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 10 Attorneys for Judgment Lien Holder
 11 HENDRICKS & LEWIS PLLC

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

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| <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)) NOTICE OF <i>EX PARTE</i>) APPLICATION AND <i>EX PARTE</i>) APPLICATION OF JUDGMENT) LIENHOLDER HENDRICKS &) LEWIS PLLC REQUESTING) ACCESS TO PLAINTIFF'S) MOTION FOR DIVISION AND) DISTRIBUTION OF SETTLEMENT) FUNDS UNDER FED. R. CIV. P.) 69(a) WITH EXHIBITS A-D FILED) UNDER SEAL (DKTS. #121, 122);) MEMORANDUM OF POINTS AND) AUTHORITIES IN SUPPORT; AND) DECLARATION OF MARY HAAS) WITH EXHIBITS A AND B)) [[Proposed] Order concurrently filed) herewith])</p> |
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1 **JUDGMENT LIENHOLDER HENDRICKS & LEWIS’S NOTICE OF *EX***
2 **PARTE APPLICATION AND *EX PARTE* APPLICATION**

3 Pursuant to L.R. 7-19, judgment lienholder Hendricks & Lewis PLLC
4 (“Hendricks & Lewis”) hereby moves this Court *ex parte* for an order directing
5 Plaintiff George Clinton (“Plaintiff” or “Clinton”) to serve on Hendricks & Lewis a
6 copy of Plaintiff’s Motion for Division and Distribution of Settlement Funds Under
7 FED. R. CIV. P. 69(a) with Exhibits A-D, which were filed under seal on or about
8 June 8, 2012 or any time thereafter. (*See* Notice of Manual Filing, Dkts. #121,
9 122.)

10 This *Ex Parte* Application is made on the grounds that, as a judgment
11 lienholder, Hendricks & Lewis is entitled to receive a copy of, and to be afforded an
12 opportunity to respond to, Plaintiff’s motion for division and distribution of the
13 settlement funds in this action. *See* CAL. CODE OF CIV. PROC. § 708.440. Hendricks
14 & Lewis does not object to maintaining the filing under seal but rather seeks only to
15 be provided with a copy of the filing to enable it, as the lienholder, to respond to
16 Plaintiff’s requested disposition of the settlement funds.

17 This Application is made following a request made to Plaintiff’s counsel for a
18 copy of Clinton’s motion. As of the filing of this Application, despite promises by
19 Plaintiff’s counsel that a copy would be served, Hendricks & Lewis has not
20 received a copy of Plaintiff’s filing.

21
22 DATED: June 14, 2012

DAVIS WRIGHT TREMAINE LLP
MARY H. HAAS

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25 By: /s/ Mary H. Haas
 Mary H. Haas

26 Attorneys for Judgment Lien Holder
27 HENDRICKS & LEWIS PLL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On May 31, 2012, the parties filed a Joint Ex Parte Application to Approve
3 Settlement Agreement and Dismiss the Action Under Fed. R. Civ. P. 41(a) in which
4 Plaintiff George Clinton (“Plaintiff” or “Clinton”) acknowledged the two liens filed
5 in this action, including that of Hendricks & Lewis. (Dkt. #114 at p. 2.) Clinton
6 also acknowledged that he would have “a continuing obligation to engage in further
7 proceedings” with the lienholders to resolve their claims to the settlement funds and
8 stated that he was, or would be, filing a motion for division and distribution of those
9 funds. (Dkt. #114 at pp. 4-5.)

10 On June 8, 2012, Clinton purportedly manually filed the motion identified as
11 Plaintiff’s Motion for Division and Distribution of Settlement Funds Under FED. R.
12 CIV. P. 69(a) with Exhibits A-D under seal in this action. (Notice of Manual Filing,
13 Dkt. #121.) It appears that the Motion may have been re-filed on June 14, 2012.
14 (Notice of Manual Filing, Dkt. #122.) But to-date, judgment lienholder Hendricks
15 & Lewis has not received a copy of this filing despite requesting a copy from
16 Clinton’s counsel on multiple occasions.¹ (Declaration of Mary H. Haas, ¶ 3, Exs.
17 A, B.) Clinton’s counsel has promised to provide the Motion but to date has not.
18 (Haas Decl., ¶ 5.)

19 Under California law, as a judgment lienholder, Hendricks & Lewis is
20 entitled to receive a copy of Plaintiff’s motion and be afforded the opportunity to
21 respond thereto before the Court rules on Clinton’s request. Specifically, California
22 law provides:

23 Upon application by the judgment debtor, the court in which the action
24 or special proceeding is pending or the judgment procured therein is
25 entered may, in its discretion, after a hearing, make an order described
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27 ¹ Hendricks & Lewis understands that the other lienholder in this matter, the
28 Allan Law Group, was also not served with a copy of the Motion. (Haas Decl., ¶ 4.)

