

1 RAINES FELDMAN LLP
Miles J. Feldman (Bar No. 173383)
2 mfeldman@raineslaw.com
Sonia Y. Lee (Bar No. 191837)
3 slee@raineslaw.com
Sheri Guerami (Bar No. 265231)
4 sguerami@raineslaw.com
9720 Wilshire Boulevard, 5th Floor
5 Beverly Hills, California 90212
Telephone: (310) 440-4100
6 Facsimile: (310) 691-1943

7 Attorneys for Defendants JULIEN
ENTERTAINMENT.COM, INC. dba
8 JULIEN'S AUCTIONS and
DARREN JULIEN
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 EVANDER HOLYFIELD, an individual,

14 Plaintiff,

15 v.

16 JULIEN ENTERTAINMENT.COM,
17 INC. dba JULIEN'S AUCTIONS, a
California corporation, and DARREN
18 JULIEN, an individual,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. CV12-09388 CAS-FFMx
[Assigned to the Hon. Christina A.
Snyder for all purposes]

**DEFENDANTS' OPPOSITION TO
MOTION FOR ORDER
CONFIRMING ARBITRATION
AWARD, DIRECTING RETURN OF
PLAINTIFF'S PROPERTY AND
EXONERATING SECURITY;
DECLARATION OF SONIA Y. LEE
IN SUPPORT THEREOF**

Date: June 2, 2014
Time: 10:00 a.m.
Ctrm: 5

1 As an initial matter, defendants Julien Entertainment.com, Inc. d/b/a Julien's
2 Auctions and Darren Julien (collectively, "Julien's") sincerely apologize for the
3 delay in filing this Opposition to the Motion filed by plaintiff Evander Holyfield.
4 Although Sonia Y. Lee has been a counsel of record on this matter since the
5 inception, she was not listed on the Court's distribution list. Accordingly, the
6 Motion was only sent to Miles Feldman, who has not been working on this matter
7 since the initial preliminary injunction phase, and to Patricia Daza, who left Raines
8 Feldman, LLP months ago. Counsel for Julien's take full responsibility for their
9 failure in updating the Court's record and would request that the Court excuse the
10 inadvertent delay in filing of this Opposition.

11 In that regard, as noted by counsel for Holyfield, Julien's has already
12 stipulated to the following relief requested by Holyfield:

- 13 (1) Release of the bond previously posted on behalf of Holyfield in
14 connection with the issuance of a preliminary injunction in this case;
15 and
- 16 (2) Confirmation of the Arbitration Award issued by Richard Posell on
17 December 18, 2013.

18 Thus, there are only two issues remaining to be addressed by way of the
19 Motion. First, Holyfield's request that the Court retain jurisdiction to address the
20 issue of attorneys' fees and costs to be awarded to the "prevailing party" in
21 connection with this Court's interim proceeding; and second, the issue of who
22 should bear the cost of the return of Holyfield's items that remain in Julien's
23 possession following the auction that went forward without the Disputed Items.

24 **A. The Arbitrator Has Already Determined The Issue Of Whether**
25 **Any Attorneys' Fees Or Costs Should Be Awarded To Any Party.**

26 The issue of whether there was a "prevailing party" in the underlying
27 arbitration that would permit any party to recover any attorneys' fees or costs under
28 the Consignment Agreement was extensively briefed and argued in the arbitration

1 itself. The Arbitrator issued a lengthy opinion on why, based upon all of the facts,
2 and equitable considerations – and, in particular, the fact that Holyfield prevailed on
3 its defense as to the claim brought against him on a mere *technicality* – that there
4 was no prevailing party and no one should recover any attorneys’ fees and costs.
5 (See, Motion, Ex. A, at pp. 9-11.) This matter has already been decided and the
6 Court should defer to the finding of the Arbitrator, who had the benefit of hearing all
7 of the testimony and weighing all of the evidence in reaching his decision.

8 The preliminary and interim proceeding does not change the substantive
9 issues in dispute, the evidence presented, the law argued, and the ultimate
10 conclusion drawn and decision made by the Arbitrator as to the merits. These issues
11 have conclusively been determined by the Arbitrator and should not be re-argued.
12 Holyfield should not get a “second bite at the apple.”

13 Thus, the Court should decline jurisdiction to determine any issue with regard
14 to the attorneys’ fees and costs incurred in the preliminary injunction phase.

