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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 EVANDER HOLYFIELD, an individual,

13 Plaintiff,

14 v.

15 JULIEN ENTERTAINMENT.COM, INC., doing
16 business as JULIEN'S AUCTIONS, a California
17 corporation, and DARREN JULIEN, an individual,

18 Defendants.

Case No.: CV-12-09388 CAS-FFMx

[Assigned to the Hon. Christina A. Snyder for all purposes]

NOTICE OF MOTION AND MOTION FOR ORDER CONFIRMING ARBITRATION AWARD, DIRECTING RETURN OF PLAINTIFF'S PROPERTY AND EXONERATING SECURITY; SUPPORTING DECLARATION AND MEMORANDUM OF POINTS AND AUTHORITIES

Date: *June 2, 2014*
Time: 10:00 a.m.
Ct. No.: 5

21 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 NOTICE IS GIVEN that on June 2, 2014, at 10:00 a.m., or as soon thereafter as the
23 matter may be heard in the United States District Court, Central District of California, before the
24 Honorable Christina A. Snyder, plaintiff Evander Holyfield, by his attorney of record in this case,
25 will and hereby does apply to this Court, pursuant to 9 U.S.C. § 9, for an order confirming the
26 arbitration award rendered by the duly appointed arbitrator in this case and exonerating the security
27 previously posted by plaintiff in connection with the issuance of the temporary restraining order and
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1 preliminary injunction. Further, plaintiff seeks an order of enforcement of certain provisions of the
2 Auction Consignment Agreement regarding the return of plaintiff's property following the auction.

3 Notice and service on this motion is made pursuant to Local Rule 6-1.

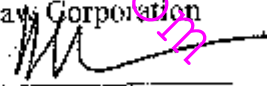
4 This motion is made on the ground that the parties previously entered into a written
5 agreement by which any dispute, claim, or controversy arising out of the parties' relationships would
6 be resolved exclusively by final, binding arbitration in Los Angeles, California administered by
7 JAMS pursuant to its streamlined arbitration rules and procedures. This Court previously ordered
8 the parties to submit their disputes to arbitration. The arbitration took place before the duly
9 appointed arbitrator and the arbitrator has rendered an award in favor of plaintiff who now seeks to
10 confirm the arbitration award and obtain release of the security that was previously posted in
11 connection with the issuance of a temporary restraining and preliminary injunction in this case.

12 This motion is based upon this notice of motion, the accompanying declaration and
13 memorandum of points and authorities, the pleadings, records and files in this case and such oral and
14 documentary evidence as may be presented at the hearing on the motion.

15 This motion is made following the conference of counsel pursuant to Local Rule 7-3 which
16 took place on April 8, 2014.

17 DATED: April 18, 2014

18 PHILIP D. DAPEER
A Law Corporation

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20 PHILIP D. DAPEER
21 Attorney for Plaintiff
22 Evander Holyfield
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DECLARATION OF PHILIP D. DAPEER

1
2 I, Philip D. Dapeer, declare:

3 1. I am an attorney duly admitted to practice law in the State of California and before
4 this Court. I am the principal in the law firm Philip D. Dapeer, a law corporation, one of the
5 attorneys for plaintiff Evander Holyfield in this action.

6 2. In such capacity I have personal knowledge of the facts set forth in this declaration
7 and if called and sworn as a witness could and would competently testify thereto.

8 3. I give this declaration in support of plaintiff's motion for an order confirming the
9 arbitration award that has been rendered in favor of plaintiff, for an order exonerating and releasing
10 the security in the amount of \$250,000.00 which is currently being held by the Clerk of the court and
11 for orders re accounting and return of plaintiff's property.

12 4. This action was commenced by plaintiff upon the filing of his verified complaint and
13 ex parte application for temporary restraining and issuance of order to show cause re preliminary
14 injunction on November 1, 2012. See docket entries 1 - 8.

15 5. On November 5, 2012, defendants filed their motion to compel arbitration as well as
16 their opposition papers on the plaintiff's ex parte application for a temporary restraining order and
17 the issuance of order to show cause re preliminary injunction. See docket entries 9 - 15. The parties
18 then proceeded to file their opposition and reply papers with respect to the application for injunctive
19 relief and the application for order compelling arbitration and to stay pending action.

20 6. On November 21, 2012, the Court granted plaintiff's request for a temporary
21 restraining order, and on November 28, 2012, the Court required plaintiff to post a \$250,000.00
22 security. Plaintiff posted the required security on November 29, 2012.

23 7. In the Court's November 21, 2012 order, the Court directed defendants to show cause
24 why its preliminary injunction should not issue restraining defendants from auctioning the Not For
25 Sale Items. On November 27, 2012, defendants told the court that because a temporary restraining
26 order had already been granted, they did not oppose the issuance of a preliminary injunction
27 enjoining an auction of the Not For Sale Items until resolution of the parties' dispute through
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1 arbitration. See docket entry 44. On December 3, 2012, the Court issued its preliminary injunction.
2 The order setting the amount of the bond for a security is dated November 27, 2012.

3 8. Defendants had filed an ex parte application for an order compelling arbitration on
4 November 6, 2012. See docket entry 22. Pursuant to the Court's November 21, 2012 order, that ex
5 parte application was converted into a motion to compel arbitration. The Court then found that the
6 parties were in agreement as to how to proceed in the case. Plaintiff urged that the claims should
7 proceed in arbitration, and requested that the Court retain jurisdiction over matters related to the
8 interim relief that the Court had already granted. Defendants agreed. Accordingly, by order staying
9 the case pending arbitration entered December 12, 2012, docket entry 59, the Court stayed the action
10 pending resolution of plaintiff's claims in arbitration, but retained jurisdiction to hear any disputes
11 regarding the preliminary injunction issued on November 29, 2012.

