant chain similar to that of a Planet Hollywood or Hard Rock Cafe. Joe
17 Jackson and Tito planned to run this subsidiary and they gathered every possible
18 piece of memorabilia that the Jackson family had in order to launch this new
19 restaurant venture. They stored their family memorabilia, music, photography,
20 videos and drawings, along with other family household goods (a.k.a. "personal
21 property") in a storage facility located in Oxnard, California. Tito Jackson leased
22 this facility. The personal property in the storage unit ultimately became the
23 property of the US Trustee for the Jacksons' bankruptcies. To conceal the true
24 value of this personal property stored in that facility, the bankrupt debtors listed its
25 value at \$5,000.00 and claimed it as exempt household goods. They also swore
26 under penalty of perjury that they were not holding property for any third party.

27

1 On October 23, 2001, Federal Bankruptcy Judge Kathleen T. Lax signed an
2 Order to abandon all the personal property to Tito Jackson's family, provided they
3 pay approximately \$70,000.00 in storage fees. But the Jacksons failed to pay those
4 storage fees. As a result of that failure to pay, the court ordered the trustee to sell
5 all the property held in the storage unit at public auction. El Rich Corp. purchased
6 that property at public auction. (Copy of Order Approving Trustee's Application to
7 Sell Property of the Estate, Notice of Sale of Estate's Property & Order Approving
8 Sale of Storage Units Contents, and copy of Bill of Sale from El Rich Corp. to
9 Vintage Pop Inc. are attached to the request for judicial notice and incorporated
10 herein by this reference as Exhibit 2.)

11 Michael Jackson had never made any claims to ownership at any time to any
12 of the property in the storage unit, even after repeated requests by the court that he
13 do so. These requests were in the form of a Court Order (see Exhibit 2, Paragraph
14 4) and Michael Jackson's attorney was noticed on this Order. Michael Jackson
15 never filed a third party claim of ownership. He never filed any claim with the
16 estate that he owned any part of the personal property placed in that storage area.

17 On January 10, 2002 an auction was held in Federal Bankruptcy court, with
18 Michael Jackson's attorney present. At the hearing prior to the auction, the court
19 ruled that Michael Jackson had no legal standing in the matter. After the sale to El
20 Rich Corp. was completed, Michael Jackson never filed any appeal.

21 A copy of the order approving the sale to El Rich Corp. is attached to the
22 request for judicial notice and incorporated herein by this reference as Exhibit 3.
23 The property was sold free and clear of all claims from all third parties pursuant to
24 363(m) of the Bankruptcy Code. On July 29, 2002 El Rich Corp. sold the personal
25 property to Vintage Pop Inc.

26 Vaccaro was the owner of Vintage Pop, Inc. He is one of the members of
27 Vintage Pop Media Group LLC. (VPMG) which is the successor-in-interest to

1 Vintage Pop, Inc. in the ownership of the Jackson Family Assets acquired at the
 2 Bankruptcy Court Sale. Howard Mann is a consultant working with Henry Vaccaro
 3 to manage these assets and is a business partner of Katherine Jackson as publisher
 4 of her book, *Never Can Say Goodbye*.

5 In 2004, Michael Jackson filed suit against Vaccaro and Vintage Pop, among
 6 others. A copy of that lawsuit is attached to the request for judicial notice and
 7 incorporated herein by this reference as Exhibit 4. The court is asked to note that
 8 in the original lawsuit of 2004 Michael sued for nearly everything that the Estate of
 9 Michael Jackson is now suing for, as follows:

11 2004 Lawsuit Filed by Michael Jackson:	2011 Lawsuit Filed by the Estate of Michael Jackson:
12	
13 Parties: Henry Vaccaro, Vintage Pop, 14 numerous corporate and domain names	Parties: Henry Vaccaro, one of the 15 owners of Vintage Pop Media Group, 16 Vintage Pop Media Group LLC, 17 Vintage Pop, Inc. and numerous domain names
18 Copyright Infringement	Copyright Infringement 17 USC § 101 19 et seq. (five claims)
20 False Designation of Origin [Lanham 21 Act 15 USC 1125(a)]	False Designation of Origin [Lanham Act 15 USC 1125(a)]
22 Violation of Statutory Right of Publicity 23 California Civic Code § 3344	Misappropriation of Likeness -- California Civil Code § 3344.1
24 Common Law Misappropriation of 25 Right of Publicity	Common Law Misappropriation of Right of Publicity
26	
27	

1	Violation of 15 USC 1125(D)	Violation of 15 USC 1125(D)
2	Cybersquatting	Cybersquatting
3	Violation of Right of Privacy	Cyber Piracy (California B&P Code
4		17525)
5	Accounting	Accounting
6	Constructive Trust	Declaratory Relief
7	Injunctive Relief	Unfair Competition (California B&P
8		§17200

9

10 The two complaints have overlapping claims for Relief. The Michael
 11 Jackson 2004 lawsuit was dismissed with prejudice on January 3, 2006. A copy of
 12 the dismissal with prejudice is attached to the Request for Judicial Notice as
 13 Exhibit 5. Here, in this instant case, the litigants are virtually identical. Henry
 14 Vaccaro was the owner of Vintage Pop in the 2004 lawsuit – and still owns
 15 Vintage Pop – but is also a member of Vintage Pop Media Group LLC. The Court
 16 dismissed Michael’s lawsuit in 2006 with prejudice because he chose to abandon
 17 all of his claims. Such ruling by the court to dismiss Michael’s 2006 lawsuit in
 18 response to these Defendants Motion to Dismiss was a decision on the merits.
 19 Michael Jackson meant to be bound by the Court’s ruling and the Estate of
 20 Michael Jackson is no less bound today by those very same rulings.

21 Any rights, title and interest that Michael Jackson may have had concerning
 22 any issue covered by that lawsuit were lost to him in 2006 by operation of law. At
 23 the time of his death in 2009, Michael owned none of the rights, title and interest
 24 that the Estate of Michael Jackson is now relying upon. Moreover, the Estate of
 25 Michael Jackson is barred under the doctrines of *Res Adjudicata*, Collateral
 26 Estoppel, Laches and Statute of Limitations in this instant litigation.

