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9 Attorney for Plaintiff GEORGE CLINTON

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 GEORGE CLINTON,
13 an individual,

14 Plaintiff,

15 v.

16 WILL ADAMS, p/k/a WILL I AM,
17 individually, et al.

18 Defendants.

Case No. CV 10-09476-ODW-PLA

The Honorable Otis S. Wright II

**DECLARATION OF JEFFREY P.
THENNISCH**

1 5. After reading the Undisputed Material Fact 13 set forth in the
2 Defendants' motion for partial summary judgment, I also searched the PACER
3 document filing system maintained by the U.S. District Court for the Central
4 District of California to retrieve the June 17, 2005 Order issued by Judge Real in
5 Case No. 03-CV-08955 which previously adjudicated Clinton's rights in the same
6 Master Recordings that are at issue in this action since the Order itself was not
7 included in the Defendants' submissions to this Court. A complete copy of Judge
8 Real's June 17, 2005 Order is attached hereto at Exhibit B.

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12 6. I am also familiar with a third party service offered by Nielson and
13 more commonly-known as SoundScan which, for a fee, provides a requesting party
14 with factual data of the amount and type of sales of musical works. As set forth at
15 Exhibit C hereto, the website content for the SoundScan service (available through
16 at least www.nielsen.com) states that "Nielsen's tracking of music sales data is
17 used by all major and most independent record companies as well as distribution
18 companies, artists managers, booking agents, concert promoters, performing rights
19 organizations, government agencies, venue owners, traditional retailers, online
20 retailers, and digital delivery companies." Since this is a third party data
21 compilation service, I reasonably and legitimately believe that such "music sales
22 data" is/are objective facts of the existence of unit sales. Prior to becoming an
23 attorney, I worked in the automotive industry in Detroit, Michigan and view this
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1 type of unit sales data to be akin to the monthly unit sales data released by General
2 Motors, Ford, and Chrysler in any given month.

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4 7. Not surprisingly, Plaintiff's prior counsel explicitly requested such
5 SoundScan data from at least Defendant Will Adams as part of Plaintiff's
6 Document Production Request No. 4 at Exhibit D hereto. As also shown at Exhibit
7 D, Defendant Will Adams objected to this request on November 7, 2011 insisting
8 that the SoundScan data required a Protective Order before it would be produced to
9 the Plaintiff.
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12 8. However, as shown at Exhibit E hereto, counsel for Will Adams had
13 already provided the SoundScan data to Clinton's undersigned counsel on October
14 12, 2011, albeit cloaked that it was subject to the protections of Federal Rule of
15 Evidence 408. Although the undersigned fully understands the importance and
16 need for Federal Rule of Evidence 408, its application does not apply to purely
17 factual data that is otherwise discoverable, and such material may be admissible
18 where it is not being offered or used to assert liability or evidence of a
19 compromise. Plus, as here, it may be used to negate an argument of delay.
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23 I have personal knowledge of the facts set forth above and I could and would
24 testify as to the facts set forth above if called as a witness.

25 Executed this 19th day of March, 2012.

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Jeffrey P. Thennisch