12 9. Following entry of the order staying the action, the parties went forward to arbitrate
13 their disputes pursuant to the Auction Consignment Agreement dated July 21, 2012, attached as
14 Exhibit A to plaintiff's verified complaint. The arbitration took place at Los Angeles, California
15 and was administered by JAMS pursuant to its streamlined arbitration rules and procedures. See
16 Paragraph 19 of the Auction Consignment Agreement.

17 10. On December 18, 2013, the arbitrator, Richard E. Posell, rendered his arbitration
18 award in the matter. Attached hereto, marked Exhibit "A" and incorporated herein by this reference,
19 is a true copy of the arbitration award. The arbitrator found that defendants failed to include an
20 inventory in the Auction Consignment Agreement in violation of California Civil Code §
21 1812.608(d)(2). As a result, the Auction Consignment Agreement was void and unenforceable with
22 respect to the Not For Sale Items that were the subject of this Court's temporary restraining order
23 and preliminary injunction. The arbitrator found that any auction of the Not For Sale items would
24 have been unlawful and that plaintiff was not estopped from asserting the illegality of the auction
25 consignment agreement with respect to the Not For Sale Items.

26 11. As a result, plaintiff contends that he prevailed in the matter with respect to all of the
27 issues and disputes that were the subject of proceedings before this Court on plaintiff's application
28 for a temporary restraining order and issuance of an order to show cause re preliminary injunction

1 prior to the entry by this Court of its order staying this action pending completion of arbitration.
2 Essentially, the award of the arbitrator is entirely consistent with the rulings and orders of this Court
3 with respect to plaintiff's application for injunctive relief.

4 12. There has been no timely motion by defendants for order vacating, modifying or
5 correcting the arbitration award. Such a motion had to be served and filed, if at all, within three
6 months after the arbitration award was filed or delivered. *See* 9 U.S.C. §§ 10, 11 and 12.
7 Consequently, any such objections to the arbitration award cannot now be asserted by defendants in
8 opposition plaintiff's within motion to confirm the award pursuant to 9 U.S.C. § 9.

9 13. However, a dispute has arisen between the parties post-arbitration. In addition to the
10 Not For Sale Items that are the subject of plaintiff's complaint, defendants retain possession of
11 additional items of personal property belonging to plaintiff that were not sold at the auction that was
12 conducted by defendants. Paragraph 20 of the Auction Consignment Agreement, Exhibit "A" to the
13 verified complaint, provides that:

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

17 14. Plaintiff contends that defendants are obligated to ship and deliver back to plaintiff, at
18 defendants' expense, all of the remaining property belonging to plaintiff in defendants' possession,
19 custody and control. Defendants apparently contend that plaintiff is obligated to pick-up his
20 property, including the Not For Sale Items, at defendants' business facilities in Beverly Hills,
21 California and arrange for the pick-up and transportation of that property at his sole cost and
22 expense. Further, there is a dispute between the parties regarding the verification of exactly what
23 property now remains in defendants' possession, custody and control, an accounting of the auction
24 proceeds and what property sold at auction has not as yet been paid for by the purchasers. *See* the
25 email communications between counsel, attached collectively as Exhibit "B" hereto. The open
26 issues with respect to Paragraph 20 of the Auction Consignment Agreement were not before the
27 arbitrator in the parties' submittals and claims because the Auction Consignment Agreement had not
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1 then terminated. Plaintiff therefore seeks and order requiring defendants to comply with Paragraph
2 20 of the Auction Consignment Agreement.

3 15. The security of \$250,000.00 that was deposited on behalf of plaintiff at the time of
4 the issuance of the temporary restraining order was financed by Mr. Yank Barry. Plaintiff seeks an
5 order of this Court exonerating the security and authorizing and directing that the Clerk of the court
6 shall pay the security deposited with the Clerk to Mr. Yank Barry, 1544 1st Street, Sarasota Florida,
7 34236. Attached hereto, marked Exhibit "C" and incorporated herein by this reference, are true
8 copies of the security agreements and financing statements entered into between plaintiff and Mr.
9 Yank Barry dealing, in part, with the security deposited with the Clerk of the court in connection
10 with this action.

11 16. Plaintiff seeks and order and judgment of this Court confirming the arbitration
12 award. Plaintiff also seeks an award of his attorney's fees incurred in connection with the
13 proceedings before this Court. The arbitrator ruled on that issue at page 11 of the award, as follows:
14 "Respondent also seeks fees for his success in the Action. The Arbitrator is mindful of that
15 success. However, since that Action is not final, and the parties will obviously have to return
16 to District Court, the Arbitrator abstains from awarding any fees with respect thereto, and
17 defers the issue of fees and costs in the Action to the discretion of the District Court Judge
18 who oversaw the proceedings."

19 17. Under separate cover, plaintiff will file a motion for an award of attorney's fees
20 incurred in connection with the prosecution of this action.

21 Executed at Westlake Village, California this 26 day of April, 2014.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 
25 PHILIP D. DAPEER

MEMORANDUM OF POINTS AND AUTHORITIES

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2 1. 9 U.S.C. § 9 provides that if the parties in their agreement have agreed that a
3 judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall
4 specify the court, then at any time within one year after the award is made any party to the
5 arbitration may apply to the court so specified for an order confirming the award, and thereupon the
6 court must grant such an order unless the award is vacated, modified or corrected as prescribed in
7 sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such
8 application may be made to the United States Court in and for the district within such an award has
9 been made.

