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John A. Clarke, Executive Officer/Clerk

By C. Ferrufino, Deputy

PAUL G. FLYNN

Judge _____ Dept. m
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1725 Main Street, Santa Monica Courthouse

6 Attorneys for Plaintiff Dieter Wiesner

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

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DIETER WIESNER, an individual,

Plaintiff,

vs.

MICHAEL JACKSON, an individual;
TRIUMPH INTERNATIONAL, INC.; and
DOES 1 through 25, inclusive,

Defendants.

CASE NO.

SC087708

COMPLAINT for

- 1) BREACH OF CONTRACT
- 2) FRAUD
- 3) NEGLIGENT MISREPRESENTATION
- 4) RESCISSION
- 5) FRAUD
- 6) BREACH OF CONTRACT
- 7) BREACH OF CONTRACT
- 8) COMMON COUNT
- 9) BREACH OF CONTRACT
- 10) DECLARATORY RELIEF
- 11) BREACH OF CONTRACT
- 12) BREACH OF CONTRACT

Plaintiff Dieter Wiesner ("Wiesner" or "plaintiff") hereby alleges as follows:

INTRODUCTION

1. Burdened by a dwindling cash supply and an extravagant lifestyle, former pop star Michael Jackson copied some of Max Bialystock's footwork from "The Producers" and sold the same extremely valuable, exclusive rights to merchandise his name and likeness, twice. The second buyer, plaintiff Dieter Wiesner's ("Wiesner," or "plaintiff") predecessor-in-interest, MJ Net Entertainment, AG ("MJ Net"), initially paid Jackson more than \$7.4 million, based on Jackson's false assurances that he owned the rights, was free to sell them, and would do his utmost

1 corporation organized and existing under the laws of the State of California, with its principal
2 place of business in Los Angeles, California.

3 9. On information and belief, MJ is and at all times material herein has been the
4 President and sole shareholder of Triumph.

5 10. Plaintiff sues Does 1 through 10, inclusive, herein under fictitious names. Plaintiff
6 does not know their true names and capacities. When plaintiff ascertains the Doe defendants' true
7 names and capacities, plaintiff will amend this complaint by inserting their true names and
8 capacities herein. On information and belief each defendant named herein as a Doe acted with the
9 other defendants and is responsible for the damages to plaintiffs herein alleged. Each reference in
10 this complaint to defendants, or to any of them, also refers to all defendants sued under fictitious
11 names.

12 11. On information and belief at all times material herein each of the defendants was
13 the agent and employee of the other defendants, and in doing the things hereinafter alleged, was
14 acting within the course and scope of such agency and employment.

15 12. On information and belief, at all times material herein, Triumph was MJ's alter
16 ego, and there exists and has existed at all times material herein a unity of interest and ownership
17 between them, such that any separateness between them has ceased to exist, and that Triumph is a
18 mere shell, instrumentality and conduit through which MJ has at all times material herein carried
19 out its business, exercising complete control and dominance over Triumph such that any
20 individuality or separateness of Triumph and MJ has ceased to exist.

21 13. Adherence to the fiction of the separate existence of Triumph as an entity distinct
22 from MJ would permit an abuse of the corporate privilege and would sanction fraud and promote
23 injustice. In this complaint, references to "Jackson" include MJ individually and MJ and Triumph
24 collectively.

25 **FIRST CAUSE OF ACTION**

26 **(Breach of Contract)**

27 14. Plaintiff realleges and incorporates by reference paragraphs 1 through 13, inclusive
28 above, as though fully set forth.

1 15. On or about September 30, 2000, MJ Net and Jackson entered into a written
2 Merchandise Licensing Agreement (the "Agreement"), pursuant to which Jackson granted MJ Net
3 the sole and exclusive right to exploit name(s), symbols, approved logos, trademarks, designs,
4 approved likenesses and/or approved images of Jackson as an individual (the "Licensed Marks")
5 in connection with the manufacture and distribution of any and all types of merchandise (the
6 "Merchandise"), worldwide.

7 16. Before the commencement of this Action, MJ Net sold, assigned, and set over to
8 Wiesner all of its right, title and interest in the Agreement, including, but not limited to, the
9 claims, demands, obligations, recoveries and causes of action alleged in this complaint.