1 **CLAIMS MADE BY THE ESTATE OF MICHAEL JACKSON ARE BARRED**
2 **BY THE DOCTRINES OF RES ADJUDICATA AND COLLATERAL**
3 **ESTOPPEL**

4
5 **The Fifth, as well as Seventh through Twelfth, Claims for Relief are all**
6 **barred by the Doctrines of Collateral Estoppel and Res Adjudicata.**

7 In the case of Kilroy v. State of California, 119 Cal. App. 4th 140 (2004),
8 the court discusses the basis for Collateral Estoppel and Res Adjudicata in the
9 following terms:

10 *“[A] party will be collaterally estopped from relitigating an issue only*
11 *if (1) the issue decided in a prior adjudication is identical with that*
12 *presented in the action in question; and (2) there was a final judgment*
13 *on the merits; and (3) the party against whom the plea is asserted*
14 *was a party or in privity with a party to the prior adjudication.”*
15 *(Clemmer v. Hartford Insurance Co. (1978) 22 Cal.3d 865, 874, 151*
16 *Cal.Rptr. 285, 587 P.2d 1098 italics omitted.) In addition to being a*
17 *party or in privity with a party to the prior action, “the circumstances*
18 *must have been such that the party to be estopped should reasonably*
19 *have expected to be bound by the prior adjudication.” (Id. at p. 875,*
20 *151 Cal.Rptr. 285, 587 P.2d 1098.)*

21 In the case now before this court, the parties are the same. Henry
22 Vaccaro is still a party, either directly or indirectly (as an owner of one or
23 more corporations or limited liability companies.) The issues are the same,
24 as shown in the chart above. The ruling of the court dismissing the
25 complaint in its entirety with prejudice after a motion to dismiss was filed by
26 these same defendants is a ruling on the merits. And Michael Jackson knew
27

1 that by abandoning his case, he would be bound by whatever decision the
2 court made.

3 *A preclusive judgment "prevents litigation of all grounds and defenses*
4 *that were or could have been raised in the [first] action." Davis &*
5 *Cox, 751 F.2d at 1518.*

6 *The doctrines of Collateral Estoppel and Res Adjudicata ordinarily*
7 *provide adequate assurance that one court's resolution of a*
8 *controversy will be respected by other courts. Wood v. Santa Barbara*
9 *Chamber of Commerce, Inc., 705 F.2d 1515 (9th Cir.1983)*

10 *Federal courts look to the law of the state where judgment was*
11 *rendered for applicable Res Adjudicata and Collateral Estoppel*
12 *principals. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1035 (9th*
13 *Cir.1990), cert. denied, 112 S.Ct. 417 (1991). In California, the*
14 *doctrine of Res Adjudicata bars a party who has obtained a final*
15 *judgment on the merits in state court from bringing a federal*
16 *constitutional claim based on the same alleged injury as the state*
17 *action and involving the same parties, whether or not the*
18 *constitutional claim was specifically raised in state court. Sanchez,*
19 *936 F.2d at 1035. Res Adjudicata is appropriate provided the party*
20 *against whom the doctrine is asserted was a party to the former*
21 *litigation. United States ex rel. Robinson Rancheria Citizens Council*
22 *v. Borneo, 971 F.2d 244, 249 (9th Cir.1992). Res Adjudicata may bar*
23 *a party from bringing an action in federal court even if the issues*
24 *before the federal court are not identical to those brought in state*
25 *court. Id. CASTLE, v. SUPERIOR COURT OF CALIFORNIA, County*
26 *of San Diego, [995 F.2d 230 (9th Cir. 1993)]*

1 In the case now before this court, the Estate of Michael Jackson has sued
2 these Defendants for the very same issues as those already litigated in the Michael
3 Jackson 2004 lawsuit, as shown in the comparative chart of claims for relief set
4 forth hereinabove. The 2004 case was dismissed with prejudice for failure to
5 prosecute. Therefore the Estate of Michael Jackson has no more rights, title and
6 interest to the properties of Vintage Pop Media or to any claims that were lost by
7 Michael Jackson during his lifetime.

8
9 ***THE ESTATE OF MICHAEL JACKSON VIOLATED 17 U.S.C. 512***

10
11 **The First, Second and Third Claims are barred by 17 U.S.C. 512.**

12
13 *The Online Copyright Infringement Liability Limitation Act (OCILLA) is*
14 *United States federal law that creates a conditional safe harbor for online*
15 *service providers (OSP) (a group which includes internet service providers*
16 *(ISP)) and other Internet intermediaries by shielding them for their own acts*
17 *of direct copyright infringement (when they make unauthorized copies) as*
18 *well as shielding them from potential secondary liability for the infringing*
19 *acts of others. OCILLA was passed as a part of the 1998 Digital Millennium*
20 *Copyright Act (DMCA) and is sometimes referred to as the "Safe Harbor"*
21 *provision or as "DMCA 512" because it added Section 512 to Title 17 of the*
22 *United States Code. By exempting Internet intermediaries from copyright*
23 *infringement liability provided they follow certain rules, OCILLA attempts*
24 *to strike a balance between the competing interests of copyright owners and*
25 *digital users.*

26 17 U.S.C. 512 (c) provides:

27 *A service provider shall not be liable for monetary relief, or, except as*

1 provided in subsection (j), for injunctive or other equitable relief, for
2 infringement of copyright by reason of the storage at the direction of a user
3 of material that resides on a system or network controlled or operated by or
4 for the service provider, if the service provider-

5 (A)

6 (i) does not have actual knowledge that the material or an activity using the
7 material on the system or network is infringing;

8 (ii) in the absence of such actual knowledge, is not aware of facts or
9 circumstances from which infringing activity is apparent; or

10 (iii) upon obtaining such knowledge or awareness, acts expeditiously to
11 remove, or disable access to, the material;

12 (B) does not receive a financial benefit directly attributable to the infringing
13 activity, in a case in which the service provider has the right and ability to
14 control such activity; and

15 (C) upon notification of claimed infringement as described in paragraph (3),
16 responds expeditiously to remove, or disable access to, the material that is
17 claimed to be infringing or to be the subject of infringing activity.

18 **(2) Designated agent**

19 The limitations on liability established in this subsection apply to a service
20 provider only if the service provider has designated an agent to receive
21 notifications of claimed infringement described in paragraph (3), by making
22 available through its service, including on its website in a location
23 accessible to the public, and by providing to the Copyright Office,
24 substantially the following information:

25 (A) the name, address, phone number, and electronic mail address
26 of the agent.
27

1 (B) other contact information which the Register of Copyrights may
2 deem appropriate.

