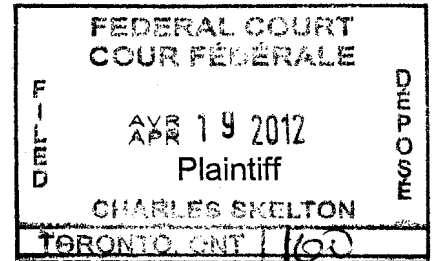


FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

- and -



NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

PLAINTIFF'S MOTION RECORD

(The Plaintiff's Motion to compel answers arising out of an examination of discovery of the Defendants)

VOLUME I

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FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

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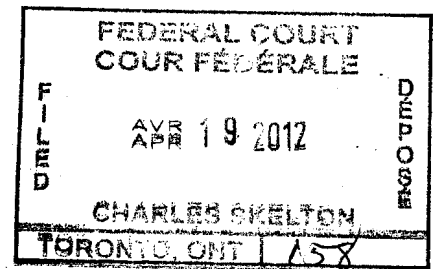
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FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

AND:

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the Plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

NOTICE OF MOTION

(re: The Plaintiff's Motion to Compel Answers arising from the Examinations for Discovery of the Defendants held on November 8, 2011)

TAKE NOTICE THAT the Plaintiff will make a motion to the Federal Court on April 24, 2012 commencing at 2:00 p.m. at Toronto, Ontario. This motion has been scheduled for a special sitting before Madam Prothonotary Milczynski.

THIS MOTION IS FOR:

1. An Order requiring the Defendants to deliver answers to the questions refused or taken under advisement as identified in Schedules "A" and "B" attached herein to the Notice of Motion, and all proper questions arising therefrom, within thirty (30) days of the Order of this Court;

2. Costs of this motion fixed at \$8,000; and
3. Such further or other relief as counsel may advise and as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

1. This motion arises in the context of a reference proceeding commenced by the Plaintiff for an accounting of profits for copyright infringement (the “**Reference Proceeding**”).
2. In *His Highness Prince Karim Aga Khan v. Nagib Tajdin*, 2011 FC 14, affirmed by the Court of Appeal, 2012 FCA 12, Mr. Justice Harrington determined that the Defendants, Messrs. Tajdin and Mr. Jiwa, had infringed the Plaintiff’s copyright by their unauthorized reproduction of a book and mp3 audio bookmark entitled *Farmans 1957-2009 – Golden Edition Kalam-E Imam-E Zaman* (hereinafter the “**Golden Edition**”). The Golden Edition reproduced in substantial part a series of original religious addresses and messages (viz. Farmans and Talikas), of which the Plaintiff is the sole and original author (hereinafter the “**Harrington Judgment**”).
3. On September 6, 2011, the Referee, Madam Prothonotary Milczynski, made an Order respecting the production of relevant documents and a schedule for an examination for discovery in this Reference Proceeding (the “**Referee Order**”).
4. Pursuant to the Referee Order, an examination for discovery of the Defendants Nagib Tajdin and Alnaz Jiwa was conducted on November 8, 2011.

5. At that time, numerous questions were refused or taken under advisement as set out in the charts attached at Schedules "A" and "B" to the Notice of Motion herein. This motion is to compel answers to those outstanding questions.

Litigation History of the Reference Proceeding

6. The Harrington Judgment dated March 4, 2011 provided for a reference for the determination of damages or profits arising from the Defendants' infringing sales of the Golden Edition.
7. By Statement of Issues for a Reference Proceeding dated March 29, 2011, the Plaintiff elected to pursue an accounting of profits and set out the following detailed issues for determination:
 - (a) What is the total number of books and MP3 audios that were printed and produced?
 - (b) What sales did the Defendants make of the Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein (the "Impugned Sales")?
 - (c) What revenues were made by the Defendants from the Impugned Sales?
 - (d) What costs are properly deductible by the Defendants from the revenues made in respect of the Impugned Sales? and
 - (e) What award of pre-judgment and judgment interest under sections 36 and 37 of the Federal Courts Act are applicable?
8. The Defendants sought to stay the Reference Proceeding pending the outcome of their appeal of the Harrington Judgment on the merits (appeal since dismissed). This request to stay was dismissed by the Federal Court of Appeal by the Order of Mr. Justice Manville dated May 19, 2011.

