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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GEORGE CLINTON, an individual,

Plaintiff,

v.

WILL ADAMS, p/k/a will,I,am  
individually and d/b/a will.i.am music, et  
al.,

Defendants.

Case No. CV 10-09476-ODW-PLA

The Honorable Otis D. Wright II

**PLAINTIFF'S RESPONSE IN  
OPPOSITION TO DEFENDANTS'  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Date: April 16, 2012  
Time: 1:30 P.M. (PST)  
Place: Courtroom 11

Action Filed: December 10, 2010

1 Plaintiff, George Clinton (“Clinton”), hereby opposes the Defendants’ March 7,  
2 2010 Request For Judicial Notice In Support Of Motion For Summary Judgment at  
3 D/E 80 which seeks to have this Court take judicial notice of a December 3, 2007  
4 “Declaration Of Alasdair McMullan in Opposition to Plaintiff George Clinton’s  
5 Motion for Partial Summary Judgment which was filed before Judge Real of this Court  
6 in Case No. 06-CV08106.  
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9 Although Clinton certainly recognizes that this Court has broad discretion and  
10 latitude to exercise Judicial Notice of “an adjudicative fact” within the meaning of  
11 Federal Rule of Evidence 201(a), it is respectfully submitted that “a court may not take  
12 judicial notice of a fact that is ‘subject to reasonable dispute.’ Fed.R.Evid 201(b).” *Lee*  
13 *v. City of Los Angeles*, 250 F.3d 668, 690 (9<sup>th</sup>.Cir. 2001). In *Lee*, the Ninth Circuit  
14 drew a distinction between the ability of a court to “take judicial notice of *undisputed*  
15 matters of public record” and “judicial notice of *disputed* facts” which remain wholly  
16 unproven and concluded that reversible error was committed “by taking judicial notice  
17 of disputed matters of fact to support its ruling. *Id.* Here, the Moving Defendants ask  
18 this Court to take judicial notice of the December 3, 2007 McMullan Declaration as  
19 some form of “adjudicative fact” under Fed.R.Civ.P. 201(a) despite the reality that the  
20 same Moving Defendants are simultaneously claiming to possess some type of license  
21 to Clinton’s musical works allegedly flowing from the parties discussed in the  
22 McMullen Declaration – all of which is/are disputed by Clinton.  
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1           Indeed, the existence (or lack thereof) of such a putative license claimed by the  
2 Moving Defendants is the central disputed matter in this entire action. Moreover, the  
3 Moving Defendants have the burden of proof to establish the existence of such a  
4 “license” as an affirmative defense – as pleaded by the Moving Defendants in their  
5 respective answers at D/E 21-27 which remains unproven. In accordance with *Lee*,  
6 and the disputed nature of all facts regarding the existence of a putative license, the  
7 Defendants’ request for judicial notice should be denied under Federal Rule of  
8 Evidence 201.  
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12           Further, Clinton additional objects to the Defendants’ request for judicial notice  
13 of the December 3, 2007 McMullen Declaration for the following reasons:  
14

15           (1) The version of the December 3, 2007 McMullan Declaration which

16           Defendants attach to D/E 80 in this action is incomplete and does not include  
17 either the Exhibit A referenced in ¶3 of the McMullan Declaration itself or  
18 the Exhibit B referenced in ¶7 of the McMullan Declaration itself. To the  
19 extent that this Court is being asked to take judicial notice of a document, it  
20 is axiomatic that such a document be provided in its true and complete form  
21 and entirety; and  
22

23  
24           (2) Paragraph 9 of the December 3, 2007 McMullan Declaration in Case 06-  
25 08106 expressly contains the following statement and limitation:

26           “Defendants had no participation in, or control over, any party in the action  
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1 entitled *Montes v. Kaplan, Kenegos & Kagin, et al.*, U.S.D.C. C.D. Cal. Case  
2 No. CV 03-8955 R, including Tercer Mundo and Funk Mob”, which was also  
3 an action before Judge Real. Based upon the fact that the December 3, 2007  
4 McMullan Declaration, on its face, draws the reader to the earlier 2003 case  
5 before Judge Real, it logically flows that this earlier 2003 case has relevance  
6 to the December 3, 2007 McMullan Declaration. Thus, a review of the  
7 Court’s own docket in Case No. 03-08955 shows the existence of a prior  
8 June 17, 2005 Order by Judge Real which is attached hereto at Exhibit A to  
9 this response. Judge Real’s June 17, 2005 Order at Exhibit A hereto existed  
10 for over two (2) years prior to the December 3, 2007 McMullan Declaration  
11 and clearly contains the following language from an Article III Court that  
12 Judge Real:  
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18 “ORDERED, adjudged and decreed that GEORGE CLINTON is the sole owner  
19 of the master recordings of the albums “Hard Core Jollies,” “One Nation Under  
20 A Groove”, “Uncle Jam Wants You<sup>1</sup>”, and “Electric Spanking Of War Babies”  
21 (the “Masters”) and has been the sole owner of Masters since 1993; and it is  
22 further

23 ORDERED, adjudged and decreed that the liens of the law firms and any other  
24 grant of rights in the Masters since 1993 by anyone other than GEORGE  
25 CLINTON are invalid and shall not be honored.” [emphasis added].

26 Accordingly, Clinton submits that this Court should deny the Defendants’

27 <sup>1</sup> The musical work at issue in this action, (Not Just) Knee Deep is contained in  
28 Clinton’s prior album, Uncle Jam Wants You, which is clearly covered by Judge  
Real’s prior June 17, 2005 Order at Exhibit A hereto.

1 present request to take any judicial notice of the December 3, 2007 McMullan  
2 Declaration for the reason that it (i) does not pertain to this action, (ii) is not probative  
3 of any issue involving the parties to this action, and (iii) is a December 3, 2007  
4 declaration from a third party in another case being submitted as a pretext to avoid the  
5 more applicable and germane June 17, 2005 Order and ruling of Judge Real. As more  
6 fully set forth above and, with reliance upon *Lee v. City of Los Angeles*, 250 F.3d 668,  
7 690 (9<sup>th</sup>.Cir. 2001), the Moving Defendants are effectively asking this Court to not  
8 only take judicial notice of “disputed facts” at issue in this case, but to also take notice  
9 of supposed facts that are contrary to an issued Order of this same Article III Court  
10 which was entered over two (2) years before the “statements” made in the December 3,  
11 2007 McMullen Declaration were ever made.

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16         Once again, Clinton recognizes that the Court has wide discretion to exercise  
17 judicial notice, but FRE 201 is limited. As such, it should be denied in this instance  
18 where the Court is being asked to take such “judicial notice” for the wholly improper  
19 and impermissible purpose of avoiding the express content and, indeed, attempting to  
20 collaterally attack Judge Real’s prior June 17, 2005 Order regarding the same musical  
21 subject matter of this action. On this exact point, Clinton states that a review of the  
22 Court docket in Case No. 03-CV-08955 does not show that the June 17, 2005 Order  
23 has been vacated in any manner under Fed.R.Civ.P. 60 or otherwise limited in any  
24 manner by the named Defendants in this action – or Alasdair McMullan.  
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1 DATED: March 19, 2012  
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3

4 Attorneys for Plaintiff, George Clinton

5 /s/Jeffrey P. Thennisch  
6 Dobrusin & Thennisch PC  
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9 Pontiac, Michigan 48342  
10 (248) 292-2920  
11 (248) 292-2910

12 **CERTIFICATE OF SERVICE**

13 I, hereby certify that on March 19, 2012, I electronically filed the foregoing:

14 **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' REQUEST**  
15 **FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR PARTIAL**  
16 **SUMMARY JUDGMENT with Exhibit A**

17 with the Clerk of the Court using the ECF System which will send notification of such  
18 filing to all counsel of record.

19 /s/ Jeffrey P. Thennisch  
20 Jeffrey P. Thennisch (Pro Hac Vice)  
21 Attorneys for Plaintiff  
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