10 2. The Auction Consignment Agreement attached as Exhibit "A" to plaintiff's verified
11 complaint in this action, expressly provides that: "Judgment on the award may be entered in any
12 court having jurisdiction, and each party hereby irrevocably waives any right to adjudicate in any
13 other court or forum." Consequently, this Court should enter judgment on the arbitration award
14 because the parties have so specified in the auction consignment agreement that judgment may be so
15 entered. Since defendants have not timely filed a motion to vacate, modify or correct the arbitration
16 award, there is no impediment at this stage to entry of an order confirming the award as rendered by
17 the arbitrator.

18 3. In view of the fact that the arbitrator found that defendants shall take nothing by their
19 arbitration demand for monetary damages, that the auction consignment agreement was void with
20 respect to the Not For Sale Items, defendants did not have the right to auction any of the Not For
21 Sale Items, and that any auction of the Not For Sale Items would have been unlawful, no damage
22 claim can be asserted by defendants against the security that was deposited by plaintiff in connection
23 with the issuance of the temporary restraining order and preliminary injunction. Defendants are
24 precluded by the arbitration award from raising any damage claim as a result of the issuance by this
25 Court of the temporary restraining order and preliminary injunction. Consequently, the security or
26 undertaking should be exonerated and released to Mr. Yank Barry.

27 4. Plaintiff requests that this Court retain jurisdiction to hear plaintiff's request for
28 award of attorney's fees and costs incurred in the prosecution of this action in the District Court.

1 Further, plaintiff requests that this Court order that the remaining property belonging to the plaintiff
2 in defendants' possession, custody and control, including the Not For Sale Items that are the subject
3 of the temporary restraining order and preliminary injunction, be returned and shipped to plaintiff by
4 defendants at defendants' sole cost and expense and that defendants be ordered to provide a verified
5 inventory under oath of all of the plaintiff's property in their possession, custody and control, as well
6 as an accounting of all of the auction results and the open sales that have not been paid for as yet by
7 any of the purchasers, per the meeting of counsel in accordance with Local Rule 7-3. Plaintiff will
8 lodge a proposed order and judgment on this motion.

9 5. On March 27, 2014, declarant sent counsel for defendants a request for meeting of
10 counsel pursuant to District Court Local Rule 7-3. On April 8, 2014, declarant received the response
11 from defendants' counsel to that request. True copies of the email communications between counsel
12 concerning compliance with District Court Local Rule 7-3 are attached hereto, marked Exhibit "D"
13 and incorporated herein by this reference. Defendants have agreed to provide an updated accounting
14 and will indicate whether the sold property has been paid for by the bidder or remains unpaid.
15 Defendants have agreed to provide a verified inventory under oath as to plaintiff's property in
16 defendants' possession, custody and control. Defendants have agreed to the release and exoneration
17 of the bond or security. Defendants have agreed to stipulate to confirmation of the arbitration award
18 in view of the fact that defendants acknowledge that the time to file any petition to vacate, correct,
19 modify or challenge the award has already lapsed.

20 6. Based upon the foregoing stipulations and agreements of defendants by and through
21 their counsel, plaintiff seeks an order of this court accordingly. As a result, there remains one open
22 issue with respect to the pending motion; namely, enforcement of Paragraph 20 of the Auction
23 Consignment Agreement with respect to the return of plaintiff's property.

24 7. Plaintiff contends that defendants' interpretation of Paragraph 20, as contained in the
25 email of April 8, 2014 from defendants' counsel is not a fair reading of that paragraph. Paragraph 20
26 does not condition Julien's obligation to return plaintiff's property to plaintiff at Julien's expense on
27 whether a particular item of property was actually offered for auction. Reference here is made to the
28 moving, opposition and reply papers submitted by the parties in connection with plaintiff's

1 application for issuance of a temporary restraining order and order to show cause re preliminary
2 injunction.

3 8. Julien's picked up hundreds of items of Holyfield's property from the storage facility
4 in Atlanta, Georgia where plaintiff was keeping his personal effects following foreclosure by the
5 lender on his residence. Julien's took the position in this case from inception that, from the moment
6 possession of plaintiff's personal property passed to Julien's when the items were loaded on the
7 moving and storage trucks that Julien's dispatched from California, it was deemed consigned to
8 Julien's for auction. When plaintiff's property arrived at Julien's in California, it was defendants
9 who made all final decisions as to what items would be included in the auction catalogue for sale at
10 auction. Julien's has steadfastly taken the position in this case that the consignor could not dictate
11 what items could or could not be included in the auction once the consignment agreement became
12 effective; that is, when Julien's picked up Holyfield's property.

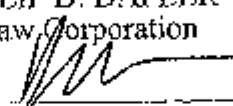
13 9. The thrust of Julien's argument in opposition to plaintiff's initial application for
14 injunctive relief was that Holyfield did not have the right to withdraw any item from consignment
15 once Holyfield's property left Atlanta, Georgia on Julien's trucks. At the time of its opposition to
16 plaintiff's initial application for injunctive relief, Julien's argued that it had exclusive possession,
17 custody and control of the inventory of Holyfield property as a result it being loaded on the moving
18 and storage trucks Julien's sent from California to Atlanta, Georgia, and that all of Holyfield's
19 property loaded into the trucks had been consigned for auction, with Julien's rights as a consignee
20 under the auction consignment agreement vesting at that time. Julien's decision after the Holyfield
21 property was consigned to exclude some of the consigned property from the auction sale does not, in
22 plaintiff's view, excuse Julien's from having to return plaintiff's property to plaintiff at the
23 consignee's sole cost and expense.