3
4 In the case of *Perfect 10 v Google, No. CV 04-9484 AHM (SHx) July*
5 *26, 2010*; the court delineates the Threshold Requirements for Safe
6 Harbor Under All Three Sections:

7 *“In order to be eligible for any of these three safe harbors under the*
8 *DMCA, a party must satisfy three threshold conditions. First, the*
9 *party must be a service provider as defined under 17 U.S.C. §*
10 *512(k)(1)(B). Second, the party must have “adopted and reasonably*
11 *implemented, and inform subscribers and account holders of the*
12 *service provider’s system or network of a policy that provides for the*
13 *termination in appropriate circumstances of subscribers and account*
14 *holders of the service provider’s system or network who are repeat*
15 *infringers.” 17 U.S.C. § 512(i)(1). Third, the party must*
16 *“accommodate and . . . not interfere with standard technical*
17 *measures” used by copyright owners to identify or protect*
18 *copyrighted works. 17 U.S.C. §§ 512(i)(1)-(2)”*

19 In this instant case, Vintage Pop Media provides the name and address of the
20 designated agent for service of a notice of a cease and desist letter from the holder
21 of a copyright. It has a policy and this is the first time anyone has ever claimed
22 that there is a violation of copyright. After this lawsuit was filed, the Estate of
23 Michael Jackson sent a cease and desist letter to the Defendants’ counsel.
24 Defendants examined the site and removed all items that Plaintiffs’ claimed to hold
25 a copyright to, pursuant to the DMCA 512.

1 ***DEFENDANTS HAVE NOT MADE A FALSE ENDORSEMENT***

2 The Sixth Claim for Relief is without merit as the Defendants have not made
3 any false endorsement to claim they are associated with the Estate of Michael
4 Jackson.

5 The Estate of Michael Jackson contends there may be a reference made to
6 the Estate in Katherine Jackson's book, *Never Can Say Goodbye*, which potentially
7 could mislead people into believing that the Estate of Michael Jackson approved
8 her book. However, the Estate -- which *includes* Katherine and Michael's children
9 -- does not approve of or endorse the book, because Katherine and the children
10 benefit from the sales of that book. Katherine is the book's author. She works
11 with Howard Mann and Vintage Pop Media.

12 But what is pivotal to grasping the importance of this issue raised is to
13 remember that the Estate of Michael Jackson is **not** supposed to operate for the
14 financial gain of its trustees, but rather for the welfare and benefit of its
15 beneficiaries, to wit: Katherine Jackson and Michael's children. Plaintiffs herein
16 are trustees of the Estate of Michael Jackson --NOT its intended or designated
17 beneficiaries. Katherine Jackson has a right to use the materials in HER BOOK for
18 money she so desperately needs to protect and provide for herself and for
19 Michael's children's welfare, education and upkeep, since the trustees of her son's
20 estate clearly are not adequately providing for her and Michael's children.

21 According to Probate Court records, the Trustees have taken \$38,000,000+
22 EACH (nearly EIGHTY MILLION DOLLARS!) while paying Katherine Jackson
23 a paltry \$160,000 since Michael died. The Trustees have also formed
24 ADDITIONAL corporations, taking business positions in those new companies to
25 receive *additional funds* that should have been part of the Estate of Michael
26 Jackson and accounted for to the Probate Court. These actions taken by the
27

1 Trustees are a breach of their fiduciary duties owed to the beneficiaries of the
2 Estate of Michael Jackson.

3
4 ***THE COMPLAINT BY MICHAEL JACKSON COMPANY, LLC SHOULD BE***
5 ***DISMISSED BECAUSE IT IS NOT AUTHORIZED TO DO BUSINESS IN***
6 ***CALIFORNIA***

7 Additionally, the court is asked to take notice of the fact that there are three
8 additional corporations/limited liability companies that are Plaintiffs in this action.
9 The Michael Jackson Company, LLC is listed as a California limited liability
10 company. However, there is no such limited liability company authorized to do
11 business in California per the California Secretary of State.

12 California Corporations Code § 2203 (c) provides:

13 “(c) A foreign corporation subject to the provisions of Chapter 21
14 (commencing with Section 2100) which transacts intrastate business
15 without complying with Section 2105 shall not maintain any action or
16 proceeding upon any intrastate business so transacted in any court of
17 this state”

18 A copy of the Secretary of State’s report confirming that Michael Jackson
19 Company LLC is not found as being registered with it is attached hereto and
20 incorporated herein by this reference as Exhibit 6 to the request for judicial notice.

21
22 ***THE ESTATE OF MICHAEL JACKSON DOES NOT OWN THE RIGHT OF***
23 ***PUBLICITY***

24 California Civil Code § 3344.1 recognizes that the right of publicity, like
25 many other rights, is a personal property right, which can be sold or otherwise
26 transferred during the life of the personality.

27 § 3344.1 (b) provides:

1 “(b) The rights recognized under this section are property rights,
2 freely transferable or descendible, in whole or in part, by contract or
3 by means of any trust or any other testamentary instrument, executed
4 before or after January 1, 1985. The rights recognized under this
5 section shall be deemed to have existed at the time of death of any
6 deceased personality who died prior to January 1, 1985, and, except as
7 provided in subdivision (o), shall vest in the persons entitled to these
8 property rights under the testamentary instrument of the deceased
9 personality effective as of the date of his or her death. In the absence
10 of an express transfer in a testamentary instrument of the deceased
11 personality's rights in his or her name, voice, signature, photograph, or
12 likeness, a provision in the testamentary instrument that provides for
13 the disposition of the residue of the deceased personality's assets shall
14 be effective to transfer the rights recognized under this section in
15 accordance with the terms of that provision. The rights established by
16 this section shall also be freely transferable or descendible by
17 contract, trust, or any other testamentary instrument by any
18 subsequent owner of the deceased personality's rights as recognized
19 by this section. **Nothing in this section shall be construed to render**
20 **invalid or unenforceable any contract entered into by a deceased**
21 **personality during his or her lifetime by which the deceased**
22 **personality assigned the rights, in whole or in part, to use his or**
23 **her name, voice, signature, photograph, or likeness, regardless of**
24 **whether the contract was entered into before or after January 1,**
25 **1985.”**

26 In the 2004 Michael Jackson lawsuit, the complaint covered: unauthorized
27 exploitation of Michael Jackson's name, likeness, photographs, domain names, and

1 copyrighted property. (See ¶¶ 1-12, 54, 55) The copyrighted materials included,
2 but were not limited to, lyrics and other copyrighted materials on the websites (See
3 ¶¶ 45 & 46). Also included in the 2004 lawsuit was Michael Jackson's right of
4 publicity under California Civil Code § 3344; Jackson's name, photographs,
5 likeness and persona. (See ¶¶ 64-68). Under Cybersquatting, the name Michael
6 Jackson was included in any and all Cybersquatting issues. (See ¶¶ 91-94).
7 Michael Jackson also sued for an accounting in the 2004 lawsuit.

