

**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**  
(Plaintiff's Rule 368 Motion for Judgment)

**TAKE NOTICE** that the Plaintiff, His Highness Prince Karim Aga Khan (the "Plaintiff"), brings this motion for judgment before The Honourable Mr. Justice Harrington, in writing, pursuant to Rule 369 of the *Federal Courts Rules*.

**THE MOTION IS FOR:**

1. Judgment in the form attached to this Notice of Motion as Schedule "A"; and
2. Costs of this motion.

**THE GROUNDS FOR THE MOTION ARE:**

3. On January 7, 2011, The Honourable Mr. Justice Harrington delivered Reasons for Judgment granting the Plaintiff's motion for summary judgment and dismissing the Defendants' motion for summary judgment (the "Reasons for Judgment") in the context of the Plaintiff's action for copyright infringement.

4. Paragraph 77 of the Reasons for Judgment provide as follows:

[77] In accordance with Rule 394 of the *Federal Courts Rules*, I direct the plaintiff to prepare for endorsement a draft judgment to implement these conclusions, approved as to form and content by Messrs Tadjin and Jiwa, or if the parties cannot agree, to bring on a motion for judgment in accordance with Rule 369. In the meantime, an interlocutory injunction shall issue restraining the defendants, whether acting alone or by their directors, officers, servants, agents, workers or representatives, from infringing the plaintiff's copyright in the literary works. More particularly, the defendants shall be restrained from ordering further copies of, publishing, reproducing, selling, giving or promoting in any way the book entitled *Farmans 1957-2009 – Golden Edition Kalam-E Iman-E-Zaman* and accompanying pre-loaded MP3 audio bookmark.

5. In accordance with Paragraph 77 of the Reasons for Judgment, the Plaintiff has sought, but has been unable to obtain the Defendants' approval as to the form and content of a draft judgment to implement the conclusions of the Reasons for Judgment.
6. Accordingly, the Plaintiff brings this motion for judgment in accordance with Rule 369 of the *Federal Courts Rules*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Bola Sholubi sworn February 8, 2011;
2. The Reasons for judgment of The Honourable Mr. Justice Harrington dated January 7, 2011;
3. The Interlocutory Injunction Order of The Honourable Mr. Justice Harrington dated January 7, 2011; and
4. Such further and other material as counsel may advise and this Honourable Court may permit.

February 8, 2011

*Ogilvy Renault LLP per Brian W. Gray*

**OGILVY RENAULT LLP**  
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Royal Bank Plaza, South Tower  
Toronto, Ontario M5J 2Z4

**Brian W. Gray**  
**Allyson Whyte Nowak**

Tel: (416) 216-4000  
Fax: (416) 216-3930

**Solicitors for His Highness**  
**Prince Karim Aga Khan**

**TO: THE ADMINISTRATOR**  
Federal Court

**AND TO: NAGIB TAJDIN**  
37 Sandford Drive  
Unit 205a  
Stouffville, Ontario, L4A 7X5  
nagib@tajdin.com

Tel: (254) 723-693-844  
Fax: (905) 640-7533

**AND TO: ALNAZ I. JIWA**  
37 Sandford Drive  
Unit 205a  
Stouffville, Ontario, L4A 7X5  
jiwalaw@yahoo.ca

Tel: (905) 650-3831  
Fax: (905) 640-7533

Court File No: T-514-10

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**FEDERAL COURT**

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B E T W E E N:

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Defendants

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(Plaintiff's Rule 368 Motion for Judgment)

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Fax: (416) 216-3930**Solicitors for His Highness  
Prince Karim Aga Khan**

**TAB A**

**SCHEDULE "A"**

Court File No. T-514-10

**FEDERAL COURT**

B E T W E E N:

**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

**JUDGMENT**

**UPON THE APPLICATION** made before this Court this day by the Plaintiff for Judgment herein in accordance with the Reasons for Judgment of The Honourable Mr. Justice Harrington dated January 7, 2011:

**THIS COURT DOTH ORDER AND ADJUDGE THAT:**

1. Copyright subsists in the Farmans and Talikas authored by the Plaintiff and reproduced in whole or in part in a book entitled "Farmans 1957-2009- Golden Edition Kalam-E Imam-E-Zaman" (the "Golden Edition") and in the Farmans and Talikas contained therein (the "Farmans and Talikas").
2. Copyright subsists in the MP3 audio bookmark accompanying the Golden Edition, being an audio reproduction of a reading of certain of the Farmans or Talikas (the "MP3").
3. The Plaintiff is the owner of the copyright in the Golden Edition and the Farmans, Talikas and the MP3.

