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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 **F. MARC SCHAFFEL, et al.,**

14 Plaintiffs,

15 vs.

16 **MICHAEL JACKSON, et al.**

17 Defendants.

18
19

AND RELATED CROSS-ACTION

) CASE NO. SC083501

) **TRIAL BRIEF OF DEFENDANTS AND**
) **CROSS-COMPLAINANTS MICHAEL**
) **JACKSON, MJJ PRODUCTIONS, INC.**
) **AND FIRE MOUNTAIN SERVICES, LLC**

) Trial Date: June 19, 2006
) Time: 8:30 a.m.
) Dept: I

) Final Status Conference: June 2, 2006

20 Defendants Michael Jackson, MJJ Productions, Inc., and Fire Mountain Services, LLC
21 respectfully submit the following trial brief.
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I

INTRODUCTION

This case is deceptively simple. Stripped to its essentials, it is an accounting case, albeit one with an overlay of fraud, deception, and self-dealing on the part of plaintiff Marc Schaffel.

To say that Schaffel is an unsavory character would be an understatement. He is a professional swindler and pornographer with a long history of dishonest, immoral and manipulative behavior.

Schaffel maneuvered internationally famous entertainer Michael Jackson into a series of business arrangements starting in 2001. Schaffel is now claiming that Mr. Jackson owes him money from those arrangements; Mr. Jackson claims that Schaffel, who controlled the bank accounts into which millions of dollars of Mr. Jackson's money was placed, owes him money.

II

THE NATURE OF THE PARTIES' RELATIONSHIP

Things began in 2000-2001, when Schaffel convinced Mr. Jackson that Schaffel was the right person to help Mr. Jackson produce and release a charity single called "What More Can I Give," from a song written and copyrighted in 1998 by Mr. Jackson. Mr. Schaffel created a limited liability company called "F. Marc Schaffel Productions, LLC," which began doing business as "Neverland Valley Entertainment" in connection with the charity single and other Michael Jackson projects. Schaffel was the sole member and manager of F. Marc Schaffel Productions, LLC/Neverland Valley Entertainment. For convenience, that LLC and its dba will simply be referred to hereafter as "NVE." Mr. Schaffel and NVE are the plaintiffs in this case.

The circumstances surrounding the initial financing of NVE are telling. Schaffel arranged for the trusting Mr. Jackson to borrow \$2,000,000 from a factoring company at a high rate of interest – 48 percent per annum. Schaffel received a commission from the lender, and put the \$2,000,000 into a bank account for NVE. Schaffel arranged things so both he and Mr. Jackson would be signatories on the account. Mr. Jackson, however, never wrote a single check. Schaffel controlled everything. Schaffel also opened two more accounts for NVE without Mr. Jackson's signature.

1 Over the next three years, Mr. Jackson and/or one or another of his companies, including
2 MJJ Productions, Inc. and Fire Mountain Services, Inc., deposited an additional \$4.4M into one
3 or another of the NVE accounts, trusting Schaffel to apply those monies to Mr. Jackson's
4 projects and/or needs. During that time, Schaffel also deposited in excess of \$1,000,000 (all of
5 which had been earned by him as fees or commissions on projects undertaken with Mr. Jackson)
6 into those accounts. Mr. Jackson, MJJ Productions, and Fire Mountain are the defendants in this
7 case.

8 III

9 SCHAFFEL'S CLAIM FOR UNPAID COMMISSIONS

10 In 2003, after Martin Bashir's smear video against Mr. Jackson aired, Jackson aides hired
11 Mr. Schaffel to produce two rebuttal documentary specials "Take 2: The Interview They
12 Wouldn't Show You" and "Michael Jackson: Private Home Movies." These were shown
13 domestically on the Fox network as well as internationally. Defendants received a total of
14 \$10,035,252 in gross domestic and foreign proceeds from these documentaries.

15 Mr. Schaffel was generously offered 20 percent of this amount for producing the
16 documentaries (i.e., roughly \$2M) and was paid ultimately \$1,525,000, leaving a shortfall of
17 about \$482,000. This claim is the subject of the First Cause of Action in Schaffel's first
18 amended complaint, although Schaffel contends that the amount he is owed is much higher,
19 about \$925,000.

20 The figure of \$482,000 is correct. Expert testimony will establish that Schaffel's
21 \$925,000 figure is unsustainable (and inconsistent with Schaffel's original, and equally
22 unsustainable, figure of \$800,000). In addition, Schaffel pleaded in his original complaint that
23 (1) he and defendants had reached an accord and satisfaction in 2003 with respect to this claim;
24 (2) that defendants had partially performed; and (3) that \$500,000 was left owing. See
25 Complaint, Para. 19 (alleging that Schaffel agreed with defendants to accept \$1,500,000 "in full
26 satisfaction of the remaining fees owing," that defendants paid him \$1,000,000, and that they
27 failed to pay the final \$500,000. That judicial admission (dropped from Schaffel's first amended
28 complaint without explanation) is binding on Schaffel. See R. Weil & I. Brown, *California*

1 *Practice Guide, Civil Procedure Before Trial* § 6:708 (TRG 2005) (allegations in original
2 pleading that render the cause of action vulnerable cannot simply be omitted without explanation
3 from an amended pleading): “The policy against sham pleadings requires the pleader to explain
4 satisfactorily any such omission. Otherwise, the original defect ‘infects’ the subsequent
5 pleading as well. I.e., the self-destructive allegations of the original pleading will be ‘read into’
6 the amended pleading”

7 Schaffel has never sued to rescind the accord and satisfaction pleaded in his original
8 complaint. He cannot do so now. First of all, the parties are too close to trial. Second, any such
9 claim would be barred by the statute of limitations. The amount owed to Schaffel for producing
10 the Fox documentaries is therefore either the \$482,000 which defendants’ accounting analysis
11 supports or, at most \$500,000, the sum Schaffel pleaded was still owed him pursuant to the
12 unrescinded accord and satisfaction Schaffel pleaded in his original complaint.