24 10. "Unsold" property, as the term is used in Paragraph 20 of the Auction Consignment
25 Agreement, by fair reading of that paragraph, would include both property that was put up for
26 auction but was not sold as well as property that Julien's decided not to offer for auction and was not
27 sold or not sold by Julien's in a subsequent auction pursuant to its right to offer property in a
28 subsequent auction in accordance with the terms and conditions of the Auction Consignment

1 Agreement. If Julien's intended to draw a distinction between property that had been offered up for
2 auction sale but remained unsold and property consigned to Julien's but not included by Julien's in
3 the auction, Paragraph 20 of the Auction Consignment Agreement could have clearly made the
4 point. It does not, and Julien's should be ordered to pay for the cost of returning the inventory of
5 plaintiff's property that remains in its possession, custody and control to plaintiff at Julien's sole cost
6 and expense. Any ambiguity in Julien's form consignment agreement must be construed against
7 defendants.

8
9 DATED: April 24, 2014

PHILIP D. DAPEER
A Law Corporation



PHILIP D. DAPEER
Attorney for Plaintiff
Evander Holyfield

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EXHIBIT "A"

JULIEN V HOLYFIELD

AWARD

Arbitrator:

Richard E. Posell
1601 Cloverfield Ave, Suite 37-S
Santa Monica, CA 90404

Place of Arbitration: Santa Monica, CA

Date of Award: December 18, 2013

The undersigned Arbitrator, having been designated in accordance with the Auction Consignment Agreement between the parties dated July of 2012 (the "Agreement"), and pursuant to their stipulation before the United States District Court for the Central District of California in case No. CV 12-9388 (the "Action"), and the resulting Order of that Court dated December 12, 2012, staying proceedings pending arbitration, and having examined the submissions, proofs and allegations of the parties, now finds, concludes and issues this Award, as follows:

I. INTRODUCTION.

Respondent Evander Holyfield is a five-time heavy weight boxing world champion. Claimant Julien's Entertainment .com, Inc, d/b/a Julien's Auctions is an auction company which entered into the Agreement with Respondent in July of 2012 to auction his memorabilia in November of 2012, at Claimant's location in Los Angeles, California. At the time, Respondent was living in Atlanta, Georgia and shipped the memorabilia to Los Angeles for auction. Shortly before the auction date, however, a dispute broke out between the parties because Respondent declined to auction approximately 20 items (the "Disputed Items") which Claimant asserts were iconic and central to the success of the auction. Unable to resolve this conflict, Respondent brought the Action and obtained a temporary restraining order (which was later converted to a preliminary injunction by stipulation) enjoining Claimant from including the Disputed Items in the auction, but otherwise permitting the auction to continue. The auction was in fact held on November 30, 2012 without the Disputed Items. The financial results were disappointing. Because the Agreement had an arbitration clause, Claimant (Defendants in the Action) sought an order compelling arbitration. Pursuant to stipulation, the Action was stayed pending arbitration on December 12, 2012. This matter went to arbitration before JAMS pursuant to a Demand filed by Claimant on December 13, 2012.

II. THE PLEADING AND ISSUES

Claimant's Demand alleges that Claimant is a premier sports and celebrity memorabilia auction house; that Respondent signed the Agreement on July 21, 2012 after a long history of negotiations; that during these negotiations, Claimant made it clear to Respondent that the costs of preparing for the auction, including the preparation of the catalogue, marketing and promotion, and pre-auction exhibition of the items for sale could typically cost hundreds of thousands of dollars, which could only be recouped through the auction; that certain iconic items closely associated with the celebrity were necessary to draw interest in the auction and were critical to its success; that Respondent was told that whatever he gave to Claimant would be items for sale in the auction. Claimant alleges further that Respondent reviewed every item sent to Claimant including the Disputed Items, and that Respondent took certain actions confirming that they were

for sale at the auction, including approving press releases, the draft catalogue, and other public information. Claimant alleges that the Agreement specifically prohibits Respondent from withdrawing any item of property from sale after he signed the Agreement, and that as a result of Respondent's actions, Claimant suffered certain specified damages. Claimant pleads two causes of action, Breach of Contract, and Breach of the Implied Covenant of Good Faith and Fair Dealing.

In reply, Respondent denies the allegation of the Demand, sets up numerous affirmative defenses and asserts a Counterclaim against both Claimant and its principal, Darien Julien ("Julien"), which alleges that Respondent was in dire financial straits, having just lost his home to foreclosure; that Respondent signed the Agreement on July 12, 2013 without benefit of counsel; that the Agreement contemplates that the property to be sold at auction would be listed on a "Consignment Receipt" which Respondent did not receive until September 26, 2012; and that within a reasonable time after receipt of the Consignment Receipt, Respondent withdrew the Disputed Items. Respondent further alleges that the conditions under which the initial selection of the items sent to Los Angeles from Atlanta occurred were chaotic and that it was clear that a final selection of included items would not be made until the required Consignment Receipt or inventory was provided. Respondent also alleges that Claimant has not returned any of the unsold items in its possession, that certain irregularities occurred in the auction and in processing payments to him. Respondent alleges eight causes of action for conversion, Unfair Business Practices, Breach of Fiduciary Duty, Breach of an Oral Agreement, Breach of the Agreement, False Promise, Misrepresentation, and a violation of the Civil Code provisions regulating the conduct of auctions in California. Five of the claims are asserted against both Julien and the Claimant.

Thus prior to trial, the issues before this arbitrator were as follows:

- A. Did the parties enter into the Agreement?
- B. If so, did the Agreement satisfy the provision of California Civil Code §§ 1812.601 et seq.?
- C. If it did, did Claimant fully perform its contractual obligations under the Agreement?
- D. If so, did Respondent fully perform his contractual obligation under the Agreement?
- E. Was there a separate oral agreement made by Claimant or Mr. Julien?
- F. Are any of the non-contractual allegations of the Counterclaims valid?
- G. Was Respondent entitled to a writ of possession?
- H. What are the damages to either party resulting from a finding that the other side either breached the Agreement or committed non-contractual wrongs?
- I. Is either side entitled to punitive damages?
- J. Is either party entitled to attorneys' fees?