4. The Defendants, Nagib Tajdin and Alnaz Jiwa, have infringed copyright in the Plaintiff's Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein.
5. 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 producing, reproducing, copying, publishing, selling, giving away, promoting, translating, making any sound or video recording of, performing, communicating electronically, telecommunicating, making available or distributing any work that infringes the Plaintiff's copyright in the Farmans and Talikas or MP3, or any part thereof, and in particular the Golden Edition.
6. 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 Golden Edition and the Farmans and Talikas and MP3 in the Defendants' possession, care or control, and all other wares, labels, packages, signage, advertising materials, plates or moulds or other materials or things in the Defendants' power, custody or possession, which refer to all or any part of, or which are used to produce, the Golden Edition or the Farmans and Talikas and MP3. Such delivery up to be made to the appropriate ITREB authority as identified in the Ismaili Constitution in whatever country the Golden Edition or the Farmans, Talikas and MP3 are located or as agreed by the Defendants with the Plaintiff's representatives or solicitors.
7. There shall be a reference for the determination of damages or profits owing to the Plaintiff by reason of the Defendants' infringing activities, with any such damages or profits to be payable to the Plaintiff for use by the AKDN Foundation, or such other non-profit organization or purpose as the Plaintiff may see fit. For this purpose the Defendants are ordered to provide an affidavit of relevant

documents and to turn over to the Plaintiff's solicitor, or as directed by the Plaintiff's solicitor, all books and records of any kind relating to the infringement of the Plaintiff's copyright and of all revenues received from the exploitation of, or otherwise in respect of, the printing, publication, production, distribution or sale of any copy of the Golden Edition or the Farmans and Talikas (whether printed or electronic) and the MP3; and the Defendants are ordered to attend for discovery to answer all relevant questions relating thereto. The Plaintiff may in his sole discretion choose not to proceed with the reference for damages or profits at any time, in which case all further steps in the reference shall cease and the reference shall be discontinued with no costs of the reference to either party.

8. The costs of this summary judgment motion and Judgment are fixed in the amount of \$30,000.00 CAD, to be payable to the Plaintiff, forthwith.
9. Pre-judgment and post-judgment interest on any amount awarded in the reference for damages shall be paid to the Plaintiff as determined at the reference.

Date: \_\_\_\_\_



Court File No: T-514-10

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Plaintiff

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**Allyson Whyte Nowak**Tel: (416) 216-4000  
Fax: (416) 216-3930**Solicitors for His Highness  
Prince Karim Aga Khan**

**TAB 2**

Court File No. T-514-10

**FEDERAL COURT**

BETWEEN:

**HIS HIGHNESS PRINCE KARIM AGA KHAN**

Plaintiff

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Defendants

**AFFIDAVIT OF BOLA SHOLUBI**

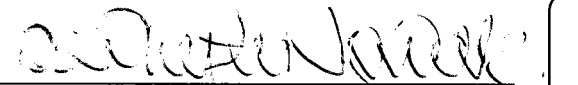
(sworn February 8, 2011)

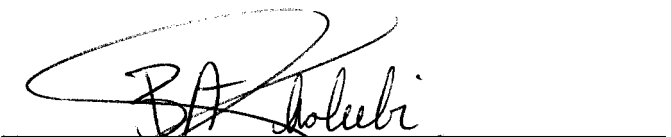
I, Bola Sholubi, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a law clerk in the Intellectual Property Group of Ogilvy Renault LLP, solicitors for the Plaintiff. I am assisting the lawyers with primary responsibility for this file and have personal knowledge of the facts set out in this affidavit except where I have received information from others in which case I have stated the source of that information and that I believe it to be true.
2. Attached as **Exhibit "A"** to my affidavit is a copy of an e-mail from Allyson Whyte Nowak to Messrs. Tajdin and Jiwa dated January 27, 2011 with a draft judgment attached.
3. I have reviewed a copy of an e-mail from Nagib Tajdin to Brian Gray dated January 31, 2011 which attaches correspondence from Mr. Tajdin to Mr. Gray together with a copy of the Plaintiff's draft judgment. The correspondence to Mr. Gray states that it is "without prejudice". Based on my review of Mr. Tajdin's correspondence, I can advise that Mr. Tajdin did not provide his approval as to the form or content of the draft judgment.

- 4. Mr. Jiwa sent an email to Mr. Gray dated February 1, 2011. Mr. Jiwa did not provide his approval as to the form and content of the draft judgment sent by Ms. Whyte Nowak on January 27, 2011, nor did he yet provide any comments on the draft.
- 5. Attached as **Exhibit "B"** to my affidavit is a copy of the Plaintiff's draft Bill of Costs which I am advised by counsel for the Plaintiff, Ms. Whyte Nowak, and do verily believe, was submitted to the Court at the hearing of the parties' motions for summary judgment.
- 6. Attached as **Exhibit "C"** to my affidavit is a copy of the Plaintiff's revised draft Bill of Costs which has been recalculated using the high end of column IV of Tariff B.
- 7. I make this affidavit in support of the Plaintiff's motion for judgment dated February 8, 2011 and for no other purpose.

**SWORN** before me at the City of  
Toronto, on February 8, 2011.

  
A Commissioner for taking affidavits

  
BOLA SHOLUBI