10 17. The Agreement provided for an initial term commencing on the first day of the
11 month after Jackson gave MJ Net written notice that Jackson had terminated his prior
12 merchandising agreement, which was with Signatures Network, Inc. ("Signatures") (the
13 "Signatures Agreement").

14 18. The end of the initial term of the Agreement was December 31, 2010. The
15 Agreement also provided for two five-year options, the first to December 31, 2015, and the second
16 to December 31, 2020.

17 19. On or about January 8, 2001, Jackson gave MJ Net written notice of the
18 termination of the Signatures Agreement and, therefore, that he was free to commence
19 performance under the Agreement. In fact, Jackson knew or should have known that Signatures'
20 position was that its agreement was not terminated, and that Signatures would take legal action
21 against Jackson and MJ Net to preserve its rights.

22 20. The Agreement required MJ Net to pay Jackson a \$1.4 million deposit upon
23 execution, plus initial advances totaling \$6 million.

24 21. In or about 2000 and 2001, in reliance on Jackson's representation that he intended
25 to terminate and then had terminated the Signatures Agreement, MJ Net paid Jackson the deposit
26 and initial advances, in the total amount of \$7.4 million. MJ Net also began arranging for sub-
27 licenses with third parties for use of the Licensed Marks.

28 22. On or about April 25, 2001, the parties entered into a written amendment to the

1 Agreement, pursuant to which Jackson agreed to repay MJ Net, upon termination of the
2 Agreement, any and all initial advances that MJ Net had paid Jackson under the Agreement that
3 were unrecouped. References below to the "Agreement" include the April 25, 2001 amendment.
4 Virtually all of the advances are unrecouped.

5 23. On or about July 26, 2001, Signatures sued MJ Net in San Francisco Superior
6 Court. Signatures alleged that its merchandising agreement with Jackson was still in effect, and
7 that it owned the exclusive right to exploit the Licensed Marks.

8 24. On or about November 15, 2001, Signatures sued Jackson in San Francisco
9 Superior Court, California, alleging similar claims.

10 25. MJ Net performed all conditions, covenants and promises required on its part to be
11 performed under the Agreement, except those that Jackson waived or that were rendered
12 impossible to perform.

13 26. Jackson purported to terminate the Agreement in or about November 2002. From
14 and after November 2002, Jackson breached the Agreement by failing to provide to MJ Net the
15 opportunity and unencumbered right to exploit the Licensed Marks, failing to cooperate in any
16 efforts of MJ Net to exploit the Licensed Marks, and failing to repay MJ Net the \$6 million in
17 initial advances that MJ Net paid under the Agreement.

18 27. As a result of Jackson's breach of the Agreement, plaintiff has suffered damages in
19 at least the amount of (1) the \$1.4 million deposit; (2) the \$6 million in initial advances; and (3)
20 lost profits from the exploitation of the Licensed Marks in an amount to be proved at trial, but
21 which plaintiff is informed and believes is in excess of \$50,000,000.

22 SECOND CAUSE OF ACTION

23 (Fraud)

24 28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27, inclusive
25 above, as though fully set forth.

26 29. When Jackson entered into the Agreement, he had no intention of performing his
27 obligations thereunder, including his obligations to repay the deposit and initial advances, to grant
28 MJ Net unencumbered merchandising rights, and to assist and cooperate in MJ Net's exploitation

1 of those rights.

2 30. Jackson entered into the Agreement, and falsely told MJ Net that he had terminated
3 the Signatures Agreement and was free to commence performance under the Agreement, with the
4 intent to induce MJ Net to pay him the \$1.4 million deposit and \$6 million in initial advances for
5 which the Agreement provided.

6 31. When MJ Net and Jackson entered into the Agreement, and when Jackson made the
7 misrepresentations and took the actions herein alleged, MJ Net was ignorant of Jackson's secret
8 intention not to perform and of the falsity of Jackson's representations that he had terminated the
9 Signatures Agreement.

10 32. From and after when Jackson entered into the Agreement, until at least the end of
11 2003, Jackson and his attorneys, including Brian Wolf ("Wolf"), continued to represent to MJ Net,
12 including Wiesner, orally and in writing that Jackson intended to assure that MJ Net received all
13 of the rights and benefits it had under the Agreement, including repayment of the initial advances
14 and the opportunity to earn millions of dollars in profits from exploiting the Licensed Marks.

