

1 Jeffrey P. Thennisch (*admitted pro hac vice*)  
 2 DOBRUSIN & THENNISCH PC  
 29 West Lawrence Street, Suite 210  
 3 Pontiac, Michigan 48342  
 (248) 292-2920  
 4 jeff@patentco.com

5 *Attorneys for Plaintiff George Clinton*

7 UNITED STATES DISTRICT COURT  
 8  
 9 CENTRAL DISTRICT OF CALIFORNIA

11 GEORGE CLINTON, an individual,  
 12  
 Plaintiff,  
 13  
 v.  
 14  
 15 WILL ADAMS, *et al.*,  
 16  
 Defendants.

Case No. 2:10-cv-09476-ODW-PLA

The Honorable Otis D. Wright, II

**PLAINTIFF’S REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 MOTION FOR DISBURSEMENT OF  
 FUNDS**

18  
 19 Pursuant to Federal Rule of Evidence 201, Plaintiff George Clinton  
 20 (“Clinton”) hereby requests that the Court take judicial notice of the Honorable  
 21 Philip S. Gutierrez’s July 16, 2012 Order Granting in Part and Denying in Part  
 22 Clinton’s Motion for Distribution and Division of Settlement Funds in a lawsuit  
 23 titled *George Clinton v. Universal Music Group, Inc., et al.*, Civil Action No.  
 24 2:07-cv-00672-PSG-JWJ (the “UMG Action”). A true and correct copy of the  
 25 July 16, 2012 Order is attached hereto as Exhibit A. Judicial notice is appropriate  
 26  
 27  
 28

1 as the Honorable Philip S. Gutierrez’s July 16, 2012 Order decides an issue that is  
2 squarely before this Court at present.

3  
4 **I. STATEMENT OF FACTS**

5 **A. Clinton’s Motion for Division and Distribution of Settlement**  
6 **Funds Pending Before This Court**

7 Clinton’s lawsuit against Defendants ended in a settlement. Pending before  
8 the Court is Clinton’s Motion for Distribution and Division of Settlement Funds  
9 requesting that the settlement amount be distributed in a certain manner. ECF  
10 No. 132. Judgment Creditor Hendricks & Lewis PLLC (“H&L”) and Third Party  
11 Allan Law Group, PC (“ALGPC”) have separately opposed Clinton’s Motion.  
12 ECF Nos. 134 and 138, respectively. H&L misguidedly requests that the Court  
13 award it the entire settlement amount at issue because H&L has “priority” over  
14 Clinton’s undersigned counsel (“Thennisch”). H&L’s Opp’n. at 1, 18, ECF No.  
15 134. Clinton filed a Reply in Support of his Motion on July 10, 2012. ECF No.  
16 144.

17  
18  
19  
20 **B. Clinton’s Motion for Division and Distribution of Settlement**  
21 **Funds In The UMG Action**

22 Clinton’s lawsuit in the UMG Action settled for \$80,000. Ex. A, Order at  
23 2. Like this action, Clinton filed a Motion for Division and Distribution of  
24 Settlement Funds in the UMG Action. *Id.* Moreover, like this action, H&L  
25 misguidedly requested that the court award it the entire \$80,000 settlement  
26 amount because H&L has “priority” over Thennisch. *Id.* at 2, 5.  
27  
28

1           On July 16, 2012, the Honorable Philip S. Gutierrez issued an Order  
2 Granting in Part and Denying in Part Clinton’s Motion for Distribution and  
3 Division of Settlement Funds. The court held that Thennisch’s attorney lien had  
4 priority over H&L’s judgment lien and awarded Thennisch his fees and costs  
5 arising out of his representation of Clinton in the UMG Action. *Id.* at 6. The  
6 court explained that “[d]enying Thennisch his fees and costs would deter  
7 attorneys from representing debtors, thus harming the debtors and ultimately their  
8 creditors.” *Id.* at 5. The court noted that “equity favors awarding an attorney  
9 priority of payment from a fund the attorney created.” *Id.*