8 All of these rights, title and interest in these properties were covered by the
9 2004 lawsuit and by operation of law, when Michael's case was dismissed with
10 prejudice. These rights, title and interest were transferred to Vintage Pop and
11 Henry Vaccaro.

12 The 2011 lawsuit filed by the Estate of Michael Jackson is barred because
13 these rights, title and interest were not owned by Michael Jackson at the time of his
14 death. Therefore, the Estate of Michael Jackson does not own MJ's name,
15 photographs, likeness, domain names and copyrighted materials now in Vintage
16 Pop Media's possession.

17
18 ***THE ESTATE OF MICHAEL JACKSON CLAIMS ARE BARRED BY THE***
19 ***DOCTRINE OF LACHES***

20
21 **The Second, Fifth, and Seventh through Twelfth, Claims for Relief are**
22 **all barred by the Doctrine of Laches.**

23 *Laches requires proof of (1) lack of diligence by the party*
24 *against whom the defense is asserted and (2) prejudice the party that*
25 *asserts the defense. United States v. Dang, 488 F.3d 1135, 1144 (9th*
26 *Cir.2007) (internal quotation marks omitted). Prejudice typically*
27 *means that evidence is no longer available or that the party asserting*

1 *laches has " altered its [behavior] in reliance on a plaintiff's*
2 *inaction." Wauchope v. U.S. Dep't of State, 985 F.2d 1407, 1412 (9th*
3 *Cir.1993).*

- 4 1. Michael Jackson was given notice of the sale of the subject property
5 on December 10, 2001 and did nothing to stop the sale (Exhibit 2 to
6 the Request for Judicial Notice)
- 7 2. Michael Jackson had his attorneys, Lavelly & Singer send a letter
8 dated May 17, 2000, which states that court has determined that
9 property belongs to the Bankruptcy Estate and not Michael Jackson
- 10 3. Lavelly & Singer send a letter dated May 31, 2002 to El Rich Corp.,
11 and for the first time Michael Jackson claims property but Michael
12 never followed through.
- 13 4. Michael Jackson knew the property was sold on April 18, 2002. He
14 did nothing to set aside the sale or challenge the Estate's ownership of
15 the subject property within the one-year statute of limitations (Exhibit
16 2 to Request for Judicial Notice)
- 17 5. Lavelly & Singer send a letter to Henry Vaccaro dated March 11,
18 2004, threatening litigation.
- 19 6. In March 2004 Michael Jackson judicially admitted he knew Vaccaro
20 was operating websites, displaying his (Michael Jackson's) images,
21 likeness, voice, lyrics, and private person property. (¶¶ 1-12 of 2004
22 lawsuit.) Then Michael abandoned this action, refused to cooperate
23 with his attorneys who requested to withdraw, whereupon the court
24 granted Defendants' motion to dismiss Jackson's complaint on
25 January 3, 2006. Michael Jackson never moved to appeal that ruling
26 or set it aside. He agreed to be bound by it.
- 27

1 Defendants have changed their positions by spending millions of dollars for
2 these assets, publicity, marketing, and promotions. Mrs. Jackson has used these
3 assets to write her memoirs in her book, *Never Can Say Goodbye*. Her business
4 partners have spent thousands of dollars to prepare, market, promote, produce, and
5 sell Katherine's book to the general public. All based upon the fact that Michael
6 did not ever prove he had any interest in the subject property or any intent to ever
7 challenge prior court rulings. The Doctrine of Laches bars the Estate of Michael
8 Jackson from raising these claims at this late date. Nevertheless...

9 The Estate of Michael Jackson is now intent upon bringing up everything
10 that Michael Jackson abandoned and lost years ago. But, due to the Doctrine of
11 Laches, the Estate of Michael Jackson/Trustees cannot resurrect these dead issues
12 focused on rights, title and interest.

13
14 ***THE ESTATE OF MICHAEL JACKSON CLAIMS ARE BARRED BY***
15 ***STATUTE OF LIMITATIONS***
16

17 **The Second, Fifth, and Seventh through Twelfth, Claims for Relief are**
18 **all barred by the Statute of Limitations.**

19 Michael Jackson had one year from the sale of assets he claimed as his to
20 file an appeal from the date of the sale. The sale occurred on January 18, 2002, but
21 Michael did nothing to challenge it.

22 The sale by the Bankruptcy Court was made under 11 U.S.C. §363m of the
23 Bankruptcy Code. The sale was free of all encumbrances and claims from all
24 parties. Those rights, title and interest included all the copyrights, trademarks,
25 likeness, images, videos, photographs, and all other personal property rights of the
26 subject property. If Michael had wanted to contest this sale he had only one year
27

1 to so – but he did not do so. Accordingly, all of these rights, title and interest were
2 transferred by operation of law to these Defendants herein.


3 Copyright Act 17 USC 507(b), the statute of limitations is three years. The
4 Second Claim is for the song “Destiny” which Michael Jackson knew had been
5 sold in 2002 to these Defendants. As set forth hereinabove, Jackson did nothing to
6 retrieve this song or its copyright. It has been more than three years since Jackson
7 had notice of the claimed ownership. Thus, he is barred by the three-year statute of
8 limitations. The Estate of Michael Jackson or Sony may have violated Defendants’
9 copyrights to this song, which they re-released in 2009.

10
11 **CONCLUSION**

12 Based upon all of the foregoing, Plaintiff’s complaint should be dismissed
13 with prejudice.

14
15 DATED: February 22, 2011 THE DURST FIRM and ONYX LAW GROUP

16
17
18 BY _____


19 Lee H. Durst
20 Attorneys for Defendants
21
22
23
24
25
26
27

TMZ

DECLARATION

1
2 **Declaration of Lee H. Durst**

3 County of Orange, State of California

4 I, Lee H. Durst, declare:

5 That this declaration is based upon my personal knowledge and, if called to
6 testify, I could and would testify to the following facts:
7

8 That I am an attorney duly licensed to practice law before all courts within
9 the State of California; as well as all Federal Courts in the State of California.
10

11 That, in my representation of Vintage Pop Media Group LLC, I received a
12 copy of the original letter from Brett-Livingstone Strong, dated March 10, 2010
13 giving Katherine Jackson permission to use a number of photos and works of art
14 owned by Mr. Strong, which were to be included in her book about her son,
15 Michael Jackson. A copy of the letter is attached hereto and incorporated herein
16 by this reference.
17
18

19 I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct. Executed this 22nd day of February
21 2011 at Newport Beach, California.
22

23
24 
25 _____
26 Lee H. Durst
27

BRETT-LIVINGSTONE STRONG



STRONG MONUMENTS LLC

Mr. Lowell Henry
Lowellhenry2@aol.com

March 20, 2010

Re: MJ art / Book publishing

Dear Lowell,

Attached are photos of the very valuable original work of art by Michael including one titled, "We the People". Michael created this work in celebration of the Bicentennial of the United States Constitution and Bill of Rights in 1987 and the Bicentennial of the U.S. Presidency in 1989. It is appraised at \$2 million.