15 33. For example, as more fully alleged below, in November 2002, Wolf told Wiesner
16 that Jackson intended to give MJ Net the opportunity to exploit the Licensed Marks, and thereby
17 to recoup the millions of dollars MJ Net had paid Jackson, and earn additional millions of dollars
18 in profits. Wolf reaffirmed that representation in writing in January 2003, by transmitting a new
19 proposed merchandising agreement to MJ Net, also as more fully alleged below. In addition,
20 throughout 2003 MJ repeatedly told Wiesner that Jackson would abide by his promises to repay
21 MJ Net and make sure that MJ Net profited from exploiting the Licensed Marks.

22 34. Plaintiff is informed and believes and based thereon alleges that, when Jackson
23 gave MJ Net written notice of the termination of the Signatures Agreement and, therefore, the
24 commencement of the term of the Agreement, Jackson knew or should have known that
25 Signatures took the position that the Signatures Agreement was not terminated, and that
26 Signatures would commence litigation against MJ Net if it attempted to exploit the Licensed
27 Marks.

28 35. When Signatures sued MJ Net in June 2002, and until at least November 2002, MJ

1 and his attorneys told plaintiff and MJ Net that the suit was utterly without merit, that Jackson
2 would take care of it, and that Wiesner had no reason for concern.

3 36. As a proximate result of Jackson's fraudulent conduct, plaintiff has suffered
4 damages in at least the amount of (1) the \$1.4 million deposit; (2) the \$6 million in initial
5 advances; and (3) lost profits from the exploitation of the Licensed Marks in an amount to be
6 proved at trial, but which plaintiff is informed and believes is in excess of \$50,000,000.

7 37. Jackson acted in willful and conscious disregard of MJ Net's rights and interests
8 with the intent to benefit himself, while subjecting MJ Net to cruel and unjust hardship and harm,
9 with the intent to defraud MJ Net and deprive it of its rights, thereby entitling MJ Net to an award
10 of punitive damages against Jackson, in order to punish him and deter similar misconduct in the
11 future.

12 **THIRD CAUSE OF ACTION**

13 **(Negligent Misrepresentation)**

14 38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37, inclusive
15 above, as though fully set forth.

16 39. When Jackson represented that he had terminated the Signatures Agreement and
17 was free to commence performance under the Agreement, he had no reasonable ground for
18 believing his statements to be accurate and truthful.

19 40. As a proximate result of Jackson's misrepresentations that he had terminated the
20 Signatures Agreement and was free to commence performance under the Agreement, plaintiff has
21 suffered damages in at least the amount of (1) the \$1.4 million deposit; (2) the \$6 million in initial
22 advances; and (3) lost profits from the exploitation of the Licensed Marks in an amount to be
23 proved at trial, but which plaintiff is informed and believes is in excess of \$50,000,000.

24 **FOURTH CAUSE OF ACTION**

25 **(Rescission)**

26 41. Plaintiff realleges and incorporates by reference paragraphs 1 through 40, inclusive
27 above, as though fully set forth.

28 42. In or about early November, 2002, Wolf informed Wiesner that Signatures was

1 threatening to take MJ's deposition, that MJ was distraught at the prospect of having to submit to a
2 deposition, and that MJ was willing to do anything and everything necessary to avoid it.

3 43. Wolf told Wiesner that, in order to avoid the deposition and resolve Signatures'
4 claims so that MJ Net could begin utilizing the Licensed Marks unencumbered, MJ had instructed
5 him to settle Signatures' claims. Wolf told Wiesner that he had drafted a Settlement and Release
6 Agreement among Jackson, MJ Net, and Signatures (the "Settlement") for that purpose.

7 44. Wolf promised Wiesner that, if MJ Net executed the Settlement, Jackson would
8 enter into a new merchandising agreement with MJ Net, and MJ Net would recoup the millions of
9 dollars it had paid Jackson, and have the opportunity to earn additional millions of dollars in
10 profits from exploiting MJ's name and likeness. MJ Net is informed and believes that Wolf made
11 those representations pursuant to MJ's express instructions.