13 IV

14 **SCHAFFEL’S CLAIM FOR UNREIMBURSED LOANS AND EXPENSES**

15 Schaffel’s main claim is for the unpaid fees for the Fox documentaries. Having decided
16 to sue for those monies, however, Schaffel decided to “up the ante” by “piling on” a spurious
17 claim that Mr. Jackson somehow owed him money for supposed loans or advances from the
18 NVE accounts and/or for Jackson-related expenses incurred through NVE.

19 This additional claim is expressed in Schaffel’s Second Cause of Action for breach of a
20 series of individual oral contracts, one for each disbursement or “loan”; Schaffel’s Third Cause
21 of Action for money lent or paid; Schaffel’s Fourth Cause of Action for an account stated; and
22 Schaffel’s Fifth Cause of Action for unjust enrichment.

23 All four of these causes of action are based on allegations that (1) Schaffel and NVE, on
24 numerous occasions, “loaned [money] directly to Jackson or made payments on behalf of
25 Jackson”; (2) “in each instance, prior to making the loan or paying the expense on behalf of
26 defendants, plaintiffs and defendants entered into an oral agreement that defendants would repay
27 the loans or reimburse plaintiffs for the expenses incurred on defendants’ behalf”; and (3)
28 defendants failed to pay. See First Amended Complaint, Paras. 31, 34.

1 for unpaid fees for the Fox documentaries and (2) a claim for unrepaid loans and unreimbursed
2 business expenses in connection with a variety of projects, including the "What More Can I
3 Give" charity single. Although expressed in five causes of action, these are the only claims
4 Schaffel has made.

5 As noted above, the evidence at trial will show that Schaffel is owed nothing for the
6 claimed "loans" and the supposedly unreimbursed "expenses." The evidence at trial will also
7 show that Schaffel is owed at most \$500,000 for the Fox documentaries.

8 VII

9 SCHAFFEL MAY TRY TO ADD ADDITIONAL CLAIMS

10 BUT SHOULD NOT BE PERMITTED TO DO SO

11 AT THIS LATE STAGE OF THE CASE

12 Schaffel has no other claims. Not only do both the original complaint and the first
13 amended complaint expressly state only a claim for expense and loan reimbursements and a
14 claim for unpaid Fox documentary fees, but Schaffel swore under oath that these were his sole
15 claims when he gave a deposition in February of this year. See Exhibit A hereto (excerpt from
16 the deposition of F. Marc Schaffel taken February 10, 2006 at Page 114, Lines 8-15) (testifying
17 that "all the monies" he was "claiming in this lawsuit" derived from (1) the failure of Mr.
18 Jackson to reimburse him for expenses and (2) "the monies owed on the Fox TV shows").

19 Defendants are belaboring this point because, despite his sworn deposition testimony and
20 the clear language of both of his complaints in this action, there are indications that Schaffel
21 may attempt to "pile on" yet another unmeritorious claim in an effort to increase the value of his
22 lawsuit.

23 In discovery, Schaffel produced a photocopy of one page of what he said was a two page
24 contract. A copy is attached to this brief as Exhibit B. Schaffel claimed that this document was
25 agreed to by him and Mr. Jackson. He said he did not have the second page but claimed that it
26 only contained signatures. He did not say whose signatures or in what capacity.

27 Defendants believe Schaffel is going to try to use this document to claim that Mr.
28 Jackson owes him additional money in unpaid salary for serving as President of Schaffel's own

1 company, NVE. The court will note that in Paragraph 1 of this document, it states that: “For the
2 services of President of Neverland Valley Entertainment, F. Marc Schaffel shall receive a salary
3 of \$375,000 per year. This shall be guaranteed for a period of at least three years.” Schaffel
4 testified at his deposition that he only took \$75,000 in salary from NVE during 2001 and nothing
5 in 2002 or 2003. Defendants anticipate that Schaffel will seek to introduce this photocopy of an
6 alleged part of an alleged agreement at trial in support of a claim against Mr. Jackson for the
7 allegedly remaining unpaid salary. [See Exhibit C – Schaffel’s response to Mr. Jackson’s
8 supplemental interrogatory served May 1, 2006, listing as additional damages \$1,125,000 for
9 unpaid salary through April 2004 and \$375,000 per year thereafter (for a total of more than
10 \$1,875,000), despite no such claim having ever been pleaded.]

11 There are several reasons why this latest anticipated “pile on” attempt must be rejected.

12 First, Schaffel has never pleaded a cause of action for breach of this so-called agreement
13 or for unpaid “salary.”

14 Second, Schaffel has already amended his complaint once. In doing so, he did not add a
15 claim for breach of this so-called agreement or for unpaid “salary.”

16 Third, Schaffel testified under oath at his deposition only two months ago that he was
17 suing only for reimbursement for expenses and unpaid Fox documentary fees; nothing else.
18 Such testimony trumps the interrogatory responses prepared by his lawyers.

19 Fourth, the document in question upon which Schaffel would base any such claim is
20 entitled “Work Agreement with Neverland Valley Entertainment.” That is, it is Schaffel’s
21 “work agreement” with his own single-member limited liability company, NVE. It does not
22 even purport to be an employment agreement with Mr. Jackson or any of Mr. Jackson’s entities.

