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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES, WEST**

19 FREDERIC GOLDMAN, an individual, and
20 as personal representative of the Estate of
21 Ronald Lyle Goldman, Deceased,

22 Plaintiffs,

23 vs.

24 ORENTHAL JAMES SIMPSON,

25 Defendant.

Case No. SC 036340

Hon. Linda K. Lefkowitz

Complaint Filed: May 4, 1995

**NOTICE OF MOTION AND MOTION BY
PLAINTIFF FREDERIC GOLDMAN FOR
ORDER TRANSFERRING AND
ASSIGNING RIGHT OF PUBLICITY OF
DEFENDANT AND JUDGMENT
DEBTOR ORENTHAL JAMES SIMPSON;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: October 17, 2006

Time: 9:00 a.m.

Place: Department "A"

26 **TO DEFENDANT AND JUDGMENT DEBTOR AND HIS COUNSEL:**

27 **PLEASE TAKE NOTICE** that on October 17, 2006, at 9:00 a.m., or as soon thereafter as
28 the matter may be heard by the Honorable Linda K. Lefkowitz in Department "A" of the Santa
Monica Courthouse, located at 1725 Main Street, Santa Monica, California 90401-3299, Plaintiff

1 and Judgment Creditor Frederic Goldman, individually and on behalf of the Estate of Ronald Lyle
2 Goldman ("Plaintiff"), will and hereby does move the Court for an Order transferring and
3 assigning to Plaintiff the right of publicity of Defendant and Judgment Debtor Orenthal James
4 Simpson ("Defendant") , so that Plaintiff may utilize this right to try to satisfy the unpaid judgment
5 in this action.

6 This Motion is based on established case law, statutes, and the inherent equitable authority
7 of the Court, and it is made on the grounds that the right of publicity is a valuable and assignable
8 property right, which can and should be utilized to satisfy the civil judgment after jury trial in this
9 action. That judgment has gone unpaid since it was entered more than nine years ago.

10 This Motion is based on and supported by this Notice, the attached Memorandum of Points
11 and Authorities, the complete pleadings and records on file herein, and on such other evidence,
12 argument, documents, and/or requests for judicial notice as may be presented to the Court at or
13 before the hearing on this Motion.

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15 DATED: September 5, 2006

SOMMER BARNARD PC

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By: _____
Jonathan G. Polak
Attorneys for Plaintiff FREDERIC GOLDMAN
Individually and as Personal Representative of the
Estate of Ronald Lyle Goldman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. INTRODUCTION**

4 Plaintiff and Judgment Creditor Frederic Goldman seeks an Order transferring and
5 assigning to Plaintiff the right of publicity of Defendant and Judgment Debtor O.J. Simpson, so
6 that Plaintiff may utilize this right to try to satisfy the multimillion dollar civil judgment against
7 Simpson. More than nine years have passed since a California jury found Simpson civilly liable
8 for the murders of his former wife and Ronald Goldman. Mr. Goldman’s father, Frederic
9 Goldman, is still waiting to collect the \$19,725,100 in total compensatory and punitive damages
10 awarded by that jury. With accrued interest, the total award now exceeds \$38,000,000.

11 Meanwhile, Simpson’s most valuable asset – his right of publicity – continues to be
12 exploited by Simpson and others. The right to allow or prevent the commercial use of Simpson’s
13 name and likeness is an intangible property right that may be transferred, assigned, or devised.¹
14 See *Civil Code* §§ 3344, 3344.1. If Plaintiff acquires this right, Plaintiff will acquire the right to
15 be compensated by others for their use of Simpson’s name and likeness.

16 California law generally provides that “all property of the judgment debtor is subject to
17 enforcement of a money judgment.” *Civil Code* § 695.010(a). The right of publicity is a valuable
18 and assignable property right. The Court should issue an order transferring Simpson’s right of
19 publicity to Fredric Goldman to partially satisfy the unpaid judgment in this action.

20
21 **II. BRIEF STATEMENT OF FACTS**

22 **A. The March 10, 1997 Judgment**

23 On March 10, 1997, after a jury trial, the Court entered a civil judgment against Simpson
24 and in favor of Frederic Goldman, individually and as the personal representative of the estate of

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26 ¹ The right of publicity has been defined as the “right of individual, especially public figure or
27 celebrity, to control commercial value and exploitation of his name or picture or likeness or to
28 prevent others from unfairly appropriating that value for their commercial benefit.” *Black’s Law
Dictionary* 1325 (6th ed. 1990) (citing *Estate of Elvis Presley v. Russen*, 513 F.Supp. 1339, 1353
(D.N.J. 1981).

