

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

WRITTEN REPRESENTATIONS
to the Plaintiff's Rule 369 Motion
(of the defendant Alnaz Jiwa / responding party)

1. The defendants consent to paragraphs 1, 2, 3, and 4 of the draft judgment as drafted in accordance with the Reasons of the Court.
2. The defendants object to paragraphs 5, 6, 7, 8 and 9 as drafted, as the said paragraphs do not adhere to the Reasons of the Court.
3. Paragraph 5 is not drafted in accordance with the Reasons of the Court. At paragraph 71 of the Reasons, the Court orders a permanent injunction, "from infringing copyright by publishing and distribution the Golden Edition." Accordingly, paragraph 5 of the Judgment should read as follows:

"The Defendants, Nagib Tajdin and Alnaz Jiwa, by whatever names known, their agents, employees, servants, associates, representatives and all other persons, personal or corporate, acting on their behalf or under their control, are permanently prohibited, restrained and enjoined from publishing and distributing the *Golden Edition*."
4. Paragraph 6 is also not drafted in accordance with the Reasons of the Court. The Reasons of the Court specifically provide for the "delivery up of all copies of the infringing material...", and infringing material has been defined as the *Golden Edition* including the MP3 audio. Accordingly, paragraph 6 of the Judgment should read as follows:

“The Defendants, Nagib Tajdin and Alnaz Jiwa, by whatever names known, their agents, employees, servants, associates, representatives and all other persons, personal or corporate, acting on their behalf or under their control, are ordered to deliver up all copies of the infringing material in their possession, care or control, to the appropriate ITREB authority as identified in the Ismaili Constitution in whatever country the infringing material is located.”

5. Paragraph 7 is also not drafted in accordance with the Reasons of the Court. The court ordered “reference for the determination of damages, with pre- and post-judgment interest..”. Accordingly, paragraph 7 of the Judgment should read as follows:

“This Court orders a reference for the determination of damages, with pre-and post-judgment interest, and that damages, if any, shall be payable to Aga Khan Development Network (AKDN) Foundation, or such other charitable organization as may be designated by the plaintiff.”

6. In this motion, the plaintiff is seeking costs in excess of what is asked for in the Notice of Motion, where at paragraph 1(f) of the Notice of Motion, the plaintiff sought fixed costs in the amount of \$30,000.00. There are insufficient grounds for the plaintiff to seek costs on a higher scale, and whereas the defendants’ could have argued that costs be ordered at a lower scale, but the defendants will agree to pay the sum of \$30,000.00 as costs, payable to the Aga Khan Foundation, as submitted by the plaintiff at the argument of the motion. Accordingly, paragraph 8 of the Judgment should read as follows:

“Costs of the Motion for Summary Judgment are fixed at \$30,000.00 CAD, payable to AKDN Foundation.”

7. Paragraph 9 is redundant as it is subsumed in paragraph 7 of the draft judgment (paragraph 5 above).
8. The costs of this motion should be denied as the plaintiff’s counsel as he did not wait to hear from the defendant Jiwa as per his email of February 7, 2011, and that the order is not drafted in accordance with the Reasons of the Court.

Date: February 16, 2011

Respectfully submitted,

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