23 Fifth, the document does not say that Mr. Jackson or the other defendants will pay
24 Schaffel’s “salary.” To the contrary, the document itself makes clear that if there is any person
25 or entity obligated to pay Schaffel’s \$375,000 per year salary it is NVE. Not only is that the
26 way these things always happen – companies pay the salaries of their officers and employees –
27 but throughout the document it is made clear that the company is the obligor with respect to
28 President Schaffel. See, e.g., Paragraph 2 (“Mr Schaffel shall receive a Company vehicle. . . .

1 The Company shall pay all the expenses related to this vehicle”); Paragraph 3 (Mr. Schaffel shall
2 receive full health benefits which the Company shall pay for”); Paragraph 4 (Mr. Schaffel shall
3 receive a cellular telephone, or continue to use a cellular telephone he current [sic] has and the
4 Company shall pay the bill”); and so on.

5 There is only one reference in Exhibit B to Mr. Jackson paying anything, and that
6 appears in Paragraph 7, where (after stating that the Company will cover Mr. Schaffel’s
7 business-related travel expenses) the document states: “Any monies outlaid on behalf of Mr.
8 Schaffel personally for the company for any purpose shall be paid back to Mr. Schaffel from the
9 Company, or by Michael Jackson.” That is, Mr. Jackson was supposedly guaranteeing
10 reimbursement of Schaffel’s out-of-pocket business expenses if NVE failed to do so. That is all
11 there is. Nowhere in this document is there anything about Mr. Jackson or his co-defendants
12 paying Schaffel’s salary from NVE or guaranteeing that salary if NVE did not pay it.

13 Sixth, any such promise or guarantee would in any event be twice barred by the statute of
14 frauds, which requires that (1) a promise to pay the debt of another and (2) contracts of more
15 than one year in duration must be in writing and signed by the party to be charged. Civil Code §
16 1624. Schaffel is unable to produce a signed version of Exhibit A (or even a complete copy,
17 including the signature page).

18 Seventh, Exhibit B violates what used to be called the “best evidence rule.” It is an
19 incomplete, unsigned photocopy. Schaffel was in possession of the original and has failed to
20 produce it, claiming he cannot find it. Mr. Jackson has testified that he has no recollection of
21 ever signing Exhibit B, although the scribble on the side was his initial, and that he could not
22 recall ever agreeing that Mr. Schaffel would be paid a salary of \$375,000 per year. See
23 Deposition of Michael Jackson taken September 23, 2005 at Page 105, Line 12 Page 106, Line
24 13 [Exhibit D hereto].

25 Of course, there is no way to know, given that Schaffel is proffering a photocopy,
26 whether the scribbled initial appears on the original or was “cut and pasted” from another
27 document onto Exhibit B using a photocopier. Under the circumstances, a genuine dispute
28 exists as to the authenticity of Exhibit B.

1 validity of the termination of their business relationship with Schaffel because Schaffel's
2 complaint did not contain a cause of action for breach of Exhibit B. Given the serious questions
3 as to Exhibit B's authenticity and the large amount of money Schaffel has recently said he is
4 owed for breach of it, defendants would need an opportunity to (1) re-depose Schaffel; (2) serve
5 interrogatories seeking the identities of additional witnesses on the issue of when and how Mr.
6 Jackson learned of Schaffel's gay porn career; (3) depose those people; (4) seek additional
7 documents from Schaffel; and (5) subpoena the records of the Santa Barbara County Sheriff
8 regarding items seized from Schaffel's home pursuant to a search warrant in connection with the
9 criminal prosecution of Mr. Jackson. In addition, since Exhibit B was undoubtedly created on a
10 computer, defendants would need to conduct a forensic review of Schaffel's computers, which
11 would reveal the time and date the document was created, what its actual content was, and what
12 revisions were made to it and when, in order to establish that it is a phony, after the fact
13 fabrication created by Schaffel in an effort to enhance his claims. Without affording defendants
14 such an opportunity, allowing Schaffel to amend his complaint now would be a gross abuse of
15 discretion. See *Magpali v. Farmers Group, Inc.*, 48 Cal. App. 4th 471, 488 (1996) (leave to
16 amend complaint on the eve of trial properly denied where amendment would have necessitated
17 continuance and additional discovery).

18 IX

19 MR. JACKSON'S CROSS-COMPLAINT AGAINST SCHAFFEL

20 Defendants have cross-complained against Schaffel for an accounting, for breach of
21 fiduciary duty, fraud, conversion, and an accounting.

22 At trial, Mr. Jackson will prove that Schaffel abused the trust that had been placed in him
23 by Mr. Jackson, by misappropriating expensive artwork belonging to Mr. Jackson, utilizing
24 funds entrusted to him by Mr. Jackson to benefit himself, while providing false books of
25 account, and self-dealing with respect to Mr. Jackson's charity single, "What More Can I Give."

26 Only the latter disgraceful incident will be discussed here in any detail, as Mr. Jackson's
27 recovery on that one claim alone will more than offset the \$482,000 balance owed to Schaffel on
28 the Fox documentaries.

THE WHAT MORE CAN I GIVE FIASCO

1
2
3 We alluded earlier to the song "What More Can I Give," which Mr. Jackson wrote and
4 copyrighted in 1998. Schaffel undertook to produce a charity single of that recording for Mr.
5 Jackson. Indeed, a large portion of the expenses incurred through NVE (roughly \$2.8M) were
6 attributable to efforts to get that single produced and released.

7 On August 13, 2001, Schaffel and Mr. Jackson signed a contract regarding the What
8 More Can I Give deal. The testimony is in dispute as to whether Schaffel, who was by then
9 acting as Mr. Jackson's agent, misled Mr. Jackson as to the contents of the contract before Mr.
10 Jackson signed it.

