

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: Plaintiff's Motion to Reconsider the Order of Justice Tremblay-Lamer dated April 24, 2013)

TAKE NOTICE THAT the Plaintiff will make a motion in writing pursuant to Rule 369 to the Honourable Madam Justice Tremblay-Lamer of the Federal Court for reconsideration of the Order of Justice Tremblay-Lamer dated April 24, 2013.

THIS MOTION IS FOR:

1. An Order reconsidering paragraph two of the Order of Justice Tremblay-Lamer dated April 24, 2013, as follows:

“The Order of the Prothonotary dated October 29, 2012 is set aside, with the sole exception that the Court orders the Defendants to provide the Plaintiff and his legal counsel with the names of ten (10) purchasers of the material in dispute, being a book entitled ‘Farmans 1957-2009 – Golden Edition Kalam-E Imam-E-

Zaman”, [as set out in paragraph six of the Order of Prothonotary Milczynski dated October 29, 2012], for the sole purpose of ascertaining the purchase price paid by them.”

- 2. Such further or other relief as counsel may advise and as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- 3. This motion in writing for reconsideration of the Order of Madam Justice Tremblay-Lamer dated April 24, 2013 (the “Production Order”) arises in the context of a reference proceeding commenced by the Moving Party (Plaintiff) for an accounting of profits for copyright infringement of a book entitled “Farmans 1957-2009 – Golden Edition Kalam-E Imam-E-Zaman” (the “Golden Edition”).

- 4. The Plaintiff requests a reconsideration of paragraph two of the Production Order pursuant to Rule 397 of the *Federal Courts Rules* on the grounds that paragraph two of the Production Order does not accord with the reasons given for it, and/or matters that should have been dealt with in the Production Order have been overlooked or accidentally omitted.

- 5. Paragraph two of the Production Order states as follows:

“The Order of the Prothonotary dated October 29, 2012 is set aside, with the sole exception that the Court orders the Defendants to provide the Plaintiff and his legal counsel with the names of ten (10) purchasers of the material in dispute, being a book entitled “Farmans 1957-2009 - Golden Edition Kalam-E Imam-E-Zaman”, for the sole purpose of ascertaining the purchase price paid by them.”

- 6. Paragraph two of the Production Order appears to allow the Defendants to produce the names of any ten purchasers of the Golden Edition. It does not expressly permit the Plaintiff to select the ten purchasers whose names the Plaintiff wishes to receive. As a result, the Production Order inadvertently omits to order the same relief contained at paragraph six of the Referee’s order dated October 29, 2012 (the “Referee Order”):

7. Paragraph six of the Referee Order specified that the Plaintiff be allowed to select the ten names it wishes to receive from one of the document productions in this Reference Proceeding, as follows:

“The Defendant Mr. Tajdin shall answer the questions represented by Item Nos. 14 to 22 on the Revised Summary chart of refusals by producing the names of ten people who ordered books, as indicated on the "Golden Edition Shipping Spreadsheet" (Exhibit 2, Tab 8 of the Discovery Transcript of Mr. Tajdin taken November 8, 2011). The Plaintiff is entitled to select the ten names it wishes to have produced by Mr. Tajdin from this spreadsheet. If Mr. Tajdin does not have names in connection with the shipping orders identified by the Plaintiff, then Mr. Tajdin is to produce any customer names he has in connection with this spreadsheet.” (Emphasis added.)

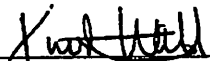
8. The above paragraph six relief contained in the Referee Order was intended to be the “sole” part of the Referee Order upheld on appeal. The Plaintiff respectfully requests that this Court reconsider the Production Order by incorporating the paragraph six relief that was omitted by accident or inadvertence.
9. The Plaintiff relies on Rules 3, 369 and 397 of the *Federal Courts Rules*, SOR/98-106, as amended.
10. Such further and other relief as this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE RELIED UPON IN
SUPPORT OF THIS MOTION:**

1. The pleadings and proceedings herein;
2. The Golden Edition Shipping Spreadsheet, Exhibit 2, Tab 8 of the Discovery Transcript of Mr. Tajdin taken November 8, 2011;
3. The Order of Prothonotary Milczynski dated October 29, 2012;

- 4. Letter to Madam Justice Tremblay-Lamer from Counsel for the Defendants dated April 19, 2013;
- 5. Letter to Madam Justice Tremblay-Lamer from Counsel for the Plaintiff dated April 22, 2013;
- 6. The Order of Madam Justice Tremblay-Lamer dated April 24, 2013; and
- 7. Such further and other material as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted this 6th day of May, 2013.

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Solicitor for the Defendants

FEDERAL COURT

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Plaintiff

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**NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE
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