III MOTIONS

Prior to the Hearing, Respondent made a motion to bifurcate and try separately the issues of liability and compensatory damages, and also to separately try the issue of punitive damages, if awarded. On September 12, 2013, the Arbitrator issued an order granting the motion as to punitive damages and denying without prejudice, the separate trial of liability and compensatory damages. Instead the Arbitrator issued an order governing the order of proof, as follows: First that proof be taken on liability under both the Demand and the Counterclaims; and second, at the conclusion of the liability phase, the Arbitrator would orally decide liability and determine which party would promptly present its evidence of damages.

Before the Hearing began, Respondent objected to many of Claimant's exhibits on the grounds of relevance and hearsay. These objections were overruled without prejudice.

At the commencement of the Hearing Claimant made four Motions in Limine. Two of the motions were addressed to qualification of Respondent's expert witnesses, which motions were denied. The third Motion in Limine asked the Arbitrator to exclude any evidence of conversion as to the property included in the auction (i.e. property other than the Disputed Items). That Motion was

granted. A fourth Motion to prevent Respondent from asserting the defense of mistake because it was not specifically pled was deferred, and became moot.

III THE EVIDENTIARY HEARING

The arbitration hearing was conducted on October 16, 17 and 18, 2013 at the JAMS office in Santa Monica, California. Each side offered documentary evidence at the hearing and the following such evidence was admitted: Exhibits 1-140; 301-454.]

Each side called witnesses and cross-examined opposing witnesses: Darien Julien, Daniel Nelles ("Nelles"), Orlando Lynch, Tim Luke, and Evander Holyfield.

Prior to the conclusion of the liability phase, Claimant stated that it had narrowed its damage claim to the amount it lost in commissions and so-called "buyer's premiums" only with reference to the lost sales on the Disputed Items. In addition Respondent dropped the entirety of its Counterclaims.

At the conclusion of the liability phase, the Arbitrator heard oral argument and took time to consider his decision and to review the new cases cited by both parties in their final argument. The Arbitrator then announced that he found that the Agreement failed to comply with Cal. Civ. Code §1812.608 (d) (2) requiring an inventory of the items to be sold at auction to be included in the Agreement. As a result, the Arbitrator also held that the Agreement could not be enforced against Respondent as to the Disputed Items. Since Respondent had withdrawn his Counterclaims, neither party was entitled to damages. Both parties then stated that they had no further evidence to present. The Arbitrator requested briefing on the issue of attorneys' fees. On November 19, 2013, after both parties filed initial briefs on the subject, a telephonic hearing was held on the issue of fees. Thereafter, additional briefing was requested and filed on November 25, 2013, at which time the matter was deemed submitted.

IV THE FACTS

The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. Since the Arbitrator concludes that the Agreement is not enforceable and the Respondent's Counterclaims were withdrawn, some of the evidence adduced at the Hearing will be omitted or summarized briefly. To the extent that this recitation differs from any party's position that is the result of the determinations as to credibility and relevance, considerations of the burden of proof, and the weighing of the oral and written evidence.

Claimant is a professional auction house specializing in celebrity and sports memorabilia. Respondent was a professional boxer who was a five-time heavyweight world champion. Until the summer of 2012, Respondent owned a large home in Atlanta, Georgia and maintained possession of a large quantity of memorabilia from his professional career. Since 2007 Claimant had been discussing with Respondent the possibility of a consignment of all or a portion of Respondent's approximately 2000 memorabilia items for auction, even negotiating the terms of a proposed auction consignment agreement several years earlier with Respondent who was represented by counsel in those previous negotiations. The negotiations did not bear fruit until 2012 when Julien, Claimant's founder and CEO, became aware that Respondent had lost his home to foreclosure and was in financial distress.

Being informed that Respondent was no longer represented by counsel, in July of 2012, Claimant began negotiating with Tol Irvin ("Toi"), a former spouse or partner of Respondent, who was assigned by Respondent to handle this transaction. After the foreclosure, Respondent's household goods, including the memorabilia, were quickly placed in storage at Atlanta Peach Tree Movers, a local moving and storage company. Toi requested an advance of \$50,000 from Claimant as part of the auction agreement, in order to pay the storage company the money it

required to move Respondent out of his home, crate the goods, store them and ship them to Los Angeles. Claimant agreed to do so, but only if Respondent signed the Agreement. The fee to Atlanta Peach Movers turned out to be \$47,000, to the dismay of both Claimant and Respondent.

Respondent signed a version of the Agreement and the advance was paid. The Arbitrator is mindful that there is a controversy about when or whether a final version of the Agreement was actually signed by Respondent. Respondent provided evidence that Respondent only signed the Agreement once in an early version and that changes were made to the document after he signed it. Respondent contends that there is therefore actually no final signed agreement upon which to base the Demand. Since all parties acted as though there was an agreement and an auction was actually conducted based thereon, Respondent presumably got paid whatever proceeds were available to him, and Claimant incurred substantial preparation costs (including the advance to pay the mover), the Arbitrator concludes that a written agreement was made between the Parties in the form of the Agreement. During the Hearing, the parties and the Arbitrator relied on Exhibit 334 as a true and correct copy of the final version of the Agreement, and that is the document which the Arbitrator now concludes was the Agreement.

In any event, since the Arbitrator finds that the Agreement fails to comply with the applicable statutory requirements, and cannot be enforced against Respondent as to the Disputed Items, and since Respondent seeks only to defend against that claim, it is unnecessary to delve into the murky evidence about what version of the agreement was signed and when.