11 A copy of the August 13, 2001 agreement is attached hereto as Exhibit E. As the court
12 can see, Paragraph 4 of the contract purported to grant Schaffel certain rights to exploit the
13 master recording, while Paragraph 3 required Schaffel to pay all of the costs of the production of
14 the master.

15 It is undisputed that Schaffel did not personally pay all of the \$2.8M costs of the
16 production. Those costs were paid out of the NVE accounts with money that came from Mr.
17 Jackson. If Schaffel succeeds in convincing the jury that Exhibit E is valid and that he
18 (Schaffel) held any rights under Paragraph 4, he is going to have to reimburse Mr. Jackson
19 \$2.8M pursuant to Paragraph 3. That will wipe out Mr. Schaffel's \$482,000 claim for unpaid
20 fees on the Fox documentaries, resulting in a net \$2.3M judgment in Mr. Jackson's favor. If, on
21 the other hand, Schaffel does not convince the jury that Paragraph 4 gave him the rights he
22 claims, he is going to have to account to Mr. Jackson for all monies Schaffel received by
23 exploiting those claimed rights.

24 It is undisputed that the single was never released but that Schaffel secretly entered into a
25 deal with a Japanese group called "Music Fighters" to sell his purported rights under Paragraph
26 4 of the August 13, 2001 contract for a large sum of money.

27 Mr. Jackson will show at trial that Schaffel received several hundred thousand dollars
28 from Music Fighters while bound by fiduciary obligations to Mr. Jackson. Schaffel did not

1 account to Mr. Jackson for any of this money. Some, if not all, of those funds were used by
2 Schaffel as part payment on an expensive home in Calabasas.

3 Mr. Jackson is entitled to those monies or, in the alternative, to impress a constructive
4 trust on the real property purchased by Schaffel with those monies. The amount in question
5 exceeds Schaffel's claim for unpaid fees on the Fox documentaries, and standing alone
6 guarantees an overall verdict in favor of defendants/cross-complainants.

7 Finally, Mr. Jackson's cross-complaint seeks an accounting, which is undoubtedly an
8 appropriate vehicle for sorting out the competing claims of the parties. Pursuant to the "equity
9 first" rule, the court may wish to consider whether the matter ought to be referred to a referee for
10 an accounting before trying the parties' "legal claims" to a jury, since the accounting might well
11 resolve most of the major issues in the case. *Connell v. Bowes*, 19 Cal. 2d 870, 872 (1942).


12 **XI**

13 **CONCLUSION**

14 This trial brief does not discuss all of defendants and cross-complainants' contentions.
15 Only some of the most salient issues have been discussed. As the court can see, however,
16 defendants and cross-complainants anticipate an overall judgment in their favor.

17 Dated: May 26, 2006

18 Thomas C. Mundell
19 John L. Wollman
20 Mundell, Odlum & Haws, LLP

21 By: 

22 Thomas C. Mundell
23 Attorneys for defendants and Cross-
24 complainants Michael Jackson, MJJ
25 Productions, Inc. and Fire Mountain
26 Services, LLC

1 to paragraph seven?

2 A. Yes.

3 MR. MUNDELL: Okay.

4 MR. KING: Let's take a break.

5
6 (Recess.)

7
8 Q. BY MR. MUNDELL: Back on the record. All
9 right.

10 Roughly, how much of what you are claiming in
11 this lawsuit derives from the failure of the company and
12 Mr. Jackson to reimburse me for expenses pursuant to
13 paragraph seven of Exhibit Three?

14 A. All the monies except the monies owed on the
15 FOX TV shows for Royalty.

16 Q. Okay. Now paragraph seven, also, refers to
17 Michael Jackson's quote "Special secret project" closed
18 quote.

19 Did you -- and it says you are going to set up
20 a Trust for that, did you do so?

21 A. I believe the paperwork was done for that, yes.

22 Q. Okay. But beyond the paperwork, do you know if
23 anything else was done to establish the Trust for the
24 secret project?

