

AT-138, EJ-125

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): DAVID J. COOK, Esq. CSB: 060859 Cook Collection Attorneys, PLC. 165 Fell Street San Francisco, CA 94102 5106 TELEPHONE NO. (877) 989 4730 FAX NO.: (866) 989 0491 ATTORNEY FOR (Name) Plaintiff and Judgment Creditor	FOR COURT USE ONLY CASE NUMBER 96 CV 01928 MHP
NAME OF COURT: United States District Court STREET ADDRESS Northern District of California MAILING ADDRESS 450 Golden Gate Avenue CITY AND ZIP CODE San Francisco, CA 94102 BRANCH NAME San Francisco Division	
PLAINTIFF: TOP RANK INC., a corporation DEFENDANT: LOS TRES AMIGO ETC. ET. AL.	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION <input checked="" type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input checked="" type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person	

ORDER TO APPEAR FOR EXAMINATION

- TO (name): JAVIER LUNA individually and dba LOS TRES AMIGOS
- YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
 - furnish information to aid in enforcement of a money judgment against you, and bring with you all of those
 - answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor. **certain books, records, papers, and files which are listed on Exhibit "A"**
 - answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment, **and which is attached hereto and incorporated by reference herein.**

Date: 12/17/08 Time: 9:15 a.m. Dept. or Div.: C Rm.: 450 Golden Gate, 15th Fl.
 Address of court shown above is: San Francisco, CA 94102

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):
TONY KLEIN. CARSON ATTORNEY'S SERVICES OR ANY REGISTERED PROCESS SERVER

Date: 11/10/08

JUDGE OR REFEREE

This order must be served not less than 10 days before the date set for the examination.

IMPORTANT NOTICES ON REVERSE

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

- Judgment creditor Assignee of record Plaintiff who has a right to attach order applies for an order requiring (name): JAVIER LUNA ind & dba Los Tres Amigos to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
- The person to be examined is
 - the judgment debtor.
 - a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
- The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
- This court is not the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
- The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Oct. 23, 2008

DAVID J. COOK, Esq. CSB: 060859

(TYPE OR PRINT NAME)

/s/ DAVID J. COOK

(SIGNATURE OF DECLARANT)

(Continued on reverse)

APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION (Attachment—Enforcement of Judgment)

Code of Civil Procedure, §§ 491.110, 708.110, 708.120

APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

**APPEARANCE OF A THIRD PERSON
(ENFORCEMENT OF JUDGMENT)**

(1) NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

(2) NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows (*Describe the property or debt using typewritten capital letters*):

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

**APPEARANCE OF A CORPORATION, PARTNERSHIP,
ASSOCIATION, TRUST, OR OTHER ORGANIZATION**

It is your duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with your property and debts.

DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF
PRODUCTION OF CERTAIN BOOKS, RECORDS,
PAPERS AND FILES LISTED ON EXHIBIT "A"

I, DAVID J. COOK, hereby declare and state as follows:

1. Declarant is one of the attorneys of record for Judgment Creditor in the above-entitled matter, am duly licensed to practice before all courts in the State of California, am familiar with the facts and circumstances as set forth below, and if called as a witness could testify thereto.

2. Plaintiff seeks production of the books, records, papers and files, which are listed on Exhibit "A" herein, which is attached hereto and incorporated by reference as though fully set forth herein.

3. Declarant requests the production of these records on the basis that they are relevant herein, in that these records will show any and all assets and liabilities of the Judgment Debtor(s) herein. These records are admissible in any trial, hearing or tribunal hereof which may relate to any proceeding by this Judgment Creditor herein.

4. Declarant believes that the deponent, officer, director, examinee, or any other person receiving this request, subpoena or order has possession either in part or in whole of the books, records, papers and files listed on Exhibit "A."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 23, 2008 at San Francisco, California.