The attached photos show Michael working on the flag that he created for the official commemorative White House book. I hereby grant permission for these photos and the images of the art to be published in Katherine's forthcoming book about Michael.

Sincerely,

Brett Livingstone Strong

ADDRESS: 3100 DONALD DOUGLAS LOOP NORTH, EXECUTIVE HANGAR #4, SANTA MONICA AIRPORT CALIFORNIA 90405
WEBSITE: WWW.BLSART.COM EMAIL: INFO@BLSART.COM PHONE: 310 980 2832

PROOF OF SERVICE

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: 220 Newport Center Drive, Ste 11285, Newport Beach, California 92660

On February 23, 2011, I served the foregoing document described as:

MOTION TO DISMISS and REQUEST FOR JUDICIAL NOTICE

on the parties listed below in this action by placing a true copy thereof mail to the following

COUNSEL FOR PLAINTIFFS

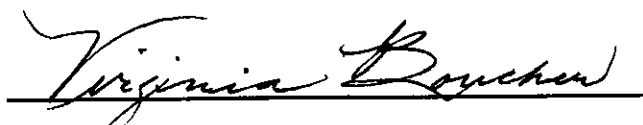
Zia F. Modabber, Esq.
KATTEN MUCHIN ROSENMAN
2029 Century Park East, Suite 2600
Los Angeles, CA 90067

Howard Weitzman, Esq.
Kinsella Weitzman Iser Kump & Aldisert
808 Wilshire Blvd., Suite 300
Santa Monica, CA 90401

BY MAIL. I caused the above document to be mailed via First Class Mail at Newport Beach, California. Executed on February 23, 2011, at Orange California.

FEDERAL. 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.

I declare under penalty of perjury under the laws of United States of America that the above is true and correct.


Virginia Boucher

1 Lee H. Durst, Esq., SBN 69704
2 THE DURST FIRM
220 Newport Center Drive, Suite 11285
3 Newport Beach, California 92660
Tel: 949-400-5068 & Fax 714-242-2096
4 Email: lee.durst@gmail.com

5 Denise Hsu Sze, Attorney at Law, SBN 238511
6 Randall Jakubowski, Esq., SBN 248357
Onyx Law Group
7 P.O. Box 64191
Los Angeles, California 90064

RECEIVED
BUT ~~NOT FILED~~ RETURNED
MAR - 1
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
BY *[Signature]* DEPUTY

8 Attorneys for Defendants Howard Mann, Vintage Pop Media Group LLC,
Vintage Pop, Inc.

9 RECEIVED
BUT
NOT FILED
10 FEB 24 2011
11 CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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

14 John Branca et al

15 Plaintiff,

16 vs.

17 Howard Mann, Vintage Pop Media
18 Group LLC, Vintage Pop, Inc., et al.

19 Defendants.

Case No.: CV 11-00584 DDP (PJW)
Judge Dean D. Pregerson
(Magistrate Judge Patrick J. Walsh)
COURTROOM 3

REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS

Date: 3/28/2011
Time: 10 A.M.
CTRM. 3

Case Filed: 1/20/2011
Trial: NONE SET

1 TO THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

2 Pursuant to Rule 201(b)(2) of Federal Rules of Evidence, Defendants
3 Howard Mann, Vintage Pop Media Group LLC and Vintage Pop Inc.
4 (hereinafter referred to as "Vintage Pop Media" or "VPM") request that the
5 Court take judicial notice of the following documents in support of Defendants'
6 Motion to Dismiss Plaintiffs' Complaint:

- 7 1. Copy of a judgment in favor of ~~the~~ Henry Vaccaro against the
8 Jacksons, a true and correct is attached hereto and incorporated
9 herein by this reference as Exhibit 1.
- 10 2. Copy of the Order approving the Trustee's Application to Sell
11 property of the Estate, Notice of Trustee Sale and the Order
12 approving the sale of the storage unit contents, and a copy of the
13 Bill of Sale from El Rich Corporation to Vintage Pop Inc., a true and
14 correct is attached hereto and incorporated herein by this
15 reference as Exhibit 2.
- 16 3. Copy of the order approving the sale of storage unit, a true and
17 correct is attached hereto and incorporated herein by this
18 reference as Exhibit 3.
- 19 4. Copy of the Michael Jackson 2004 lawsuit, with exhibits, a true
20 and correct is attached hereto and incorporated herein by this
21 reference as Exhibit 4.
- 22 5. Copy of the Dismissal of the Michael Jackson 2004 on January 3,
23 2006, a true and correct is attached hereto and incorporated
24 herein by this reference as Exhibit 5.
- 25 6. Copy of the Secretary of State's report showing that Michael Jackson
26 Company LLC is not found as being registered, a true and correct is
27

1 attached hereto and incorporated herein by this reference as
2 Exhibit 6.

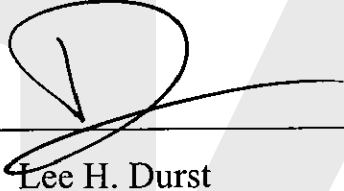
3
4 Grounds for Request 1 – 5, are true and correct copies of official records of the U.
5 S. Bankruptcy Court and U.S. District Court. These documents of official records of
6 the Clerk of the Court for the U.S. Bankruptcy Courts of New Jersey and Central
7 District Court of California, whose authenticity is capable of accurate and ready
8 determination by resort to sources whose accuracy cannot reasonably be questioned.
9 *See Gamboa v. Tr. Corps & Cent. Mortg. Loan Servicing Co.*, 2009 U.S. Dist. LEXIS
10 19613 *4-*10 (N.D. Cal. Mar. 12, 2009) (court took judicial notice of recorded
11 documents related to the foreclosure sale, including grant deed and deed of trust:
12 “[t]hese documents are also part of the public record and are easily verifiable. See
13 Fed. R. Evid. 201(b); *Castillo-Villagra v. INS*, 972 F.2d 1017, 1026 (9th Cir. 1992)
14 (holding that notice may be taken of facts capable of accurate and ready determination
15 by resort to sources whose accuracy cannot reasonably be questioned).”). Further,
16 judicial notice is appropriate for information obtained from governmental websites.
17 *Paralyzed Veterans of Am. v. 12 McPherson*, 2008 U.S. Dist. LEXIS 69542, *17-
18 18 (N.D. Cal. Sept. 8, 2008) (court took judicial notice of information appearing on
19 and printed from official government websites -- citing numerous decisions from
20 federal circuits and district courts all approving judicial notice of information obtained
21 from government 16 websites).