9. On July 18, 2011, Messrs. Tajdin and Jiwa each served and filed a "Reply to the Plaintiff's Statement of Issues".

10. On September 6, 2011, the Referee issued the following Order (the "Referee Order"):

Further to the case management teleconference (sic) held on August 26, 2011 and upon reading correspondence from the parties, the following timetable shall govern the next steps in the proceeding:

1. Counsel for the Plaintiff will deliver a letter to the Defendants by September 2, 2011, listing the categories of relevant documents and specific documents to be produced in this Reference.
 2. The Defendants, Mr. Tajdin and Mr. Jiwa, will deliver a supplementary affidavit of documents, including delivery of complete and unredacted copies of all relevant documents, and including an explanation for any documents missing or lost; and including enquiries that have been made of others to locate relevant documents, to Counsel for the Plaintiff by October 7, 2011.
 3. Mr. Tajdin and Mr. Jiwa will make themselves available for discovery in Toronto on November 8 to 9, 2011.
 4. A case management conference will be held with the parties at the Federal Court at 180 Queen Street West, 4th Floor, Toronto, Ontario on November 15, 2011 at 9:30 a.m.
11. Mr. Tajdin appealed the Referee Order. His appeal was dismissed by the Order of Mr. Justice Russell dated October 26, 2011, with costs on a full indemnity basis payable forthwith and irrespective of the cause ("Russell Order").
12. In dismissing Mr. Tajdin's appeal, Russell J. held, *inter alia*, that Mr. Tajdin's production in the Reference Proceeding is deficient. He determined that few

original documents have been produced, including no documents identifying the printer of the infringing work, and no documents that enable the Plaintiff to verify the quantity of books printed or expenses incurred.

13. Mr. Tajdin is appealing the Russell Order to the Federal Court of Appeal. A date for this appeal has yet to be determined.
14. Mr. Tajdin has not complied with the Referee's Order to produce unredacted copies of documents prior to October 7, 2011, or at all, nor has he ever sought to have the Referee's Order stayed pending his appeals.
15. Messrs. Tajdin and Jiwa both made themselves available for examination for discovery in the Reference Proceeding on November 8, 2011, in compliance with the Referee Order.

Plaintiff's Motion to Compel Answers Arising from Discovery

16. On discovery, Mr. Tajdin refused requests to provide information and/or produce original documents, including no information or documents identifying the printer of the Golden Edition, no information or documents that enable the Plaintiff to verify the quantity of books printed or the expenses incurred.
17. Mr. Tajdin has produced spreadsheets of purported financial data that he compiled on the Golden Edition. No original sources for the financial information contained in these spreadsheets have been identified.
18. On discovery, Mr. Jiwa gave eight undertakings which he has not yet fulfilled, although such undertakings were identified and requested by letter dated February 1, 2012.

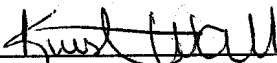
19. Although Mr. Jiwa admitted that many people asked him about the Golden Edition and contacted him to buy the book, Mr. Jiwa only located a single e-mail relating to the purchase of the infringing Golden Edition. Apparently, he deleted any such e-mails as he received them.
20. Mr. Jiwa knows the identity of some of the book distributors, including the distributor from whom he purchased his 24 boxes of Golden Edition books, but he will not disclose any names.
21. Both Defendants attest to having dealt primarily in cash sales, while maintaining no records of sales and/or costs. Due to the Defendants apparent failure to maintain proper accounting records, the Plaintiff requested information with respect to third parties on discovery. The Plaintiff may need to contact third parties in order to obtain the necessary information to conduct this Reference Proceeding.
22. All of the information sought by the Plaintiff in this motion to compel is relevant to the accounting issues set out in the Plaintiff's Statement of Issues.
23. There is a reasonable likelihood that this information will advance the Plaintiff's case or damage the Defendants' case. Accordingly, the Plaintiff requests that all outstanding questions set out a Schedules "A" and "B" hereto be ordered answered.
24. The Plaintiff relies on Rules 157, 233, 238, 240, 241, and 400 of the *Federal Courts Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The pleadings and proceedings herein; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted this 19th day of April, 2012.



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