/s/ DAVID J. COOK

DAVID J. COOK, ESQ. (SB# 060859)

1 **EXHIBIT "A" DESCRIPTIVE LIST OF RECORDS OF THE JUDGMENT DEBTOR TO BE**
2 **PRODUCED AT THE HEARING ON THE JUDGMENT DEBTOR EXAMINATION OF**
3 **THE JUDGMENT DEBTOR UNDER C.C.P. § 708.110 ETC.**

4 **A. FINANCIAL RECORDS**

- 5 1. All financial statements for the last three years of the judgment debtor, including
6 balance sheets, profit and loss statements, income statements.
- 7 2. All general ledgers and journals for the last three years of the judgment debtor.
- 8 3. All canceled checks, bank statements and other items which appear in any bank
9 statement, check registers, check books, bank reconciliations, deposit slips for any deposit, copies of
10 any checks deposited in any bank account, copies of checks which are cashed, receipts of purchases
11 of any cashiers checks, confirmation or notifications of any wire transfers of any type or nature and
12 notes or reports from bookkeepers pertaining to any bank statement of the Judgment Debtor(s).
- 13 4. All loan files for the loan of any money from any person or party of the Judgment
14 Debtor.

15 **B. AGREEMENTS**

- 16 5. Any contracts, agreements, leases and other business files of the Judgment Debtor.
- 17 6. All applications for credit with any vendor, financial institutions, creditors and third
18 parties of the Judgment Debtor.
- 19 7. All vendor contracts of the Judgment Debtor.
- 20 8. All leases for the lease or rental for office space of the Judgment Debtor.
- 21 9. All agreements with any and all officers, directors, employees, independent contracts
22 of Judgment Debtor(s).
- 23 10. All bills, dunning notices, claims for payment of money, statements, demands,
24 lawsuits, vendor contracts to and from any vendor, supplier, employee, creditor who has supplied
25 goods or services to Judgment Debtor(s).
- 26 11. Any and all agreements, notices, letters, correspondence, written memorandum, bulk
27 sales notices, notice of transfer, disposition, lien, mortgage of any assets of Judgment Debtor(s) to
28 any person or party, outside the ordinary course of business at any time.
12. Any and all joint venture agreements, partnership agreements, agreements with any

1 officer, director, shareholder, affiliate, subdivision, subsidiary of Judgment Debtor(s) to provide any
2 goods or services, commence or prosecute any contract or other any business activity.

3 **C. CORPORATE RECORDS**

4 13. All Articles of Incorporation, Bylaws, Minutes of Meetings of Shareholders and
5 Directors of Judgment Debtor(s).

6 14. All stock books, stock subscription agreements, issued shares of stock, agreements to
7 pay any consideration for issuance of shares of stock, agreements with any shareholder for the
8 issuance, sale or exchange of shares of stock to Judgment Debtor(s).

9 15. All permits, licenses or certificates of waivers of any permit, license or certificate
10 with any state, federal or other government agency for the issuance of any shares of stock to any
11 person on behalf of the Judgment Debtor(s).

12 **D. LICENSES AND PERMITS**

13 16. Any and all licenses issued by any state, county, city or other governmental entity by
14 which to conduct any business of the Judgment Debtor.

15 17. Any fictitious business statement by, for and on behalf of the Judgment Debtor to
16 conduct business of the Judgment Debtor.

17 18. Any professional license issued by any state licensing agency to conduct any business
18 of the Judgment Debtor.

19 19. Any county or city health permit to conduct any business of the Judgment Debtor.

20 **E. GENERAL RECORD REQUEST**

21 20. All lists of assets of the Judgment Debtor.

22 21. All lists of liabilities of the Judgment Debtor.

23 22. All auto registrations and pink slips of the Judgment Debtor.

24 23. Any and all trust agreements of the Judgment Debtor.

25 24. Any and all agreements for any safety deposit boxes of the Judgment Debtor.

26 25. All employment agreements of the Judgment Debtor.

27 26. All accounts receivable records or billings of any type or nature.

28 27. All documents which refer to any money owing to the Judgment Debtor(s).

1 28. All Federal and State Income tax returns for the last three (3) years of the Judgment
2 Debtor.

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