22 Grounds for Request 6, is a true and correct copy of the Official Records of
23 the California Secretary of State website. These documents of official records of
24 the Official Records of the California Secretary of State website, whose authenticity
25 is capable of accurate and ready determination by resort to sources whose accuracy
26 cannot reasonably be questioned. *See Gamboa v. Tr. Corps & Cent. Mortg. Loan*
27 *Servicing Co.*, 2009 U.S. Dist. LEXIS 19613 *4-*10 (N.D. Cal. Mar. 12, 2009) (court

1 took judicial notice of recorded documents related to the foreclosure sale, including
2 grant deed and deed of trust: “these documents are also part of the public record and
3 are easily verifiable. See Fed. R. Evid. 201(b); *Castillo-Villagra v. INS*, 972 F.2d
4 1017, 1026 (9th Cir. 1992) (holding that notice may be taken of facts capable of
5 accurate and ready determination by resort to sources whose accuracy cannot
6 reasonably be questioned).”). Further, judicial notice is appropriate for information
7 obtained from governmental websites. *Paralyzed Veterans of Am. v. 12 McPherson*,
8 2008 U.S. Dist. LEXIS 69542, *17-18 (N.D. Cal. Sept. 8, 2008) (court took judicial
9 notice of information appearing on and printed from official government websites --
10 citing numerous decisions from federal circuits and district courts all approving
11 judicial notice of information obtained from government 16 websites).

12
13 DATED: February 22, 2011 THE DURST FIRM and ONYX LAW GROUP

14
15
16 BY _____


17 Lee H. Durst
18 Attorneys for Defendants
19
20
21
22
23
24
25
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27

TMZ

Exhibit 1

SCHOTTLAND, AARON & MANNING
36 West Main Street, PO Box 6578
Freehold, New Jersey 07728
(908) 462-4405

BETTY POWELL

BY: JAMES G. AARON, ESQ. (JA-0729)
Attorneys for HVV Corporation, Debtor/Plaintiff

In re:
HVV CORPORATION,

Debtor.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Case No. 92-31771 (WHG)

HVV CORPORATION,

Plaintiff,

Adv. No. 94-3104 TG

vs.

JACKSON COMMUNICATIONS, INC.,
JACKSON JUBILEE, INC., MICHAEL
JACKSON, JANET JACKSON,
JERMAINE JACKSON, JACKIE JACK-
SON, RANDY JACKSON, TITO JACK-
SON, JOSEPH JACKSON, KATHERINE
JACKSON, REBBIE JACKSON,
MARLON JACKSON, as individu-
als, and ROBERT PETRALLIA,

**ORDER FOR JUDGMENT
IN FAVOR OF RUSSELL PASSAMANO,
ESQ., CHAPTER 7 TRUSTEE FOR
THE ESTATE OF DEBTOR HVV CORP.
AND AGAINST JACKSON JUBILEE,
INC., JERMAINE JACKSON,
Individually, JACKIE JACKSON,
Individually, RANDY JACKSON,
Individually, TITO JACKSON,
Individually, JOSEPH JACKSON,
Individually, KATHERINE
JACKSON, Individually,
REBBIE JACKSON, Individually,
and MARLON JACKSON,
Individually**

Defendants.

THIS MATTER having come before the Court by way of an adversarial proceeding instituted by the Plaintiff, HVV Corp., by James G. Aaron, Esq., of the firm of Schottland, Aaron & Manning, special counsel to Russell Passamano, Esq., Chapter 7 Trustee, and it appearing that the defendants Jackson Jubilee, Inc., Jermaine Jackson, Randy Jackson, Tito Jackson, Joseph Jackson, Katherine

Jackson, Rebbie Jackson, and Marlon Jackson have been served with the Summons and Complaint, as evidenced by the Certification of James G. Aaron in Support of Application to Enter Default, and it appearing that the defendants Jackson Jubilee, Inc., Jermaine Jackson, Randy Jackson, Tito Jackson, Joseph Jackson, Katherine Jackson, Rebbie Jackson, and Marlon Jackson have failed to answer the complaint within the time set by Court Rules, and it appearing that the Court entered default against defendants Jackson Jubilee, Inc., Jermaine Jackson, Randy Jackson, Tito Jackson, Joseph Jackson, Katherine Jackson, Rebbie Jackson, and Marlon Jackson on October 31, 1995; and it further appearing that under the Federal Rule of Civil Procedure 55(b)(2) that the Court has the authority to enter judgment in favor of the Plaintiff and against the named defendants in the within cause of action for failure to answer the complaint; and it appearing that the defendants are not infant or incompetent persons; and it further appearing that on the 29th day of January 1996, the Court conducted a proof hearing, pursuant to Federal Rule 55(b)(2) and Federal Rule of Bankruptcy Procedure 7055, in the presence of James G. Aaron, Esq., Russell Passamano, Esq., appearing; and it further appearing that no named defendant has moved before this Court prior to the date of this Order to vacate the default and/or to contest any allegations made by the Plaintiff; and it further appearing that all defendants who have had default entered against them have been properly served pursuant to Rule 7004(b) of the Federal Rules of Bankruptcy Procedure; and it further appearing that the Court took testimony of Robert

Petrallia and considered the testimony given and the exhibits marked into evidence; and the Court having also considered the prior testimony as to damages as was presented to the Court by Henry Vaccaro, the principal of Plaintiff HVV Corp.; the Court's knowledge of the Chapter 11 HVV Corporation case, the Legal Memorandum submitted by Plaintiff's counsel, and for good and other cause shown;

IT IS on this 7th day of February, 1996

ORDERED and ADJUDGED that Judgment be entered in favor of the Plaintiff HVV Corp., a Chapter 7 Debtor, through its trustee, Russell Passamano, Esq. and against the defendants Jackson Jubilee, Inc., Jermaine Jackson, Randy Jackson, Tito Jackson, Joseph Jackson, Katherine Jackson, Rebbie Jackson, and Marlon Jackson, in the amount of \$1,347,733.40, together with costs of suit; it is further

ORDERED that a copy of this Order be served upon the Defendants by regular and certified mail at their last known address within ten days of the entry of this Judgment; and it is further

ORDERED that this Judgment may be docketed and filed in any district in which the Defendants may reside.

