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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

<p>12 GEORGE CLINTON, an individual, 13 Plaintiff, 14 vs. 15 WILL ADAMS, <i>et al.</i> 16 Defendant.</p>	<p>) Case No. CV 10-09476-ODW-PLA)) HENDRICKS & LEWIS PLLC'S) RESPONSE TO <i>EX PARTE</i>) APPLICATION TO APPROVE) SETTLEMENT AGREEMENT AND) DISMISS UNDER FRCP 41(A))) Action Filed: December 10, 2010))</p>
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1 Lien holder Hendricks & Lewis PLLC responds to the joint *ex parte*
2 application to approve settlement agreement and dismiss the action under Fed. R.
3 Civ. Pro. 41(a). Hendricks & Lewis objects to dismissal before determining the lien
4 holder's right in the settlement proceeds, and requests that if the Court decides to
5 approve the settlement and dismiss the action, that it retain jurisdiction over the
6 settlement and determine disposition of the proceeds.

7 Hendricks & Lewis is engaged in discussions with lien claimant The Allan
8 Law Group to obtain information about its claims and to understand its relative
9 priority and anticipates having a position with respect to that claim shortly.

10 Hendricks & Lewis anticipates moving for leave to intervene under Section
11 708.430(a) of the California Code of Civil Procedure, or alternatively requests that
12 it be deemed a party under subsection (b) as this proceeding involves the Court's
13 determination of the lien holder rights under Section 708.470 of the California Code
14 of Civil Procedure.

15 **Dismissal is Premature; Disposition of Settlement Proceeds Can and**
16 **Should Be Promptly Determined While the Court's Jurisdiction is Clear.**

17 Determining the disposition of the settlement proceeds can be accomplished
18 expeditiously and without dismissal of the case. Disposition of settlement proceeds
19 can be quickly resolved by motion on a schedule set by this Court. Indeed, Clinton
20 suggested that he was concurrently filing under seal a "Motion for Distribution and
21 Division of Settlement Funds."¹ Clinton's expressed intention demonstrates that
22 resolution can be prompt and without any need for immediate dismissal or transfer.
23 Thus, there is no good reason to rush to dismissal.

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25 ¹ To date, Hendricks & Lewis has not been served with a copy of such a
26 Motion but assumes that notwithstanding the claim that it will be filed under seal,
27 Hendricks & Lewis as a lien holder will be served with the Motion. If not, it
28 strenuously objects as it has an absolute right to receive the Motion and to be heard
on the distribution of the settlement proceeds under California law. C.C.P.
§708.440(b) ("The application for an order under this subdivision shall be made on
noticed motion. The motion shall be served on the judgment creditor.")

1 Dismissal also may create unnecessary issues as to the Court's jurisdiction.
2 Rule 69 does not provide for dealing with Hendricks & Lewis's lien by means of
3 supplementary proceedings as Clinton suggests. Joint *Ex Parte* Application at 2.
4 Rule 69 provides for judgment enforcement under state law to the extent federal law
5 does not provide otherwise. Sections 708.410 to 708.480 of the California Code of
6 Civil Procedure provide a comprehensive statutory means for resolution of a lien
7 filed in a pending action without resort to "ancillary" supplementary proceedings as
8 Plaintiff suggests. Plaintiff has not provided authority for addressing the lien in
9 supplementary proceedings.

10 Further, C.C.P. Section 708.440(a) specifically provides that "no
11 compromise, *dismissal*, settlement or satisfaction of the pending action . . . may be
12 entered into by or on behalf of judgment debtor, without written consent of the
13 judgment creditor or authorization by order of the court under subdivision (b)."
14 (emphasis added.) Such an order can only be obtained after the filing of an
15 application by the judgment debtor and a hearing held on such application. C.C. P.
16 § 708.440(b). Accordingly, under Section 708.440(a), as Hendricks & Lewis does
17 not consent to dismissal and an application has not been filed or ruled upon,
18 dismissal cannot be entered at this time.

19 If the Court is inclined to approve the settlement now and dismiss the action,
20 Hendricks & Lewis requests that it expressly retain jurisdiction of the settlement
21 and enter an order that Defendants not transfer the proceeds without an order from
22 this Court. This would avoid issues about the propriety of ancillary supplementary
23 proceedings and simplify what remains to be completed and confirm by judicial

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