1 his late son, Ronald L. Goldman. *See* Exhibit “A”, Judgment (March 10, 1997). The jury
2 awarded Frederic Simpson \$7,225,000 in wrongful death compensatory damages, property
3 damages of \$100, and punitive damages of \$12,500,000. *Id.* The total award was \$19,725,100.

4 That Judgment has gone unpaid. With accrued interest allowed by law, the total judgment
5 has now grown to \$38,385,625.

6 7 **III. ARGUMENT**

8 **A. Simpson’s Right Of Publicity Is A Property Right That May Be Transferred**

9 The right of publicity is an intangible asset akin to other intellectual property rights like
10 copyright, trademark, and patent. In California, the right of publicity is protected by both common
11 law and the *Civil Code*. *See* Drew Sherman, *The Right of Publicity and the First Amendment*
12 *Defense in California*, 9 NO. 1 INTELL. PROP. L. BULL. 29, 30 (2004). “California has long
13 recognized the right of publicity as derivative of the right of privacy.” *Id.* at 30.

14 In California, as elsewhere in the United States, Courts have recognized that the right of
15 publicity is a property right. David Westfall and David Landau, *Publicity Rights as Property*
16 *Rights*, 23 CARDOZO ARTS & ENT. L. J. 71 at 72 (2005). Beginning with the Second Circuit
17 Court of Appeals’ influential decision in *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*,
18 202 F.2d 866 (2nd Cir. 1953) (person has a right to grant exclusive privilege of publishing his
19 picture), courts have also generally agreed that the common-law right to publicity was transferable
20 and assignable. *See also Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F.Supp.2d 1146, 1184
21 (under California law, magazine had a strong likelihood of success under Unfair Competition Law
22 based on violations of rights of publicity assigned to the magazine by models or celebrities).
23 These attributes of property have been attached to the publicity right in California by statute and
24 case law. *See Civil Code* §§ 3344, 3344.1 (establishing a cause of action for violation of publicity
25 rights, and providing that the owner of publicity rights may consent to commercial uses of a
26 person’s name and likeness); *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th
27 387, 399 (“right of publicity, like copyright, protects a form of intellectual property”).

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B. The Court Has Equitable Authority To Assign Intangible Property Rights

As property, the right of publicity is subject to enforcement to satisfy a money judgment. *See Civil Code* § 695.010(a) (“Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.”). If such property is intangible and/or cannot be successfully executed upon, then a judgment creditor may invoke equity to require the transfer and/or assignment of the debtor’s rights or interests in such intangible property. *Pacific Bank v. Robinson* (1881) 57 Cal. 520, 524.

In *Pacific Bank*, the California Supreme Court held that a judgment debtor owning a patent may be compelled, by a court sitting in equity, to assign all his right in a patent to a receiver appointed to dispose of it in aid of execution of the judgment. The Supreme Court stated:

By the law of this State all goods, chattels, money, and other property, both real and personal, or any interest therein of the judgment debtor, are liable to execution. **And if there be property which cannot be reached by execution, and which the judgment debtor refuses to apply to the satisfaction of the judgment, he may be compelled, upon examination, in proceedings supplementary to execution, to deliver it in satisfaction of the judgment; i.e., to a receiver appointed to dispose of it in aid of the execution. The principle as well as the policy of the law is, therefore, to subject every species of property of a judgment debtor to the payment of his debts.** No species of property would seem to be exempt, except such as is especially exempted by law, and any property not directly liable to execution may be reached for the satisfaction of the judgments. This was effected, under the old system of practice, by a proceeding in equity, known as the creditor’s bill. After a judgment creditor had exhausted his remedy at law, by the issuance of a fieri facias, which was returned nulla bona, he had the right to invoke the jurisdiction of a court of equity to aid him, upon the principle of compelling a discovery of assets, tangible or intangible, and applying them to satisfying his execution. * * * So that any property which was reachable by a creditor’s bill may now be reached by the process of proceedings supplementary to execution. * * * As we have said, any tangible property is the subject of seizure and sale on execution. But a patent right is not tangible property. It is an incorporeal thing, subsisting in grant from the Government of the United States, yet it is subjected to some of the legal incidents of ownership of tangible property, such as succession and transfer; but as a creation of legislation, it is transferable only according to the

1 provisions of the statute which created it, and the only question is, Has a court of
2 equity power to compel its assignment and sale for the benefit of judgment
3 creditors?