Julien testified that in his negotiations with Toi, he told her that he was interested in the so called "marquis items"—the items that were iconic to Respondent's career—and she confirmed they would be included in the auction. He further advised her that he would arrange to have all items that were consigned for auction to be shipped to Los Angeles, and that anything Respondent wished to keep should simply be left out of the shipment.

On the weekend of July 17-19, 2013, Nelles and Michael Doyle, two representatives of Claimant, went to Atlanta and spent considerable time at the Atlanta Peachtree warehouse separating out items to be shipped and arranging for their shipment to Claimant. Nelles, a sports specialist, appears to have been the one primarily dealing with Toi and Respondent from that point forward until this dispute erupted.

During the selection process, according to the two Julien representatives Toi was almost always present to make decisions, but Respondent was there also, from time to time. The process was to unpack the items to be viewed, Doyle and Nelles would decide what they wanted, and then they would get approval either from Toi or Respondent. Items approved for sale were then packed by the mover for shipment, and the mover kept a running inventory in the form of a five-part shipping document (Exhibit 454) of all items being shipped (the "Shipping List"). In addition, the crates and packages being shipped were identified with colored stickers that corresponded to the number of the item and the color noted on the Shipping List. Mr. Nelles testified that Respondent intervened several times to remove segregated items from the consignment.

Orlando Lynch, the owner of Atlanta Peach Movers, testified that Exhibit 454, the Shipping List was a form document used by him to control the shipping of property belonging to others. The mover was required to fill it out, and in this case, Mr. Lynch himself directed its compilation. The document was entitled "Household Goods Descriptive Inventory" and contained the name and telephone number of Atlanta Peach Movers in bold letters near the top, under the foregoing words. It listed the owner of the goods (Respondent) and the destination address in Los Angeles. Some of the property descriptions were specific (e.g., "picture box, Buster Douglas") and others were vague (e.g. Shadow Box, Boxing glove [sic]). At the bottom, there was a line for the signature of the carrier and "owner or authorized agent" at both the origin and destination.

According to Mr. Lynch, the Shipping List was evidence of a transaction between Atlanta Peach Movers and Claimant. He testified that he gave two copies of the list to Nelles and none to Toi or

Respondent because Nelles was the customer and consignee. When the goods were trucked to Los Angeles and received, it was Nelles who signed for their receipt on a copy of the list, (Exh 2A) for the same reason. Nelles testified that Mr. Lynch gave Toi the second copy of the Shipping List, and Respondent says he was never given, and never saw a copy of that list. There is no independent evidence to resolve this conflict.

In addition to the packaged and crated items, the mover had a safe in which jewelry, medals and other precious items were held. These items were taken from the safe and Respondent selected items for sale by placing them on a table. Using one of the movers' shipping forms, Mr. Nelles filled out an inventory of these items and obtained Respondent's signature. (Exh 3) (the "Jewelry List"). Because he believed that this inventory represented a release from the custody of Atlanta Peach Movers, Mr. Lynch asked Nelles to cross out the mover's name from the top of the document and asked for Nelles' signature, as well, with the notation that the property was "released". Five of the Disputed Items are contained on this inventory. Nelles testified that he wanted the jewelry inventory signed by Respondent because the items were going to be hand carried through airport security, and he wanted evidence of his authority.

In addition to the above shipment and jewelry items, there was a second shipment of selected property because there was insufficient room on the first truck. Claimant and Mr. Lynch did not agree on trucking the second shipment, so Claimant arranged for another shipping company to pick up and send the items to Claimant in Los Angeles. No formal inventory was ever prepared for the second shipment, although there was an email between Mr. Nelles and Mr. Lynch (Exh 28) listing the items.

Third, there remained some items that were in a vault which were sent later by Ms Irvin by UPS and which were listed on an email from Nelles to Lynch with copies to Julien, and Toi (Exh 29).

A great deal of time and money went into the auction itself. The provenance of many of the items for sale had to be explored, press releases and internet marketing were published, and an elaborate, professional catalogue had to be prepared, displaying each item for sale, including a photograph and important information, and an estimate of the probable sale range of that item.³ The catalogue (Exh 5) had a cover with a picture of Respondent wearing one of the championship belts that was a Disputed Item (Exhibit 14). That picture and an introduction by Respondent referring to some of the iconic events in his career were approved by Respondent for inclusion in the catalogue. In addition, Respondent approved the press release (Exhibits 15, 27) and other marketing materials which referred to either some of the Disputed Items or the events with which they were associated. Respondent also provided information and photographs which depicted some of the Disputed Items (Exhibit 26). On July 30, Julien advised Toi by email that he had just posted auction information on Claimant's website announcing the auction and included references to some of the more iconic Disputed Items, such as the boxing gloves worn by Respondent in the famous 1998 "Bite Fight" with Mike Tyson and Respondent's championship belts and Olympic bronze medal. It is clear that at all times, Respondent was informed of Claimant's intention to include the Disputed Items in the auction.

On July 24, Toi, acting on Respondent's behalf, conveyed Respondent's message that he would like to "see all of the items". Julien replied that he didn't know what Respondent was asking for -- was it "photographs or layouts?" Toi replied: "I think he means the inventory of items you have so he can review and give you the history and dates on the items". Julien then said that she meant the layouts which would take another month or so (Exhibit 25).

On September 25, 2012, Toi again passed on Respondent's request for "an inventoried list of items and pics" (Exh 63). On September 26, Nelles replied, apologizing that he had not given her

³ Nelles testified that these estimates were purposely low to bring potential buyers to the auction. Respondent testified that he pulled a number of the Disputed Items because the price was too low, apparently referring to the catalogue estimates.

the inventory, and stating that he was "attaching an inventory list" Attached to the email is a 14 page list of items with catalogue numbers and categorized by year. This appears to be the first and only complete inventory of items to be sold at auction, although Claimant denies that this list is the "inventory" referred to in the Agreement. Nelles also states in his email that "there will still be time to pull items if needed after I have submitted my layouts to our graphic designer" (Exh 64).