25 A. No.

Work Agreement with Neverland Valley Entertainment

June 28, 2001

1. For the services of President of Neverland Valley Entertainment, F. Marc Schaffel shall receive a salary of \$375,000.00 per year. This shall be guaranteed for a period of at least three years. After that period, a new contract shall be negotiated. This shall be retroactive from May 1, 2001.
2. Mr. Schaffel shall receive a company vehicle valued at no more than \$80,000.00. The company shall pay all the expenses related to this vehicle. It is Mr. Schaffel's choice as to whether the vehicle is purchased or leased. If the vehicle is purchased it shall be titled to Mr. Schaffel after the tax benefits from the company are decided.
3. Mr. Schaffel shall receive full health medical benefits which the company shall pay for, or have the option to continue any already existing plan and the company shall reimburse Mr. Schaffel or pay directly for the premiums.
4. Mr. Schaffel shall receive a cellular telephone, or continue to use a cellular telephone he current has and the company shall pay the bill, or reimburse Mr. Schaffel for payments on the bill.
5. Mr. Schaffel shall be supplied a Laptop computer and a PC computer at the companies expense which shall remain his property.
6. Mr. Schaffel shall also receive points on the single "WMCIG", of which 1 point will be assigned to Rudy Provencio per a separate agreement. Mr. Provencio's work agreement shall be drawn up by Mr. Schaffe, and Mr. Schaffel shall be authorized to sign on behalf of the company. Mr. Schaffel shall also receive a separate fee for his services on this project besides the compensation as described in this agreement, the fee is not to be less than \$750,000.00.
7. Mr. Schaffel shall have all travel related to the company business paid for by the company as well as any related expenses such as meals or incidentals. Any monies outlaid on behalf of Mr. Schaffel personally for the company for any purpose shall be paid back to Mr. Schaffel from the company, or by Michael Jackson. At Michael Jackson's request Mr. Schaffel agrees to set up the trust for Michael Jackson's "Special Secret Project".
8. Mr. Schaffel shall be available for Michael Jackson for any assistance in any projects as needed outside of the direct company business.
9. Mr. Schaffel duties shall also include the running of the Studio at Neverland Valley Ranch and the overseeing of the project as well as the additions purposed to the property to suit the Studio as profit generating entity for Neverland Valley Entertainment.
10. Mr. Schaffel shall be authorized to obtain a space for an office for the LA based portion of the business not to exceed \$10,000.00 per month. If not less than a two year lease is available a residential lease may be substituted at the same amount or under. An office shall be provided at the Neverland Valley Ranch, during the time of construction of the studio project until such time as permanent offices for the company can be built in the facility. All related expenses to this office shall be paid by the company as well.
11. Any additional bands the company brings in or signs, shall have a separate management agreement between the individuals, F. Marc Schaffel, Rudy Provencio, and Michael Jackson, with the proceeds from the management agreement being split, Michael Jackson 50%, F. Marc Schaffel, and Rudy Provencio splitting the remaining 50%. All companies' net profits after expenses, from the bands shall go toward Michael Jackson's "Special Secret Project".
12. Mr. Schaffel shall receive an additional bonus of no more than 10% of the profit of the Publishing (Children's books), and related projects as discussed. The remaining 90% of the proceeds from the profits shall go to Michael Jackson's "Special Secret Project".
13. Mr. Schaffel shall be authorized to hire an assistant immediately, and put them through a company payroll. Any additional employees that are needed shall be hired on an "as needed" basis.
14. Mr. Schaffel shall be authorized to sign and negotiate any agreement on behalf of the company and shall have full authorization to make any decision related to the companies business, including all the day to day operations, for all the projects currently being put together as well as any Michael Jackson requests.



ORIGINAL

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES, WEST DISTRICT
12 UNLIMITED CIVIL CASE

13 F. MARC SCHAFFEL, individually and d/b/a
14 NEVERLAND VALLEY ENTERTAINMENT;
15 F. MARC SCHAFFEL PRODUCTIONS, LLC, a
16 California limited liability company,

17 Plaintiffs,

18 vs.

19 MICHAEL JACKSON; MJJ PRODUCTIONS,
20 INC., a California corporation, FIRE
21 MOUNTAIN SERVICES, LLC, a Nevada
22 limited liability company, and DOES 1 through
23 10, inclusive,

24 Defendants.

Case No. SC083501
[Hon. Jacqueline A. Connor, Department "I"]
Complaint filed: November 16, 2004

**PLAINTIFF F. MARC SCHAFFEL'S
RESPONSE TO DEFENDANT MICHAEL
JACKSON'S SUPPLEMENTAL
INTERROGATORY**

25 AND RELATED CROSS ACTION.

26 PROPOUNDING PARTY: Defendant MICHAEL JACKSON

27 RESPONDING PARTY: Plaintiff F. MARC SCHAFFEL d/b/a NEVERLAND
28 VALLEY ENTERTAINMENT

SET NO.: ONE

Plaintiff F. MARC SCHAFFEL, individually and d/b/a NEVERLAND VALLEY

ENTERTAINMENT, hereby responds to the supplemental interrogatory of defendant MICHAEL

3005.060\69516.1

PLAINTIFF F. MARC SCHAFFEL'S RESPONSE TO DEFENDANT MICHAEL JACKSON'S
SUPPLEMENTAL INTERROGATORY

1 ("Defendant"), as follows:

2 **GENERAL OBJECTIONS**

3 1. Responding party objects to the Supplemental Interrogatory to the extent it seeks
4 information that: (a) is not relevant to the claims or defenses of any party or to the subject matter
5 involved in the pending action; or (b) that is neither admissible in evidence itself nor reasonably
6 calculated to lead to the discovery of admissible evidence.

7 2. Responding party objects to the Supplemental Interrogatory to the extent it is
8 overly broad as to time or scope, unduly burdensome, likely to cause substantial and unwarranted
9 expense, or seek to compel responding party to conduct a search beyond the scope of permissible
10 discovery as contemplated by the Code of Civil Procedure or other applicable law.

11 3. Responding party objects to the Supplemental Interrogatory to the extent it seeks
12 information in Defendant's possession, custody, or control or that is equally or more readily
13 available to Defendant, including information that is a matter of public record.

14 4. Responding party objects to the Supplemental Interrogatory to the extent it seeks
15 information protected by the attorney-client privilege, work-product doctrine, Constitutional right
16 to privacy, or other applicable privileges or doctrines. Nothing contained in this response is
17 intended as, nor shall in any way be deemed, a waiver of any applicable privilege or doctrine.

18 5. Responding party objects to the Supplemental Interrogatory to the extent it seeks
19 discovery of confidential or proprietary financial or other business information and/or trade secrets
20 of plaintiffs or third parties.

21 6. In responding to these Supplemental Interrogatory, and in producing documents in
22 response to the Supplemental Interrogatory, responding party does not intend to and are not in any
23 way waiving objections based on:

24 (a) relevance;

25 (b) burden and oppression;

26 (c) ambiguity;

27 (d) attorney-client, work-product, privacy, financial confidentiality, or

28 3005.060\69516.1

2

PLAINTIFF F. MARC SCHAFFEL'S RESPONSE TO DEFENDANT MICHAEL JACKSON'S
SUPPLEMENTAL INTERROGATORY

EXHIBIT C PAGE 18

1 (e) any other applicable privilege or doctrine.