4 *Pacific Bank*, 57 Cal. at 522-523 (emphasis added, citations omitted). The Supreme Court
5 answered this question in the affirmative. The Court noted that “[p]atent rights being, therefore,
6 assignable by the voluntary act of the owner, and by act and operation of law, it followed that a
7 court of equity could compel the defendant to assign them to a receiver, to be sold and applied to
8 the satisfaction of judgments against him[.]” *Pacific Bank* at 524. See also *Peterson v. Sheriff of*
9 *City and County of San Francisco* (1896) 115 Cal. 211, 213 (“And if a creditor of the patentee can
10 have the patent right subjected to the satisfaction of his judgment at all, it can be done only by a
11 court of equity acting in personam, and compelling the patentee to make an assignment.”).

12 In *Peterson*, the California Supreme Court noted that patent rights were intangible property
13 rights that could not successfully be levied upon by a writ of execution. “There is no method by
14 which the sheriff could levy upon said property.” *Peterson*, 115 Cal. at 213. A state court
15 judgment is also enforceable by writ of execution only within the state that issued the writ. See
16 *Baker by Thomas v. General Motors Corp*, 522 U.S. 222, 241 (J. Scalia, concurring) (“It has long
17 been established that ‘the judgment of a state Court cannot be enforced out of the state by an
18 execution issued within it.’”). Thus, in lieu of a writ of execution, the assignment of such a
19 property right can be achieved by invoking the court’s inherent equitable powers and retained
20 jurisdiction. See *Brown v. Brown* (1971) 22 Cal.App.3d 82, 84 (“Every court has power to compel
21 obedience to its judgments and orders, and a court of equity retains inherent jurisdiction to oversee
22 and enforce execution of its decrees.”) (citation omitted).

23 In the years since the *Pacific Bank* case, California appellate courts have followed and
24 relied on its holding. See, e.g., *Burrows v. Jorgensen* (1958) 158 Cal.App.2d 644, 650-651
25 (relying on *Pacific Bank* to uphold order allowing potential future rental income from property to
26 be applied to judgment); *Finnegan v. Finnegan* (1944) 64 Cal.App.2d 109, 113 (“To make
27 effective the award of the patent rights to plaintiff ... the trial court should have followed the
28 practice of ordering defendant to make the proper assignment of his interest in the patents.”).

1 In 1982, the California Legislature also added *Code of Civil Procedure* (CCP) § 708.510,
2 which the State Assembly described as “a new procedure for reaching certain forms of property
3 that cannot be reached by levy under a writ of execution” Legis. Comm. Comment, Assembly
4 1982 Addition. In pertinent part, Section 708.510 provides that “upon application of the
5 judgment creditor on noticed motion, the court may order the judgment debtor to assign to the
6 judgment creditor or to a receiver . . . all or part of a right to payment due or to become due,
7 whether or not the right is conditioned on future developments, including but not limited to the
8 following types of payments: * * * (2) Rents[;] (3) Commissions[;] [and] (5) Payments due from
9 a patent or copyright.” CCP § 708.510(a).

10 Section 708.510(a) can therefore be used to reach assets not subject to execution, to reach
11 future income or rights to payment, and to reach, or enforce claims against, third parties.² As part
12 of a statutory scheme, Section 708.510 also empowers a court to make an absolute or outright
13 assignment: “construing all the applicable statutes together, it seems clear that the ‘assignment
14 order’ contemplated by CCP § 708.510 et seq. must include a court order that *assigns a right to*
15 *payment outright* (not simply an order directing the judgment debtor to do so).” Ahart, *Cal. Prac.*
16 *Guide: Enforcing Judgments and Debts* (2006), 6G-37, 6:1422.5 (italics in original). Under the
17 circumstances presented here, the right to a payment under section 708.510 is effectively the same
18 as an enforceable intellectual property right like the right of publicity. The right of publicity gives
19 the holder or assignee, among other things, the right to be paid for its use.