12 45. On or about November 25, 2002, in reliance on Wolf's representations on behalf of
13 Jackson, Wiesner, on behalf of MJ Net, signed the Settlement. The Settlement contained a
14 provision that confirmed Wolf's representations that Jackson intended to enter into a new
15 merchandising agreement with MJ Net, and that contained an agreement to consider the advances
16 paid under the Agreement as advances paid under the new agreement. The provision required
17 Jackson to negotiate a new merchandising agreement with MJ Net in good faith. The Settlement
18 also contained a release that Jackson has asserted released him from his obligations under the
19 Agreement, including his obligation to repay the \$7.4 million that MJ Net had paid him.

20 46. Jackson and his attorneys implored Wiesner to sign the settlement immediately so
21 that MJ could avoid his deposition. Therefore, in further reliance on Wolf's representations, and
22 due to the urgent need to save MJ from having to sit for a deposition, Wiesner executed the
23 Settlement on behalf of MJ Net.

24 47. The Settlement required MJ Net to pay Signatures \$600,000, and Jackson to pay
25 Signatures \$1 million.

26 48. At Jackson's urgent request, MJ Net paid Signatures Jackson's \$1 million, plus the
27 \$600,000 it was to pay.

28 49. On or about January 14, 2003, Wolf sent MJ Net a proposed Merchandising

1 License Agreement.

2 50. Jackson never intended to negotiate or enter into another merchandising agreement
3 with MJ Net. Therefore, when MJ discovered that Wolf had sent a proposed agreement to MJ
4 Net, he immediately fired Wolf and his other lawyers who had worked on the proposed agreement.

5 51. When MJ, through his attorney, made the representations alleged above, MJ Net
6 did not know the representations were false, but believed them to be true and reasonably relied on
7 them. MJ Net's reliance on the representations was reasonable based on Wolf's good reputation
8 and MJ's stature and friendship with Wiesner.

9 52. MJ Net has suffered and will continue to suffer substantial harm and injury under
10 the Settlement if it is not rescinded. The consideration for MJ Net's entry into the Settlement was
11 that MJ Net would receive credit for the monies it had already paid Jackson; and negotiation of a
12 new merchandising agreement that would replace the Agreement, compensate MJ Net for the \$7.4
13 million it had already paid Jackson, and provide an opportunity to exploit the Licensed Marks.
14 Jackson has deprived MJ Net of that consideration.

15 53. In addition, MJ Net would not have entered into the Settlement or paid Signatures
16 \$1 million on behalf of Jackson had it known that Jackson did not intend to compensate MJ Net
17 for the monies MJ Net had paid Jackson under the Agreement, and that Wolf's representations that
18 Jackson intended to negotiate in good faith and enter into a new merchandising agreement with
19 MJ Net, were false.

20 54. Plaintiff intends service of the summons and complaint in this action to serve as
21 notice of rescission of the Settlement based on a failure of consideration and/or Jackson's
22 fraudulent inducement of MJ Net to enter into the Agreement, and hereby demands that Jackson
23 restore to plaintiff MJ Net's rights and benefits under the Agreement, plus the \$1.6 million that MJ
24 Net paid Signatures.

25 **FIFTH CAUSE OF ACTION**

26 **(Fraud)**

27 55. Plaintiff realleges and incorporates by reference paragraphs 1 through 54, inclusive
28 above, as though fully set forth.

1 obligation to provide services in connection with the exploitation of MJ's name and likeness. The
2 MJL Agreement defined "Effective Date" as June 20, 2002.

3 73. Backer performed all conditions, covenants and promises required on his part to be
4 performed under the Agreement, except those that Jackson waived or that were rendered
5 impossible to perform.

6 74. Jackson failed and refused to transfer any licensing or other rights to MJL.

7 75. As a result of Jackson's breach of the MJL Agreement, plaintiff has suffered
8 damages in at least the amounts of (1) \$7.4 million due from Jackson to MJ Net under the
9 Agreement; (2) \$1.6 million that MJ Net paid Signatures; and (3) in an amount to be proved at
10 trial for loss of the opportunity to exploit the Licensed Marks, which plaintiff is informed and
11 believes exceeds \$50,000,000.