WILLIAM H. GINDIN *WHP*

HON. WILLIAM H. GINDIN, U.S.B.J.

**PLEASE SERVE COPIES OF THIS ORDER
ON ALL OTHER PARTIES TO THIS ACTION.**

TMZ

Exhibit 2

10974-323

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number PETER A. DAVIDSON (State Bar No. 76194) REIN EVANS & SESTANOVICH LLP 1925 Century Park East, Suite 1600 Los Angeles, California 90067 (310) 551-3100 FAX: (310) 551-0238	FOR COURT USE ONLY 01 DEC 10 PM 3:28 DEPT. OF CLERK CENTRAL DISTRICT OF CALIFORNIA BY: <i>[Signature]</i>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: JOSEPH WALTER JACKSON and KATHERINE ESTHER JACKSON, JERMAINE LAJUANE JACKSON, and TARIANO ADARYLL JACKSON, <div style="text-align: right;">Debtor(s).</div>	CASE NO.: SV 99-12461-KL JOINTLY ADMINISTERED [SV 99-12461-KL] [SV 99-11523-KL] [SV 99-12380-KL]

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: JANUARY 3, 2002	Time: 2:00 P.M.
Location: CTRM: 301, U.S. Bankruptcy Court, 21041 Burbank Blvd., Woodland Hills, CA	

Type of Sale: Public: Private: Last date to file objections: 12/20/01

Description of Property to be Sold: All of the Estates' right, title and interest in personal property stored at 534 Montgomery Ave., Oxnard, CA 93030 and Worldwide Moving & Storage, 1131 Industrial Ave., Oxnard, CA 93030.

Terms and Conditions of Sale: Sale is "as is", "where is" with no representations or warranties being made by the Trustee. The sale is subject to all liens. There is a purported warehouse's lien on the items at Worldwide Moving & Storage of approximately \$55,000.00.

Proposed Sale Price: \$25,000.00

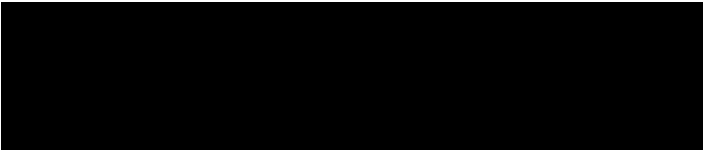
Overbid Procedure (If Any): Minimum bid is \$30,000. In order to qualify to bid, overbidders must deliver a cashier's check for \$5,000.00 to the Trustee or his counsel prior to the sale.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

PETER A. DAVIDSON

REIN EVANS & SESTANOVICH LLP



Date: December 10, 2001

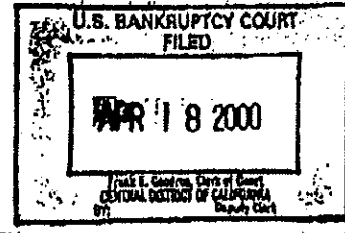
Exhibit 2 Page 4

[Handwritten signature]

PAB

16974-323
1 PETER A. DAVIDSON, (State Bar No.: 76194)
DRESSLER REIN EVANS & SESTANOVICH, LLP
2 1925 Century Park East, 16th Floor
Los Angeles, CA. 90067
3 (310) 551-3100
4 (310) 551-0238 fax

ORIGINAL



5 Attorneys for Byron Z. Moldo, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION

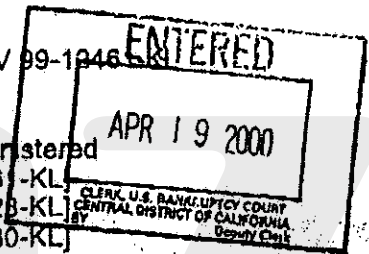
FILED

FILED
APR 18 2000
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
San Fernando Valley

In re: BY:)
10 JOSEPH WALTER JACKSON AND)
11 KATHERINE ESTHER JACKSON,)
12 JERMAINE LAJUANE JACKSON, and)
13 TARIANO ADARYLL JACKSON,)
14 Debtors.)

Case No. SV 99-1246-5)
Chapter 7)

Jointly Administered)
[SV 99-1246]-KL)
[SV 99-1152B-KL])
[SV 99-12380-KL])



ORDER GRANTING MOTION OF CHAPTER)
7 TRUSTEE FOR AUTHORITY TO SELL, BY)
PUBLIC AUCTION, PERSONAL PROPERTY)
SUBJECT TO BONA FIDE DISPUTE FREE)
AND CLEAR OF INTERESTS)

Date: April 4, 2000)
Time: 10:00 a.m.)
Crm: 301)

19 The motion of Byron Z. Moldo, Chapter 7 Trustee, for an order authorizing the
20 Trustee to sell, by public auction, all of the personal property currently stored in the
21 storage facility leased by Debtor, Tariano Adaryll Jackson, located at 534
22 Montgomery Avenue, Oxnard, California 93030 ("Montgomery Facility") and the
23 personal property previously stored at the Montgomery Facility which was moved by
24 the United States Marshall and placed into storage at World Wide Moving and
25 Storage, 1131 Industrial Avenue, Oxnard, California 93030 ("World Wide Facility"),
26 came on for hearing, having been duly noticed, on April 4, 2000, at 10:00 a.m., in
27 Courtroom 303 of the above-entitled Court.

EXHIBIT 2010

1 The Court having reviewed the Trustee's motion, the memorandum of points
2 and authorities in support thereof, the declaration of the Chapter 7 Trustee, having
3 read and considered the opposition filed to the motion, and the Trustee's reply, and
4 having heard argument of counsel thereon, and good cause appearing therefore,

5 IT IS ORDERED:

6 1. Trustee's motion is granted.

7 2. The Trustee is authorized to sell, by public auction, the personal property
8 currently stored in the Montgomery Facility and the World Wide Facility, free and
9 clear of interests, with the interests to attach to the net proceeds from the sale.

10 3. No sale shall take place until after this Court approves the employment
11 of a specific sales agent or auctioneer to conduct the sale.