20 Thus, under California law, the proper method of executing against intangible intellectual
21 property rights is to obtain an order of the court directing an assignment and/or transfer of the
22 intellectual property right. The assignment need not be executed personally by Simpson. The
23 Court may order the assignment outright, consistent with section 708.510 *et seq.*, or the Court may

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25 ² In a bankruptcy case, *In re Rollins*, 175 B.R. 69 (E.D.Cal. 1994), the bankruptcy court relied on,
26 *inter alia*, sections 708.510, 708.520 to rule that, under California law, if the executor of a will did
27 not turnover a bankruptcy debtor’s inheritance to the bankruptcy trustee, then the trustee’s position
28 would have been the same as that of judgment creditor attempting to levy upon a judgment
debtor’s inheritance. The trustee could have obtained assignment of the debtor’s right to payment,
and if the person obligated to pay the debtor ignored the assignment order and continued to pay
the debtor, then the obligor would be liable to trustee. *In re Rollins*, 175 B.R. at 76-77, fn. 5.

1 authorize a court officer to execute the assignment and the assignment will be binding on
2 Simpson. *See Zanetti v. Zanetti* (1947) 77 Cal.App.2d. 553, 560 (“On creditor’ s bill a court of
3 equity may appoint a trustee to make an assignment of a debtor’s patent right in case the debtor
4 himself does not make the required assignment, and an assignment executed by the trustee will
5 pass title to a purchaser. [Citations omitted.] ‘It is clear from the authorities that the trial court has
6 the power to order the appellant to execute a transfer to the purchaser at the receiver’s sale and to
7 order that if appellant fails to make the proper assignment that an assignment executed by the
8 receiver will pass title to the purchaser.’”). Either way, the right should be assigned to Plaintiff.

9 The recognition of the publicity right as proprietary (and the idea that it can be transferred
10 to satisfy a money judgment) is relatively new. The right is similar, however, to other types of
11 intangible assets that are specifically subject to seizure for enforcement of a money judgment.
12 For example, California law provides that “a cause of action for money or property that is the
13 subject of a pending action or special proceeding” is subject to enforcement of a money judgment.
14 *Civil Code* § 695.030. Similarly, the essence of a publicity right is the right to bring a cause of
15 action for damages arising out of the unauthorized commercial use of the protected interest.
16 Finding that the right of publicity is “property of the judgment debtor” subject to enforcement is
17 consistent with settled California law. Moreover, it may be the only way for Frederic Goldman to
18 effectively enforce his judgment against Simpson.

19

20 C. **The Court Should Award Simpson’s Right Of Publicity To Goldman To**
21 **Prevent Injustice And Effectuate The Judgment And The Jury’s Decision**

22 According to media reports, Simpson and others continue to exploit his proprietary right to
23 publicity by making paid public appearances and selling autographs and pictures, among other
24 things. Reuters reported that almost exactly ten years to the day after his criminal acquittal for the
25 murders of Nicole Brown Simpson and Ronald Goldman, Simpson appeared at the NecroComicon
26 convention in Los Angeles, selling photographs, t-shirts, football helmets, and jerseys emblazoned
27 with his autograph. *See Exhibit ‘B’*, *O.J. Simpson Makes Rare Public Appearance in L.A.*
28 (October 1, 2005) (<http://home.muzy.com/news/ll/english/1381836.shtml>). A few months earlier,

1 he was in Chicago, showing up unannounced and selling his autograph to fans at the National
2 Sports Collectors Convention. See Exhibit ‘C’, p. 2, *Simpson Kicked Out of Convention* (August
3 2, 2005) (<http://www.imdb.com/name/nm0001740/news>).

4 At the same time, Simpson is intentionally evading his obligation to pay the judgment in
5 this matter. According to a promoter of the 2005 NecroComicon convention, ‘Simpson attended
6 the convention as a favor to a friend who was paid in advance to arrange for the weekend
7 appearance.’ See Exhibit ‘B’, p. 1, *O.J. Simpson Makes Rare Public Appearance in L.A.* The
8 promoter, Tom Riccio, ‘told Reuters that Simpson, who lives in Florida, was ‘not getting a penny’
9 for his visit but was using the event as a dry run for possible future public appearances he might
10 make in exchange for donations [to charity].’ *Id.* at pp. 1-2. Simpson’s exploitation of his name
11 and likeness in exchange for fees paid to a friend, or donations to charity, is an evasion, if not a
12 violation, of the turn-over order previously entered by this Court.