Shortly thereafter, beginning on October 3, 2012, Susan Harrison, an attorney representing Respondent, and clearly acting on his behalf, began an email and telephonic exchange with Julien about withholding certain items from the auction. Despite Claimant's protests and expression of dismay, on October 12, Ms. Harrison sent an email demanding removal from the auction of the Disputed Items (Exhs 68-72).

The District Court Action followed soon thereafter.

V DISCUSSION

Central to this Award is the interplay between the Agreement and the statutes which apply to it. Paragraph 9 of the Agreement contains the provision upon which Claimant's Demand rests: "You may not withdraw your Property from sale after the date upon which you sign this agreement or Consignment Receipt, whichever is earlier".

Effective January 1, 2005, the State of California enacted a legislative scheme (Cal. Civ. Code §§ 1812.601 et seq.) regulating the conduct of auctions within the State of California. Section 1812.608 provides in pertinent part:

"... [I]t is a violation of this title for any person to do any of the following:

(a) Fail to comply with any provision of this code... relating to the auctioneering business, including, but not limited to, sales and transfer of title of goods.

"(d) Sell goods at auction before the auctioneer or auction company involved has first entered into a written contract with the owner or consignor of the goods, which contract sets forth the terms and conditions upon which the auctioneer or auction company accepts the goods for sale. The written contract shall include all of the following:

"(2) An inventory of the item or items to be sold at auction..."

Section 1812.609 provides that "Any waiver of the provisions of this title is contrary to public policy and is void and unenforceable"

None of the Shipping List, Jewelry List or trucking email were either designated "Consignment Receipt" or attached to the Agreement. None of those documents was specifically referred to in the Agreement or otherwise incorporated into the Agreement by any reference in either the Agreement or the list. Only the Jewelry List was filled out by Julien's personnel and was signed by Respondent.

Indisputably, none of the lists of property consigned were ever physically attached to the Agreement. It is also indisputable that only the Jewelry List was signed by Respondent or his representative. Julien testified that while the various lists were not actually attached, Respondent understood their purpose as contractual inventories, that this method of consignment was customary, and that in any event, the Statute does not require that the inventory be attached, only "included". Claimant also contends that the entire purpose of the selection process in Atlanta was to identify the good consigned for auction

None of these explanations bring the Agreement into compliance with the Statute. Whether Respondent knew or understood that the purpose of all of these lists was to contractually bind him to their sale under the terms of the Agreement, or agreed that all trucked goods were

irretrievably consigned for auction, is contested and in any event irrelevant. The Statute is clearly designed to preclude the need to make such an investigation, by requiring a single clear and unequivocal writing which does not depend on circumstance-based explanations. This is especially true for explanations based on custom of an industry with which the consignor is unlikely to be familiar, as is the case here.

It is true, that the Statute does not require "attachment" of the inventory, and requires it only to be "included" in the Agreement. However, the Agreement itself requires attachment in order for an inventory to be included.

The common dictionary meaning of "included" means "to take in as a part or an element (See American Heritage College Dictionary) or comprised as part of or within something else (Miriam Webster On Line Dictionary), in this case, the Agreement. Normally, that would mean that the inventory would be readable within the four corners of the document. Where the inventory is long, however, as it is here, describing each consigned item in the contract itself would be unwieldy, so the Agreement provides for alternative methods of inclusion. First, there is a box in which the items can be listed. The box is small, so presumably, it is intended to be used only when there are a few consigned items. A second choice under the Agreement is to separately attach the inventory as an "exhibit" which is then specifically "made a part hereof [i.e., "included"] by reference". The third available choice, and the one chosen by Claimant, is to use a "Consignment Receipt...if indicated below". At the bottom of the inventory box, the "Consignment Receipt" option can be "indicated" by checking the statement: "See Attached Consignment Receipt" Claimant also wrote into the inventory box itself, the words, "Julien's to Attach inventory of items received by [sic] Evander"

To make the intention of contract triply clear, the printed portion of the Agreement then states that "any such separate exhibit(s) and/or Consignment Receipt attached hereto are hereby incorporated [i.e., included] by this reference."²

Thus, according to the express terms of the Agreement none of the inventory lists were included in the Agreement because Claimant failed to attach them as it undertook to do.

Claimant contends, however, that physical "attachment" is only a technical requirement and should be ignored in favor of other compelling evidence demonstrating that Respondent knew the purpose of the shipping lists and that by physically selecting goods for auction and having them shipped to Los Angeles, he demonstrated a complete understanding of what was to be sold at auction. This argument ignores the statute, however. Section 1812.608 prohibits any sale at auction unless there is a written agreement which includes an inventory. Respondent's subjective "understanding" or his objective acts substantiating that understanding do not constitute "inclusion"

Even if we were to ignore the attachment requirement, the shipping lists could only be included in the Agreement if they were somehow incorporated therein. While the law permits parties to incorporate by reference into their contract the terms of some other document, (See *Scott's Valley Fruit Exchange v Growers Refrigeration Co.* (1947) 81 Cal App. 2nd 437, 447) Claimant's own contract only permits incorporation by reference to an attachment. Moreover, incorporation of another document by reference requires "clear and unequivocal" reference to the other document.