1 in subdivision (a) that may include such terms and conditions as the
2 court deems necessary. **The application for an order under this**
3 **subdivision shall be made on noticed motion. The notice of motion**
4 **shall be served on the judgment creditor.** Service shall be made
5 personally or by mail.

6 CAL. CODE CIV. PROC. § 708.440(b) (emphasis added). Clinton, however, has failed
7 to serve a copy of his motion seeking disposition of the settlement funds on the
8 judgment creditor, Hendricks & Lewis. This failure necessarily deprives Hendricks
9 & Lewis of the opportunity to respond to judgment-debtor Clinton's proposed
10 division and deprives the Court of sufficient information necessary to rule on
11 Clinton's request and determine the rights of the lienholders to the settlement funds.
12 *See Oldham v. Cal. Capital Fund, Inc.*, 109 Cal. App. 4th 421, 424-25, 433-34, 134
13 Cal. Rptr. 2d 744 (2003) (holding that because the record did not contain sufficient,
14 necessary information, the superior court could not have properly exercised its
15 discretion in approving the settlement).

16 Therefore, Hendricks & Lewis respectfully requests that Clinton be ordered
17 to serve Hendricks & Lewis with a copy of the motion and all supporting exhibits as
18 required under California law² and that Hendricks & Lewis be afforded the

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27 ² Hendricks & Lewis has no objection to maintaining the confidential nature
28 of the Motion and assuming the Court permits the sealing of the Motion, will file its
response under seal.

1 opportunity to file a response to that motion before the Court rules on the
2 disposition of the settlement funds.³
3

4 DATED: June 14, 2012

DAVIS WRIGHT TREMAINE LLP
MARY H. HAAS

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7 By: /s/ Mary H. Haas
 Mary H. Haas

8 Attorneys for Judgment Lien Holder
9 HENDRICKS & LEWIS PLL
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27 ³ Because Hendricks & Lewis does not even know what date a hearing for the
28 Motion has been set by Plaintiff, should the Motion have been set on minimum
notice, Hendricks & Lewis requests that upon receipt of the Motion it be afforded
additional time to respond to the Motion to account for any prejudice resulting from
the delay in service.

DECLARATION OF MARY H. HAAS

I, Mary H. Haas, hereby declare and state as follows:

1. I am a partner in the law firm of Davis Wright Tremaine, counsel for Judgment Lien Holder Hendricks & Lewis PLLC (“Hendricks”). I have personal knowledge of the following facts, and if called upon to testify, could and would testify competently thereto. I make this declaration in support of Hendricks & Lewis’s Ex Parte Application Ex Parte Application Of Judgment Lienholder Hendricks & Lewis PLLC Requesting Access To Plaintiff’s Motion For Division And Distribution Of Settlement Funds Under Fed. R. Civ. P. 69(a) With Exhibits A-D Filed Under Seal (Dkt. #121).

2. On June 8, 2012, I received electronic notice that Jeffrey Thennisch, George Clinton’s counsel had manually filed under seal a Motion for Division and Distribution of Settlement Funds Under Fed. R. Civ.P. 69(a) with Exhibits A-D (the “Motion”) (Dkt. #121). I did not receive a copy of the Motion.

3. On June 9, 2012, I requested Mr. Thennisch to provide me a copy of the Motion. Attached hereto as Exhibit A is a true and correct copy of my email to him. I have received no response to my email.

4. At or about the same time, my co-counsel Katherine Hendricks contacted the Allan Law Group, the other lienholder, to inquire about whether they have received a copy of the Motion. They have advised us that they have not. I have since been in contact with the Allan Law Group and they have confirmed as of the filing of this Declaration, they have not received a copy of the Motion.

5. On June 13, 2012, I sent Mr. Thennisch an email advising him that this ex parte application would be filed and asking him to inform me as to whether he would be opposing the ex parte application. Attached hereto as Exhibit B is a true and correct copy of my email to him. He responded later in the day to advise me that he was in the process of filing the Motion that day and would direct his staff to send me a filed copy. On June 14, 2012, I received notice through the ECF of a

EXHIBIT A

Haas, Mary

From: Haas, Mary
Sent: Saturday, June 09, 2012 8:16 AM
To: JThennisch@PatentCo.com
Subject: Clinton

Jeff, I saw that you manually filed a motion relating to approval and distribution of the settlement in the Black Eyes Peas case on Friday, June 8. We were not served a copy of the motion as required by California law. Can you please provide us with a copy of the motion and all related documents immediately? Thank you for your prompt attention. Mary

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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

EXHIBIT B

Haas, Mary

From: Haas, Mary
Sent: Wednesday, June 13, 2012 11:14 AM
To: JThennisch@PatentCo.com
Cc: Katherine Hendricks (Kh@hllaw.com)
Subject: Clinton v. Will Adams

Jeff, having not received any response to my June 9 email seeking a copy of the motion you filed under seal on June 8, please be advised that Hendricks & Lewis will be filing an ex parte application seeking access to the motion for division and distribution of the settlement amount and its accompanying exhibits. Please let me know if you intend to oppose this application.

Mary

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