

1 **KINSELLA WEITZMAN ISER KUMP**  
2 **& ALDISERT LLP**  
3 HOWARD WEITZMAN (SBN 38723)  
4 hweitzman@kwikalaw.com  
5 808 Wilshire Boulevard, 3rd Floor  
6 Santa Monica, California 90401  
7 Telephone: 310.566.9800  
8 Facsimile: 310.566.9850

6 **KATTEN MUCHIN ROSENMAN LLP**  
7 ZIA F. MODABBER (SBN 137388)  
8 zia.modabber@kattenlaw.com  
9 2029 Century Park East, Suite 2600  
10 Los Angeles, CA 90067-3012  
11 Telephone: 310.788.4400  
12 Facsimile: 310.788.4471

10 **HOFFMAN, SABBAN & WATENMAKER, APC**  
11 JERYLL S. COHEN (SBN 125392)  
12 jcohen@hswlaw.com  
13 10880 Wilshire Boulevard, Suite 2200  
14 Los Angeles, California 90024  
15 Telephone No.: (310) 470-6010  
16 Facsimile No.: (310) 470-6735

14 Attorneys for John Branca and John McClain,  
15 Co-Executors of the Estate of Michael J. Jackson

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

18 In re the Matter of the Estate of  
19 **MICHAEL JOSEPH JACKSON,**  
20 Deceased.

21 **JOHN BRANCA AND JOHN MCCLAIN,**  
22 Co-Executors of the Estate of Michael Joseph  
23 Jackson,

24 Petitioners,

25 v.

26 **TOHME R. TOHME and DOES 1 through 10**  
27 inclusive,

28 Respondents.

**CONFIRMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

**FEB 17 2012**

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

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

1 Petitioners Executors John Branca and John McClain, Executors under the Will of Michael  
2 Joseph Jackson (collectively “Executors” or “Petitioners”), allege on information and belief in this  
3 Petition against respondent Tohme R. Tohme (“Respondent” or “Tohme”) as follows:

#### 4 INTRODUCTION

5 1. After being hired by Michael Jackson (“Jackson”) as his Personal Manager in early  
6 2008, Respondent Tohme took control of virtually all of Jackson’s personal and professional affairs,  
7 then did as he pleased. With no oversight or supervision, Tohme quickly set about to and did install a  
8 far-reaching and very lucrative financial package for himself obtained as a result of a manifest breach  
9 of his fiduciary duties. The package consisted of a series of agreements that were obtained without  
10 any arms length negotiations, and without Jackson having independent legal counsel or giving  
11 informed consent, and not surprisingly called for substantial and unfair financial compensation to  
12 Tohme. Left unchecked until he was terminated in or about March 2009 (but no later than April 14,  
13 2009), Tohme used his powers as Jackson’s fiduciary and agent to take possession of both money and  
14 valuable personal property belonging to Jackson that he never returned to Jackson or the Executors,  
15 or properly accounted for. By this Petition, the Executors seek to undo the harm suffered by Jackson  
16 as a result of Tohme’s breaches of fiduciary duty, obtain an accounting of all money, property and  
17 material entrusted to or taken by Tohme during his tenure and recover all money, property and other  
18 material belonging to the Estate.

19 2. In particular, the Executors seek a judicial declaration that Tohme is not entitled to  
20 commission any monies “received by” Jackson after Jackson terminated Tohme (and certainly not on  
21 monies received after Michael Jackson’s death); a judicial declaration that Tohme’s “Services  
22 Agreement” is void and that Tohme is not entitled to any additional money under the Services  
23 Agreement; a judicial declaration that Tohme’s “finder’s fee” agreement relating to the refinancing of  
24 Neverland Valley Ranch is void and that Tohme is not entitled to any further compensation from the  
25 Estate under the “finder’s fee” agreement; an order requiring Tohme to immediately fully account for  
26 and return to the Executors all money and property entrusted to or taken by him at any time ; for  
27 double damages under Probate Code Section 859 and for an order imposing a constructive trust on all

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.

1 **JURISDICTION AND VENUE**

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

4 **COMMON ALLEGATIONS**

5 **TOHME BECOMES JACKSON'S MANAGER AND TAKES CONTROL**

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

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

23 **TOHME'S COLONY FINDER'S FEE AGREEMENT**

24 10. In or about early 2008, Jackson began attempts to refinance a loan secured by his real  
25 property located in Santa Ynez, California, commonly known as "Neverland Valley Ranch" (the  
26 "Ranch"). While acting as Jackson's personal manager and fiduciary, Respondent entered into an  
27 agreement with Jackson dated May 2, 2008, pursuant to which Respondent would earn a "finder's  
28

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

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  
28

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 mangers 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  
28

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 Thome 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



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.

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.

1 **THIRD CAUSE OF ACTION**

2 **(Wrongful Taking)**

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

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

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

14 **FOURTH CAUSE OF ACTION**

15 **(Breach of Fiduciary Duty)**

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

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

22 43. Executors are informed and believe that Respondent took advantage of the complete  
23 trust and confidence Jackson placed in him and breached his fiduciary duty to Jackson by, among  
24 other things: (a) inducing Jackson to sign the Finder’s Agreement, Services Agreement, Ranch  
25 Agreement, Powers of Attorney, Indemnity Agreement and the AEG Agreement, all of which gave  
26 Respondent substantial benefit at Jackson’s expense in amounts that exceed those customary in the  
27 industry; (b) failing to provide timely and independent legal counsel to Jackson in connection with  
28

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  
 28

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.

1 **EIGHTH CAUSE OF ACTION**

2 **(For Declaratory Relief)**

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

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

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Executors pray for relief as follows:

17 **ON THE FIRST CAUSE OF ACTION**

18 (Accounting)

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

22 **ON THE SECOND CAUSE OF ACTION**

23 (Recovery of Property)

24 For an order directing Tohme to transfer, convey and deliver to the Executors all monies and  
25 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.

1 **ON THE SEVENTH CAUSE OF ACTION**

2 (Declaratory Relief)

3 For a judicial declaration that:

4 (a) Respondent is not entitled to commission any monies "received by" Jackson after  
5 Tohme was terminated (and certainly not on monies received after Jackson's death);

6 (b) Respondent's "Services Agreement" is void or otherwise entitles him to no additional  
7 money; and

8 (c) The Finder's Agreement entitles him to no further compensation and is void.  
9

10 **ON ALL CAUSES OF ACTION**

11 1. For damages;

12 2. For interest on all amounts at the maximum legal rate;

13 3. For an order imposing a constructive trust on all property wrongfully taken,  
14 concealed or disposed of by Tohme and all property traceable to property wrongfully taken,  
15 concealed or disposed of by Tohme;

16 4. For attorneys' fees and costs of suit incurred herein; and

17 5. For such other and further relief as the Court may deem just and proper.

18 Respectfully submitted,

19 Dated: February 16 2012

20 KINSELLA/WEITZMAN ISER KUMP  
& ALDISERT LLP

21  
22 By: \_\_\_\_\_


23 Howard Weitzman  
24 Attorneys for John Branca and John McClain,  
25 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**