12 4. Parties objecting to the Trustee's proposed sale retain their rights to
13 challenge the estate's ownership of any particular item of personal property the
14 Trustee proposes to sell. However, the Trustee has established that there is a
15 presumption that the estate owns the personal property and, as a result, any third
16 party challenging the estate's ownership shall have the burden of proof to establish
17 that that person or entity, and not the estate, is the owner of the property.

18 5. Should some third party establish their ownership of any particular item
19 of personal property, that person or entity shall be responsible for the cost of storing
20 the personal property in such a manner or amount as the Court determines.

21
22 DATED: April 18, 2000


Kathleen T. Lax
UNITED STATES BANKRUPTCY JUDGE

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25 0041

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28 Exhibit 2 Page 6

BILL OF SALE

Whereas, El-Rich Corp (“Seller”) purchased all of the right, title and interest in certain personal property from a bankruptcy trustee (Bryon Z. Moldo) in a consolidated bankruptcy cases captioned Joseph Walter Jackson and Katherine Esther Jackson, Jermaine Lujuane Jackson and Tariano Adayll Jackson, Case Numbers SV 99-12461-KL, SV 99-11523, SV 99-12380/KL, pending in the United States Bankruptcy Court for the District of California and

Whereas, this personal property (“Property”) was maintained and stored in two (2) warehouses located in California and this personal property has also been become generally known as “Jackson Family Memorabilia” and

Whereas, Seller purchased all of the trustee’s right, title and interest in the Property from the aforesaid trustee and which purchase was approved by the aforesaid Bankruptcy Court and

Whereas, Seller desires to sell the Property to Vintage Pop, Inc. (“Buyer”) and Buyer desires to purchase all of Seller’s right, title and interest in Property on the following terms and conditions:

1. Buyer agrees to pay Seller the sum of \$75,000 for the Seller’s right, title and interest in the Property.
2. The purchase price of \$75,000 shall be paid as follows: \$75,000 upon the delivery of this Bill of Sale.
3. Seller hereby sells and transfers to Buyer all of Seller’s right, title and interest to the Property.

The undersigned hereby agree to the terms and conditions of the sale and have on this 29th day of July 2002 affixed to their seals and signatures.

El-Rich Corp

By Elmer Kendrick
Elmer Kendrick, Pres

Witness Ronald Bennett

Vintage Pop, Inc.

By Mark A. Zahary

Witness Ronald Bennett

TMZ

Exhibit 3

16974-323
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4 Los Angeles, CA 90067
5 Tel: (310) 551-3100
6 Fax: (310) 551-0238

FILED
JAN 18 2002
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
By

ENTERED
JAN 18 2002
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

Attorneys for Byron Z. Moldo, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION

<p>11 In re:</p> <p>12 JOSEPH WALTER JACKSON AND</p> <p>13 KATHERINE ESTHER JACKSON,</p> <p>14 JERMAINE LAJUANE JACKSON, and</p> <p>15 TARIANO ADARYLL JACKSON,</p> <p>16 Debtors.</p>	<p>) Case No. SV 99-12461-KL</p> <p>) Chapter 7</p> <p>) Jointly Administered</p> <p>) [SV 99-12461-KL]</p> <p>) [SV 99-11523-KL]</p> <p>) [SV 99-12380-KL]</p> <p>) ORDER APPROVING SALE OF</p> <p>) ESTATES' RIGHT, TITLE AND</p> <p>) INTEREST IN STORED PERSONAL</p> <p>) PROPERTY</p> <p>) Date: January 10, 2002</p> <p>) Time: 2:00 p.m.</p> <p>) Cum: 301</p>
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21 The motion of Byron Z. Moldo, Chapter 7 Trustee for Joseph Walter Jackson and
22 Katherine Esther Jackson; Jermaine LuJuane Jackson and Tariano Adaryll Jackson for an order
23 approving the Trustee's sale of the Estates' right, title and interest in the personal property
24 stored at 534 Montgomery Avenue, Oxnard, California 98030 ("Montgomery Facility") and
25 the personal property stored at Worldwide Moving and Storage, 1131 Industrial Avenue,
26 Oxnard, California 93030 (the "Worldwide Facility") (hereinafter the stored items which are
27 the subject of this motion will be referred to as the "Property") came on for hearing, having

1 been duly noticed, on January 10, 2002 at 2:00 p.m. in Courtroom 301 of the above entitled
2 Court.

3 The Court having reviewed the Trustee's Notice of Motion and Motion, the
4 Memorandum of Points and Authorities thereto, the Trustee's Declaration, the Offer to
5 Purchase Personal Property which forms the basis of the Trustee's motion; the Oppositions
6 filed to the Trustee's motion; the Trustee's Reply thereto; having heard argument of counsel
7 thereon, and good cause appearing therefore, the Court finds:

8 (a) The Court has jurisdiction over the motion pursuant to 28 U.S.C. §157 and
9 1334, and this matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

10 (b) The statutory predicate for the relief sought by the Trustee in his motion are
11 §§105(a), 363(b) and 363(m).

12 (c) The Trustee has demonstrated good, sufficient and sound business purpose and
13 justification, and compelling circumstances, for the Trustee's motion and the proposed sale of
14 the Estates' right, title and interest in the Property to the proposed buyer.

15 (d) The terms and conditions of the proposed sale are fair and reasonable.

16 (e) The buyer is a good faith buyer under 11 U.S.C. §363(m) and, as such, is
17 entitled to all the protections afforded thereby. The Trustee and the buyer are acting at arms
18 length and in good faith within the meaning of 11 U.S.C. §363(m).

19 (f) As evidenced by the affidavits of service, proper, timely and adequate and
20 sufficient notice of motion has been given.

21 (g) The granting of the Trustee's motion at this time is in the best interests of the
22 Estates and their creditors.

23 It is therefore ORDERED:

- 24 1. The Trustee's motion is granted. *and only the Estates'*
25 2. The Trustee's sale of the Estates' right, title and interest in the Property to El-
26 Rich, Corp. for \$25,000.00 is approved.
27 3. The sale of the Estates' right, title and interest in the personal property to
28

1 El-Rich, Corp. is on an "as is, where is" basis, with no representations or warranties being
2 made by the Trustee.

3 4. The Trustee authorized to execute such documents and take such other action
4 as he deems appropriate to close and conclude the sale of the Property to the buyer.

5
6 DATED: 1/18, 2002

KATHLEEN T. LAX
KATHLEEN T. LAX,
United States Bankruptcy Judge

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TMZ

Exhibit 4