15 **B. Holyfield Should Incur The Fees To Return The Items He Refused**
16 **To Sell At Auction.**

17 The Arbitration Award was issued on December 18, 2013. Shortly thereafter,
18 on December 28, 2013, knowing that counsel for Julien’s was out of the office for
19 the holidays, Holyfield’s counsel sent an email demanding that Julien’s return all of
20 Holyfield’s items in its possession to Holyfield at Julien’s cost, pursuant to
21 Paragraph 20 of the Consignment Agreement.

22 After returning from the holidays, on or about January 2, 2014, Julien’s
23 counsel had a telephonic conversation with Holyfield’s counsel in which she
24 explained that Paragraph 20 was inapplicable as the items at issue were never
25 offered for sale in the Auction, at Holyfield’s insistence. Accordingly, Holyfield
26 would need to bear the cost of the return of the items. (Lee Decl., ¶ __.)

27 Thereafter, on January 10, 2014, Julien’s counsel provided Holyfield with an
28 inventory of all items in Julien’s possession that were consigned by Holyfield but

1 ultimately refused to be sold by him in auction. (Lee Decl., Ex. A.) Julien’s
2 requested that Holyfield arrange for the removal of these items from Julien’s
3 premises forthwith, since Julien’s needed the space for its other auctions.

4 After stating that the email would be “sent to the client for instructions” (Lee
5 Decl., Ex. B), however, for nearly a month, Holyfield’s counsel failed to respond.
6 (Lee Decl., Ex. C.) When he did so, it was simply to state that, “[w]e will address
7 this promptly.” (Lee Decl., Ex. D.) There was no dispute that the cost would have
8 to be borne by Julien’s to return the items.

9 It was not until just recently, in the course of the “meet and confer” process
10 for the instant Motion, that Holyfield has again claimed that, under Paragraph 20 of
11 the Consignment Agreement, he is entitled to have Julien’s incur the cost of
12 shipping these items to him. Holyfield is wrong.

13 Paragraph 20 of the Consignment Agreement states, as follows:

14 20. TERMINATION. This agreement will terminate on September 1,
15 2013, and if upon termination any of the Property *remains unsold*,
16 such Property shall be returned to you (at our cost) in the same manner
17 and condition such Property was delivered to us. (Emphasis added.)

18 Holyfield seeks to selectively take certain words out of the context of the
19 entire paragraph to support its argument, which ploy is unavailing.

20 The paragraph provides that if any of the “Property remains unsold,” such
21 Property shall be returned at Julien’s cost. In order for Property to “remain unsold,”
22 it would have to have been offered for sale in the first instance. As the California
23 Supreme Court has noted:

24 The fundamental rules of contract interpretation are based on the
25 premise that the interpretation of a contract must give effect to the
26 “mutual intention” of the parties. “Under statutory rules of contract
27 interpretation, the mutual intention of the parties at the time the
28 contract is formed governs interpretation. . . . Such intent is to be

1 inferred, if possible, solely from the written provisions of the contract.
2 The “clear and explicit” meaning of these provisions, interpreted in
3 their “ordinary and popular sense,” unless “used by the parties in a
4 technical sense or a special meaning is given to them by usage”. . . ,
5 controls judicial interpretation. *Industrial Indem. Co. v. Apple*
6 *Computer, Inc.*, 79 Cal. App. 4th 817, 826 (1999).
7 *See also*, 11 Williston on Contracts § 32:3 (4th ed.) It is likewise well established
8 that contracts are to be construed to avoid rendering any of its terms surplusage.
9 *ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co.*, 17 Cal. App.
10 4th 1773, 1785 (1993).

11 There is no “special meaning” ascribed here by the parties. The agreement
12 was simple. Holyfield was to consign to Julien’s a number of Property to be sold in
13 an auction to be conducted by Julien’s. (Lee Decl., Ex. E, ¶ 1.) Once consigned, the
14 Property could not be withdrawn. (*Id.*, ¶ 10.) For selling the Property on behalf of
15 Holyfield, Julien’s would receive a percentage of the “hammer price” or sales price
16 as its seller’s commission.