12 **TENTH CAUSE OF ACTION**

13 **(Declaratory Relief)**

14 76. Plaintiff realleges and incorporates by reference paragraphs 1 through 75, inclusive
15 above, as though fully set forth.

16 77. An actual controversy of justiciable nature has arisen between plaintiff and
17 Jackson, in that plaintiff contends that Jackson is contractually bound to perform his obligations
18 under the MJ Net and/or MJL Agreements and, plaintiff is informed and believes, Jackson claims
19 he is not.

20 78. A judicial declaration of the parties' rights under the MJ Net and MJL Agreements
21 is therefore necessary.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Breach of Contract)**

24 79. Plaintiff realleges and incorporates by reference paragraphs 1 through 78, inclusive
25 above, as though fully set forth.

26 80. On or about October 17, 2003, pursuant to a Written Consent of the members of
27 MJL, the members appointed Wiesner to serve as Chief Executive Officer of MJL "to serve until a
28 successor is elected and qualified or until his earlier resignation or removal or his office is

1 declared vacant” (the “Wiesner/MJL Agreement”).

2 81. As an inducement for Wiesner to accept the position of CEO of MJL, Jackson
3 orally agreed to pay Wiesner a salary of \$15,000 per month, plus \$10,000 per month for expenses.

4 82. Jackson met his salary and expense obligations to Wiesner until Summer 2004.
5 Since Summer 2004, Jackson has failed and refused to meet those obligations, and has
6 communicated his intent not to honor them in the future. Had Jackson met and continued to meet
7 his obligations under the Wiesner/MJL Agreement, Wiesner would have continued as CEO for at
8 least the ten-year term of the MJL Agreement.

9 83. As a result of Jackson’s breach of the Wiesner/MJL agreement, Wiesner has
10 suffered and will continue to suffer damages in an amount to be proved at trial, but which Wiesner
11 is informed and believes exceeds \$2.7 million.

12 **TWELFTH CAUSE OF ACTION**

13 **(Breach of Contract)**

14 84. Plaintiff realleges and incorporates by reference paragraphs 1 through 83, inclusive
15 above, as though fully set forth.

16 85. In or about early 2002, MJ orally retained Wiesner to manage his business and
17 personal affairs. MJ promised to compensate Wiesner fairly once MJ’s severe cash flow situation
18 improved, based on the amounts paid for similarly situated personal managers in the entertainment
19 industry. Entertainers of MJ’s stature generally pay similarly situated personal managers
20 approximately \$100,000 per month. In or about early 2003, MJ gave Wiesner a Power of
21 Attorney to act on his behalf and Wiesner became MJ’s full time manager.

22 86. Wiesner’s services included, without limitation, assisting in the exploitation of the
23 recording entitled “What More Can I Give,” advising MJ on and implementing two highly
24 profitable television specials, introducing MJ to investors for his projects, overseeing professional
25 advisors and employees, arranging meetings with highly placed individuals, such as Nelson
26 Mandela and Kofi Annan, assisting in the creation of MJ’s 10-year plan, “MJ Universe,” and other
27 services. MJ’s demands on Wiesner’s time and attention intensified after the airing of the
28 infamous Martin Bashir expose of MJ.

1 87. MJ terminated Wiesner in or about late 2003. Since then, MJ has failed and
2 refused to pay Wiesner for the management services he rendered in 2002 and 2003.

3 88. As a result of Jackson's breach of his management agreement with Wiesner,
4 Wiesner has suffered and will continue to suffer damages in an amount to be proved at trial, but
5 which Wiesner is informed and believes exceed \$2.4 million.

6 WHEREFORE, plaintiff prays for relief, as follows:

7 On the First and Third Causes of Action

8 1. For damages in excess of \$57.4 million, in an amount to be proved at trial, plus
9 interest at the legal rate;

10 On the Second Cause of Action

11 2. For damages in excess of \$57.4 million, in an amount to be proved at trial, plus
12 interest at the legal rate;

13 3. For punitive damages;

14 On the Fourth Cause of Action

15 4. For rescission of the Settlement;

16 5. For restitution of \$1.6 million, plus interest at the legal rate;

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