2 7. These responses are based on information and documents currently available to
3 responding parties and of which they are presently aware. Responding party's discovery and
4 investigation are ongoing and may yield additional responsive documents or information.
5 Responding party reserves the right to supplement or modify its responses to these Supplemental
6 Interrogatory.

7 Subject to and without waiving the foregoing general objections, incorporated by reference
8 into each of the responses set forth below, responding party responds to the Supplemental
9 Interrogatory as follows:

10 **RESPONSES TO FORM INTERROGATORIES**

11 **SUPPLEMENTAL INTERROGATORY NO. 1:**

12 Please state in detail, with respect to each form interrogatory and specially prepared
13 interrogatory previously served on you in this action, any and all later-acquired information
14 supplementing, modifying, or otherwise bearing on any previous answers you made in response
15 to those interrogatories.

16 **RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 1:**

17 Responding party incorporates by reference as if set forth in full herein each general and
18 specific objection asserted by responding party in his responses to each form interrogatory and
19 specially prepared interrogatory previously served on responding party in this action. Subject to
20 and without waiver of the foregoing objections, including those previously served, responding
21 party supplements, amends, and/or modifies his prior interrogatory responses, as follows:

22 Plaintiff F. Marc Schaffel's Response to Defendant Fire Mountain Services, LLC's First
23 Set of Form Interrogatories, at response to Form Interrogatory No. 9.1(c), is modified, as follows:

24 **Response to Form Interrogatory 9.1**

25 ...

26 (c) At least \$2,150,789 for the loans and expenses, and at least \$925,000 for the two
27 Fox specials; approximately \$94,246.32 in legal fees and costs; salary under the work agreement

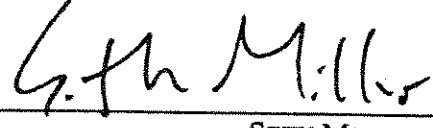
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1 of \$1,125,000 through April 30, 2004, and \$375,000 per year thereafter; interest on the foregoing
2 in the approximate amount of \$1,131,000.

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DATED: May 1, 2006

KING, HOLMES, PATERNO & BERLINER, LLP

By: 

SETH MILLER
Attorneys for Plaintiffs

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, 25th Floor, Los Angeles, California 90067-4506.

On May 1, 2006, I served the following document(s) described as **PLAINTIFF F. MARC SCHAFFEL'S RESPONSE TO DEFENDANT MICHAEL JACKSON'S SUPPLEMENTAL INTERROGATORY** on all interested parties in this action by placing true copies thereof addressed as follows:

See Attached Service List

BY MAIL, to the addressee(s) indicated below, enclosed in sealed envelope(s): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS, to the addressee(s) indicated below, enclosed in sealed envelope(s): I am "readily familiar" with the firm's practice of collection and processing items for Federal Express delivery. Under that practice it would be deposited at Los Angeles, California, in an envelope or package designated by Federal Express in a facility regularly maintained by Federal Express or delivered to a courier or driver authorized to receive documents on its behalf with delivery fees paid or provided for.

BY PERSONAL SERVICE, to the addressee(s) indicated below, enclosed in sealed envelope(s): I caused ALL STAR ATTORNEY SERVICE to deliver such envelope(s) by hand to the office of the addressee(s), as per the attached.

BY FACSIMILE, to the addressee(s) indicated below. I caused the foregoing document(s) to be served by facsimile transmission from sending facsimile machine number (310) 282-8903 on each interested party at the facsimile machine telephone number shown. Each transmission was reported as complete and without error. A transmission report was properly issued by the sending facsimile machine for each interested party served.

Executed on May 1, 2006, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


CHRISTIE E. FINLEY

SERVICE LIST

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Michael Sydow, Esq.
Sydow McDonald Kaiser & Ahmed, LLP
1911 Bagby Street, 2nd Floor
Houston, TX 77002
(713) 571-8000 Telephone
(713) 571-8002 Facsimile
Pro Hac Vice

Thomas C. Mundell, Esq.
John L. Wollman, Esq.
Mundell, Odum & Haws, LLP
2829 Townsgate Road, Suite 320
Westlake Village, CA 91361
(805) 446-2221 Telephone
(805) 446-2251 Facsimile

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, WEST DISTRICT
UNLIMITED CIVIL CASE

F. MARC SCHAFFEL, individually and) Case No. SC083501
d/b/a NEVERLAND VALLEY) [Hon. Jacqueline
ENTERTAINMENT; F. MARC SCHAFFEL) A Conor Dept "I")
PRODUCTIONS, LLC, a California)
limited liability company,)

Plaintiffs,)

vs.)

MICHAEL JACKSON; MJJ PRODUCTIONS,)
INC., a California corporation,)
FIRE MOUNTAIN SERVICES, LLC,)
a Nevada limited company, and DOES)
1 through 10, inclusive,)

Defendants.)