13 The money generated by Simpson’s public appearances and sales of autographed
14 memorabilia is substantial. At the National Sports Collectors Convention, ‘excited fans crowded’
15 Simpson, buying 115 autographs at \$100 and \$125 each, in Simpson’s 75 minutes at the event.
16 Exhibit ‘C’, p. 2, *Simpson Kicked Out of Convention*. The convention director told a reporter,
17 ‘the demand for his autograph was obvious based on the crowd around him.’ *Id.* After leaving
18 the convention itself, Simpson ‘signed hundreds of autographs at a nearby hotel.’ *Id.* At his Los
19 Angeles appearance, the convention promoter ‘was charging \$95 for photos and T-shirts signed by
20 Simpson, and \$125 for autographed football jerseys and helmets.’ Exhibit ‘B’, p. 2. The article
21 continued, “[b]ut one fan who turned up . . . said he paid \$200 for an autographed jersey.” *Id.*

22 More recently, Simpson has participated in a reality-based television project entitled
23 ‘Juiced’ wherein he attempts to play practical jokes on unsuspecting victims. Exhibit ‘C’, p. 1.
24 The fact that other jokes are played out using ‘props’ from his murder of Ms. Simpson and Mr.
25 Brown is no laughing matter and is particularly offensive to the Goldman family. Although
26 Simpson denies receipt of any funds from this endeavor, this is highly doubtful. Simpson’s recent
27 participation with the website www.judgeoj.com is similarly offensive. See Exhibit ‘D’.

28

1 The only way to completely prevent Simpson from circumventing this Court's turn-over
2 order and finding back-door means of profiting from his name and likeness is by ordering
3 Simpson to relinquish his property interest in his right to publicity to Mr. Goldman in partial
4 satisfaction of the judgment. As the owner of the proprietary interest in Simpson's right to
5 publicity, Mr. Goldman would have a direct cause of action against event promoters, memorabilia
6 manufacturers, and others that use Simpson's name and likeness in commerce. In the event that
7 Simpson continues to evade or circumvent this Court's judgment and turn-over order by exploiting
8 his right of publicity and then directing the proceeds out of the hands of his judgment debtors, Mr.
9 Goldman would be able to pursue those damages directly should he choose to do so.

10

11 **IV. CONCLUSION**

12 Plaintiff respectfully requests that this Court enforce the Judgment against Simpson by
13 assigning and transferring to Plaintiff all of Simpson's right, title, and interest in his right of
14 publicity. The Court may structure such an Order by requiring Plaintiff to account each calendar
15 year to Simpson for any and all proceeds of said property rights credited against the Judgment.

16

17 DATED: September 5, 2006

SOMMER BARNARD PC

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By: _____

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Jonathan G. Polak
Attorneys for Plaintiff FREDERIC GOLDMAN
Individually and as Personal Representative of the
Estate of Ronald Lyle Goldman

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within entitled action; my business address is One Wilshire Boulevard, Suite
6 2000, Los Angeles, California 90017-3383.

7 On September 5, 2006, served the foregoing document(s) described as **NOTICE OF**
8 **MOTION AND MOTION BY PLAINTIFF FREDERIC GOLDMAN FOR ORDER**
9 **TRANSFERRING AND ASSIGNING RIGHT OF PUBLICITY OF DEFENDANT AND**
10 **JUDGMENT DEBTOR ORENTHAL JAMES SIMPSON; MEMORANDUM OF POINTS**
11 **AND AUTHORITIES IN SUPPORT** on the interested parties in this action by placing a copy
12 thereof enclosed in a sealed envelope addressed as follows:

13 **See Attached List**

14 ♦ **BY PERSONAL DELIVERY.** I delivered such envelope by hand to the offices of the
15 addressee.

16 } **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the
17 U.S. Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of
18 collection and processing correspondence for mailing. Under that practice, it would be
19 deposited with the U.S. postal service on that same day with postage thereon fully prepaid
20 at Los Angeles, California in the ordinary course of business. I am aware that on motion
21 of the party served, service is presumed invalid if postal cancellation date or postage meter
22 date is more than one day after date of deposit for mailing in affidavit.

23 ♦ **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the
24 addressee(s) facsimile number(s) noted herein. The facsimile machine used complies with
25 Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008(e), I caused
26 the machine to print a transmission record of the transmission, a copy of which is attached
27 to this declaration.

28 ♦ **BY FEDERAL EXPRESS.** I caused such envelope to be deposited at the Federal
Express office at Los Angeles, California for guaranteed one/two day delivery with
delivery charges prepaid. I am "readily familiar" with the firm's practice of collection and
processing correspondence for delivery by Federal Express delivery service. Under that
practice, it would be deposited with the delivery service on that same day with delivery
charges thereon fully prepaid at Los Angeles, California in the ordinary course of business
for delivery to the addressee.

Executed on September 5, 2006, at Los Angeles, California.

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

Mark W. Clark

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