13           Furthermore, the court found distinguishable the two cases that H&L relied  
14 upon for the proposition that it has priority over Thennisch, namely the Ninth  
15 Circuit’s decision in *Fleet Credit Corp. v. TML Bus Sales, Inc.*, 65 F.3d 119 (9th  
16 Cir. 1995) and an archaic decision from the California Court of Appeals in *Del*  
17 *Conte Masonry Co. v. Lewis*, 16 Cal. App. 3d 678, 94 Cal. Rptr. 439 (1971). *Id.*  
18 at 5-6. As to *Fleet*, the Court explained that “[t]he question in *Fleet* over  
19 whether a creditor may recover the money it has paid in attorney fees in pursuing  
20 a lien, is different than the present question over whether an attorney may secure  
21 his contingency fee from a fund that his efforts helped to create.” *Id.* at 6. As to  
22 *Del Conte*, the Court noted that “the outcome of *Del Conte* appeared to rest on  
23 circumstances that suggested collusion between the attorney and the debtor to  
24 prevent the creditor from being paid” and that “there is no suggestion of collusion  
25  
26  
27  
28

1 between Thennisch and Plaintiff to prevent H&L from being paid.” *Id.* The court  
2 noted that “[t]o the contrary, Plaintiff himself requests that the Court distribute  
3 \$20,000 to H&L.” *Id.*  
4

## 5 **II. ARGUMENT**

6 Judicial notice of the Honorable Philip S. Gutierrez’s July 16, 2012 Order  
7 in the UMG Action is appropriate. The Federal Rules of Evidence permit judicial  
8 notice to be taken of facts not subject to reasonable dispute and that are “capable  
9 of accurate and ready determination by reference to sources whose accuracy  
10 cannot reasonably be questioned.” Fed. R. Evid. 201(b). In particular, this  
11 Court is permitted to take judicial notice of proceedings in other courts. *See, e.g.*  
12 *Trigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011) (noting that the Ninth  
13 Circuit “may take notice of proceedings in other courts, both within and without  
14 the federal judicial system, if those proceedings have a direct relation to the  
15 matters at issue”); *Doran v. Aus*, 308 F. App’x 49, 50 (9th Cir. 2009) (granting  
16 motion to take judicial notice of materials from state court proceedings because  
17 “[m]aterials from a proceeding in another tribunal are appropriate for judicial  
18 notice”); *Kourtis v. Cameron*, 419 F.3d 989, 995 n.3 (9th Cir. 2005) (holding that  
19 motion to take judicial notice of prior action in federal district court should be  
20 granted); *Schweitzer v. Scott*, 469 F. Supp. 1017, 1020 (C.D. Cal. 1979) (finding  
21 that “the Court is empowered to and does take judicial notice of court files and  
22 records”).  
23  
24  
25  
26  
27  
28

1 Here, the Honorable Philip S. Gutierrez's July 16, 2012 Order resolves an  
2 issue that is squarely before this Court – *i.e.*, whether Thennisch is entitled to  
3 recover on his attorney lien prior to H&L.<sup>1</sup> Like the UMG Action, H&L relies on  
4 the Ninth Circuit's decision in *Fleet Credit Corp. v. TML Bus Sales, Inc.*, 65 F.3d  
5 119 (9th Cir. 1995) and an archaic decision from the California Court of Appeals  
6 in *Del Conte Masonry Co. v. Lewis*, 16 Cal. App. 3d 678, 94 Cal. Rptr. 439  
7 (1971) for the misguided proposition that H&L has priority over Thennisch.  
8 H&L's Opp'n. at 9-11, ECF No. 134. Furthermore, H&L's lien in both this  
9 action and the UMG action is based upon the same judgment. Finally, like the  
10 UMG Action, it was Attorney Thennisch's efforts that created the settlement  
11 funds at issue.  
12

13  
14  
15  
16 **III. CONCLUSION**

17 For the foregoing reasons, Clinton respectfully requests that the Court take  
18 judicial notice of the Honorable Philip S. Gutierrez's July 16, 2012 Order  
19 Granting in Part and Denying in Part Clinton's Motion for Distribution and  
20 Division of Settlement Funds in the UMG Action.  
21

22 Dated: July 18, 2012

Respectfully submitted,

GEORGE CLINTON

25 By: /s/ Jeffrey P. Thennisch  
26 One of his Attorneys  
27

28 <sup>1</sup> Unlike the UMG Action, Clinton requests that funds from the settlement also be distributed to the IRS and ALGPC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Jeffrey P. Thennisch  
DOBRUSIN & THENNISCH PC  
29 W. Lawrence Street, Suite 210  
Pontiac, Michigan 48342  
(248) 292-2920  
jeff@patentco.com

*Attorneys for Plaintiff George Clinton*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2012, a copy of the foregoing PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR DISBURSEMENT OF FUNDS was filed with the Clerk of the Court electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail.

/s/ Jeffrey P. Thennisch  
Jeffrey P. Thennisch