Deposition of MICHAEL JOSEPH JACKSON
held on Friday, 23rd September 2005
at the Dorchester Hotel, Park Lane,
London W1A 2HJ, England
10:37 am-6:38 pm

Atkinson-Baker, Inc.
500 North Brand Boulevard, Third floor
Glendale, California 91203

File no. 9F07BEA

1 Q. That's your voice on that?
 2 A. Yes.
 3 Q. And who's Nikki?
 4 A. Nikki was one of the secretaries at Neverland at
 5 the time.
 6 Q. Does this refresh your recollection that Marc
 7 indeed was working on a possible development of
 8 film type production facilities at Neverland ranch?
 9 A. It refreshes my recollection because after coming
 10 to the ranch he had all these big ideas that we
 11 could do housing and recording studio and film
 12 studios, make our videos up there and that was his
 13 idea and I was just refreshing him to remember what
 14 he had told me as I remember.
 15 Q. OK. Well, you encouraged him to pursue these
 16 projects, right?
 17 A. Yes. I think that one came from him.
 18 Q. But it was your hope that these projects might be
 19 beneficial to you and come to fruition, right.
 20 A. Yes.
 21 Q. OK. Why were you going to have Nikki call Marc
 22 directly in connection with that?
 23 A. Because Mar said he wanted to work closely with
 24 Kicky about -- I think it was some typography at

1 A. Yes.
 2 Q. Are you able to tell whether you were under the
 3 influence to drugs or alcohol when you left that
 4 message?
 5 A. No. Because I know my history and I stay up late
 6 doing music. I probably was tired.
 7 Q. Does this refresh your recollection that Marc was
 8 taking a pretty active role on your behalf trying
 9 to get money out of Jive Records?
 10 A. No, no.
 11 Q. When the message says there is really -- "there is
 12 something here I really want to get". Do you know
 13 what you were referring to?
 14 A. Probably a house purchase here.
 15 Q. Did you want to ask your lawyer something, I saw
 16 you gesture?
 17 A. No. It's OK.
 18 Q. Did you ever form a company with Marc Schaffel?
 19 A. Form a company with Marc Schaffel?
 20 Q. Yes.
 21 A. Not that I can recall.
 22 Q. I will give you exhibit 25 and ask you first just
 23 if that's your signature on the second page under
 24 the second signature?

1 the ranch for aerial shots and space so, I think
 2 that's why he needed her. I was just following up
 3 his idea on that as I remember.
 4 Q. OK. At one point in time did you ask Marc to help
 5 you in connection with the house in Orlando you
 6 wanted to buy?
 7 A. Vaguely I remember, could be very true.
 8 Q. And did you have Marc go down to Orlando with Henry
 9 Aubrey and Angel Casio to look at the house?
 10 A. That could be true.
 11 Q. Were you hoping to get 7 million dollars from Jive
 12 records to pay for that house?
 13 A. I don't know. Could be, I don't know.
 14 Q. OK. I'm going to play another phone recording for
 15 you which I going to mark as exhibit 24.
 16 Document marked for identification as Exhibit 24
 17 (Audio recording played)
 18
 19 Q. You were on the East Coast when you left that
 20 message from Mr Schaffel weren't you?
 21 A. I don't know where I was.
 22 Q. Do you remember leaving that message?
 23 A. No.
 24 Q. From the sound of your voice in that message --
 that was your voice in a message, correct?

1 Document marked for identification as Exhibit 25
 2
 3 A. Looks like it.
 4 Q. It's?
 5 A. Yes.
 6 Q. Does this refresh your recollection that you
 7 entered into a limited liability company with Marc
 8 Schaffel?
 9 A. No it doesn't.
 10 Q. I'm going to hand you exhibit 26.
 11 A. OK
 12 Document marked for identification as Exhibit 26
 13
 14 Q. It's entitled, "Work agreement with Neverland
 15 Valley Entertainment". First I ask you if those
 16 are your initials on the right hand side of the
 17 page?
 18 A. Yes.
 19 Q. Do you have ever recall seeing this agreement, and
 20 take all the time you need to look at it?
 (Proceedings were paused)
 21
 22 Q. Have you had the opportunity to look at that Mr
 23 Jackson?
 24 A. Yes.
 Q. Do you recall signing this document?
 A. No.

- 1 Q. Do you recall forming an entity with Mr Schaffel
2 called Neverland Valley Entertainment?
3 A. No.
4 Q. Does the name Neverland Valley Entertainment mean
5 anything to you as you sit here today?
6 A. I have heard of it vaguely.
7 Q. In what context?
8 A. I think I have used that name before so I don't
9 know, pertaining to what project? Neverland Valley
10 Entertainment, of course.
11 Q. Do you recall agreeing that Mr Schaffel be paid a
12 salary of \$375,000 a year?
13 A. No I'm sorry, I don't.
14 Q. That's OK. Do you recall that Mr Schaffel was
15 entitled to receive a company vehicle valued at no
16 more than \$80,000?
17 A. No.
18 Q. Do you recall ever promising Mr Schaffel he could
19 receive a car for services he was performing on
20 your behalf?
21 A. No.
22 Q. Do you recall telling Mr Schaffel or promising Mr
23 Schaffel that he could receive points on the single
24 WMCIg which I know is an acronym for "What More Can

- 1 I Give?"
2 A. He should get a percentage from a charity record?
3 Q. Do you recall that?
4 A. I vaguely remember he was desperately wanting to
5 get points on the single and I didn't think it was
6 a good idea.
7 Q. Because it was...
8 A. I am sorry.
9 Q. You didn't think it was it was a good idea because
10 it was a charity record?
11 A. I have just never had anybody coming and, you know,
12 haphazardly ask for points on a song that I have
13 written.
14 Q. OK. Because "What More Can I Give?" was a charity
15 record did you expect anybody to make money you
16 have that record?
17 A. I don't remember.
18 Q. You didn't expect to making money of that record
19 did you?
20 A. I don't remember.
21 Q. Let's step back, was that supposed to be a record
22 for charity?
23 A. Yes. That was the idea.
24 Q. Did you anticipate that you would receive a fee

- 1 nonetheless for performing the song?
2 A. I don't remember.
3 Q. What portion of the proceeds from "What More Can I
4 Give?" did you intend to go to charity?
5 A. I don't remember, I don't remember.
6 Q. Did you intend that any of the proceeds go to
7 charity?
8 A. Of course I would expect, yes.
9 Q. When you say of course, I don't know that. Why do
10 you say of course?
11 A. If it is a charity record, of course.
12 Q. If it is a charity record does that mean, like, 10
13 per cent of the proceeds go to charity or 100 per
14 cent?
15 A. I don't know, I don't know.
16 Q. With respect to "What More Can I Give?", who was
17 going to make the decision as to how much of the
18 proceeds when to charity?
19 A. I don't think Marc came up with splits and all
20 those things.
21 Q. Why would Mar come up with the splits?
22 A. I don't know.
23 Q. Did Marc own the record?
24 A. Did he go on the record?