17 “Property” is defined in the Consignment Agreement as those items
18 consigned by Holyfield for sale in the auction, as set forth in an “inventory” to be
19 attached to the Consignment Agreement. As vigorously argued by Holyfield in the
20 Arbitration, Holyfield contended that there was no “inventory” attached to the
21 Consignment Agreement and thus there was no “Property” consigned for sale in the
22 auction. In point of fact, in the Cross-Demand filed by Holyfield in the Arbitration,
23 Holyfield claimed that, because there was no such “inventory” attached, *none* of the
24 items provided by him to Julien’s was ever consigned for sale in the auction and
25 claimed that Julien’s thus “wrongfully converted” such items.

26 The Arbitrator found that because the “inventories” were not clearly
27 identified or attached to the Consignment Agreement, as a matter of technicality, the
28 Consignment Agreement failed to comply with Civil Code Section 1812.608(d)(2)

1 and thus the Consignment Agreement was “void and unenforceable,” at least as to
2 the Disputed Items. Accordingly, the Disputed Items could not be sold at auction.

3 Since the items were never offered for sale in the first instance, it cannot
4 “remain unsold” and thus Paragraph 20 is inapplicable in this case.

5 With regard to the non-Disputed Items, if Holyfield seeks to enforce the terms
6 of the Consignment Agreement, he certainly would not be entitled to the return of
7 any of the non-Disputed Items in Julien’s possession, let alone to have Julien’s bear
8 the cost of any such return.

9 Paragraph 11 of the Consignment Agreement expressly provides:

10 11. UNSOLD PROPERTY. If the bidding on any lots fails to reach
11 the reserve or the Property is otherwise unsold, ***you hereby authorize***
12 ***us to re-offer the Property***, subject to the terms and conditions of this
13 agreement, with estimates and reserves at a reasonable, customary,
14 mutually agreed upon percentage reduction from the original estimates
15 and reserves. (Emphasis added.)

16 Of course, Holyfield steadfastly refuses to allow Julien’s to sell any inventory
17 in its possession, in contravention of the agreement.

18 As the Arbitrator noted:

19 Claimant [Julien’s] lost this case because it failed to follow the statute.
20 ***Its conduct was otherwise professional and competent.*** It expended
21 large sums of money to promote and conduct the auction. ***Most***
22 ***importantly, it treated Respondent [Holyfield] fairly and***
23 ***transparently.*** Respondent [Holyfield], on the other hand, did not
24 show himself to be a good business partner. His testimony was unclear
25 ***and unreliable and he failed to take responsibility for his actions.***

26 ***Thus justice scale weighs in favor of Claimant [Julien’s].*** (Motion,

27 Ex. A, at p. 11; emphasis added.)
28

1 Because of Holyfield’s irresponsible and bad conduct, Julien’s incurred a loss
2 of tens of thousands of dollars from the auction, when it should have made hundreds
3 of thousands of dollars. What should have brought in millions in auction proceeds
4 resulted in less than \$600,000 in total sales, as a result of the withdrawal of the
5 Disputed Items. As a result of Holyfield’s actions, Julien’s entire business suffered
6 a significant loss and a blow to its reputation, from which it is still attempting to
7 recover.

8 This latest Motion can only be described as unmitigated greed on top of
9 already bad faith conduct. As reflected in the enclosed Consignor’s Report (Lee
10 Decl., Ex. E), which reflect the latest and most up to date accounting for the auction
11 – which was provided to Holyfield and his counsel on numerous occasions –
12 Holyfield has been *overpaid* by at least \$2,460.00. While under no obligation to do
13 so, Julien’s itself provided such additional monies in anticipation of receiving
14 payment from certain purchasers, which payments had not yet been received, in
15 good faith and to assist Holyfield.

16 That Holyfield is now seeking to have Julien’s pay even more monies after
17 causing it to sustain devastating damages is simply beyond the pale.

18 For the foregoing reasons, Julien’s respectfully requests that the Court deny
19 the Motion as to the two remaining issues, to wit, to retain jurisdiction as to the issue
20 of attorneys’ fees and costs and for an order requiring Julien’s to incur the cost of
21 returning Holyfield’s items.

22 Dated: May 19, 2014

RAINES FELDMAN LLP

24 By: /s/ Sonia Y. Lee

25 Sonia Y. Lee
26 Attorneys for Defendants JULIEN
27 ENTERTAINMENT.COM, INC. dba
28 JULIEN’S AUCTIONS and
DARREN JULIEN