- 1 Q. Did he own the record, was it his record?
2 A. Absolutely not his record.
3 Q. It was never his record?
4 A. Never his record.
5 Q. It was your record?
6 A. I wrote it, yes.
7 Q. And once your composition was embodied into a sound
8 recording, that was your sound recording, correct?
9 A. Exactly. That's why I didn't understand him asking
10 for points.
11 Q. I just want to make clear that Marc Schaffel, you
12 would never allow Marc Schaffel to have ownership
13 of that sound recording, would you?
14 A. It would be ethically correct, no.
15 Q. Was it your expectation that whatever services Marc
16 Schaffel performed for the recording of "What More
17 Can I Give?" and the video shoot for "What More Can
18 I Give?" -- let me start over because I forgot
19 where I started. Was it your expectation that
20 whatever services Marc Schaffel performed in
21 connection with "What More Can I Give?" would be
22 done by Marc Schaffel for free?
23 A. It was my belief that -- it was like a contractual
24 obligation for him to pay for production of "What

AGREEMENT

This Agreement made as of August 13, 2001, is between Michael Jackson ("Artist") and F. Marc Schaffel Productions LLC by F. Marc Schaffel (Producer).

A. Whereas, Artist is a writer and copyright owner of a musical composition entitled "What More Can I Give" ("Composition"). Artist desires to create a master recording embodying the composition (the "Master") and also produce a musical audiovisual recording embodying the Master ("Music Video"). Artist further desires to exploit the Master and Music Video and to donate all income derived from the sales and exploitation of such Master and Music Video to charities designated by Artist.

B. Whereas, Producer desires to produce and exploit the Master and Music Video.

For good and valuable consideration, the receipt of which is hereby acknowledged by each party hereto, the parties acknowledge and agree to the following:

1. Artist shall exclusively own the copyright in and to Composition, and is entitled to all publishing income derived therefrom.

2. Artist hereby grants to Producer the exclusive, perpetual right throughout the world to produce the master recording embodying the Composition and to include said Composition in the Music Video. Artist further grants Producer the exclusive,



perpetual right throughout the world to exploit the Master and Music Video in any manner and in any and all media, whether now known or hereafter devised.

3. Producer shall be responsible for paying all costs in connection with the production and exploitation of the Master and Music Video.

4. Artist hereby further agrees and acknowledges that Producer shall have complete ownership of the Master and all versions thereof recorded by Artist hereunder from the inception of recording, including any behind the scenes video and audio for any production of a "making of" video or film, and all recordings and other reproductions made therefrom, together with the performances embodied therein and all rights in and to all of the foregoing, in perpetuity throughout the universe, including, without limitation, the copyright, the right to register claims to the copyright and any and all rights of renewals and extensions of copyright, in and to the Master. As between Artist and Producer, Artist acknowledges that Producer shall, for purposes of copyright law throughout the universe, be considered the "owner" of the Master, and the Master shall constitute a "work made for hire" under the United States copyright law.

5. Producer shall be paid a producer fee and basic royalty of four points (3 points to Producer and 1 point to Rudy Provencio) in connection with the gross sales and exploitation of the Master and Music Video. All of the net income (defined as gross income less all costs or fees incurred in connection with the production and exploitation of the Master and Music Video), including any royalties

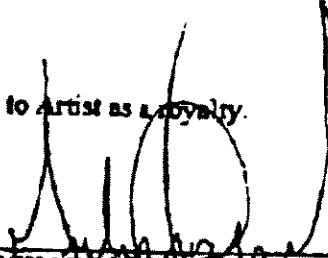


payable to persons or entities) shall be paid to Artist as a royalty.

Understood and agreed to:

8.13.01
Date

8.13.01
Date


MICHAEL JACKSON, Artist


F. MARC SCHAFFEL PRODUCTIONS LLC
By: F. Marc Schaffel, Producer

CERTIFICATE OF SERVICE

I, Susan H. Lipson, declare as follows:

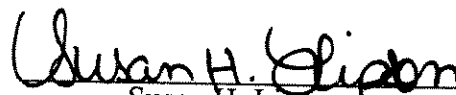
I am employed in the County of Ventura in the State of California. I am over the age of eighteen years. I am not a party to this action. My business address is 2829 Townsgate Road, Suite 320, Westlake Village, California 91361.

On May 30, 2006, I served the within **TRIAL BRIEF OF DEFENDANTS AND CROSS-COMPLAINANTS MICHAEL JACKSON, MJJ PRODUCTIONS, INC. AND FIRE MOUNTAIN SERVICES, LLC** on the interested parties in this action by placing a true copy thereof in an envelope addressed to said interested parties' attorneys of record as follows:

Howard E. King, Esq.
KING, HOLMES, PATERNO & BERLINER LLP
1900 Avenue of the Stars, 25th Floor
Los Angeles, CA 90067-4506

and by then sealing said envelope and depositing same, with first class postage thereon fully prepaid, in the mail at Westlake Village, California.

I declare under penalty of perjury that the foregoing is true and correct and this declaration is executed on May 30, 2006 at Westlake Village, California.


Susan H. Lipson