² There is no evidence explaining the meaning of "Consignment Receipt" or how it is different than a "separate exhibit". Because Julien selected it as a contractual alternative, he may have believed that the shipping list was also a "Consignment Receipt". However, there is no document in evidence entitled "Consignment Receipt" nor did Julien refer to any of the shipping lists as such. Had any list been actually attached to the Agreement this would not have mattered, but given the failure to clearly incorporate any particular document, the failure to designate a list as a "Consignment Receipt" substantiates the conclusions of this award, that the clarity required by the Statute was not achieved.

by the document executed by the parties.³ *Scott's Valley, etc, supra*, at p. 447. There is absolutely no reference, clear, unequivocal, or otherwise, to any of the shipping lists in the Agreement.

The Statute reflects a strong public policy and is designed to eliminate disputes about the property to be included in the auction. In doing so, it protects the consignor, the auction house and the buying public from improper or disputed sales. For these reasons, the Arbitrator finds that the Agreement failed to properly include an inventory in the Agreement as required by Statute.

Claimant also contends that even if there was a violation of the statute, the Agreement is nevertheless enforceable, since the Statute provides for civil penalties for violations, citing *Vitek, Inc. v Alvarado Ice Palace, Inc et al.* 34 Cal. App. 3d 566 (1973). In that case, a contractor that signed a building contract one day before his license was issued sought the balance due on the contract. The defendant did not contest the contractor's competence; rather it sought to deflect payment because the contract was illegal. The Court held that the general rule that contracts made in violation of an express statutory prohibition are void, may not apply where the statute provides for its own penalties, such as fines or administrative discipline. The test, said the Court, is whether unenforceability would be "disproportionately harsh considering the nature of the illegality" *Id.* at p. 592. Since the plaintiff in that case had competently performed the contract and was licensed during the entirety of his performance, enforceability was the just result.

On this matter, although §1812.609(d) provides for civil penalties, we cannot say that Claimant's violation was merely technical, as in *Vitek*. The failure to include an inventory in the Agreement persisted throughout the relationship with Respondent and pervades this dispute. The fundamental purpose of the statute was to prevent controversies that this case entails. The Arbitrator finds the Agreement unenforceable under the general rule stated in *Vitek*.

Finally, there is the question of estoppel. There is substantial evidence that Respondent led Claimant into believing that all or many of the Disputed Items would be included in the auction by approving catalogue photos, press releases, website postings, and by providing photographs depicting these items. Moreover, Claimant credibly contends that it expended substantial sums in reliance on these actions, all to its detriment.

Claimant concedes as it must, that the statutory scheme includes a non-waiver provision. As we noted above, §1812.609 provides: "Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable"

Claimant contends that estoppel is different than waiver, citing *Bastanchury v The Times Mirror Company*, 68 Cal App. 2d 217(1945). That case points out as dicta that the terms "waiver" and "equitable estoppel" are sometimes employed indiscriminately but that "strictly speaking", estoppel involves a change of position as a consequence of the other's conduct, while waiver is simply a repudiation of a known right.

Given the statement of public policy in the non-waiver statute, the Arbitrator finds this difference to be without significance. Like many consumer statutes, Claimant is charged with the knowledge that Respondent could not waive his rights, and were he to do so, Claimant could not rely on such conduct. Waiver—the relinquishment of his rights to enforce the statute—is at the root of any estoppel. It would significantly weaken the stated public policy to allow Claimant to claim estoppel because it relied on certain conduct of Respondent that permitted the Claimant to violate the statute. For that reason, the Arbitrator concludes that Respondent is not precluded by the doctrine of estoppel from enforcing the statute.

³ The only other document "executed by the parties is the jewelry list, but it makes no reference to any other document, including the Agreement

VI ATTORNEYS' FEES

The Agreement provides for an award of attorneys' fees, costs and expenses to the prevailing party in any dispute, claim or controversy in connection with the contract. Clearly, Respondent prevailed on the Demand against him, but he also dismissed all of his Counterclaims on the last day of the hearing. The question is, therefore, who is the prevailing party, if anyone?

Code Civ. Proc §§ 1032 and 1033.5 provide that attorneys' fees are allowable as costs when, as here, they are authorized by contract. Respondent prevailed on the Demand, which was based solely on the Agreement, and so would be entitled to his attorneys' fees, absent an adverse determination or dismissal of his Counterclaims.

Respondent's Counterclaims consisted of eight separate causes of action:

First: A claim for conversion of the Disputed Items because Claimant failed and refused to return them. A writ of possession and punitive damages are requested.

Second: A claim that Claimant's failure to comply with Civ Code §1812.605, etc. constituted an Unfair Business Practice under Calif. B & P Code §§17200, et seq. Violations are alleged to include failure to include the business address and phone number of the Claimant and the date of the auction in the Agreement (as well as failure to include the inventory)

Third: A claim for Breach of fiduciary duty against Claimant and Julien personally as bailees for many of the actions surrounding the transaction, including the failure to return the Disputed Items

Fourth: A claim for breach of an oral contract between Respondent and both Claimant and Julien obligating Claimant and Julien to provide photographs of all items and seek Respondent's approval before they were sold at auction.

Fifth: A claim for breach of the Agreement against Claimant for selling and offering for sale unapproved items, failing to assume all auction expenses, and failing to timely remit the auction proceeds to Respondent

Sixth: A claim against Claimant and Julien for breach of a false promise not to sell the Disputed Items without prior approval

Seventh: A cause of action for misrepresentation against Claimant and Julien by representing that only items approved by Respondent would be advertised and sold at auction;

Eighth: A statutory cause of action against both Claimant and Julien based on violations of §1812.608

Civ. Code §1717 provides for the mandatory award to "the party who is determined to be prevailing on the contract, and further calls upon the court to "determine who is the party prevailing on the contract whether or not the suit proceeds to final judgment"

Civ. Code §1717(b)(2) states: "Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section"

On its face, the dismissal of the entire Counterclaim would seem to make Respondent eligible for the "no prevailing party" provision of §1717(b)(2). But Claimant asserts that §1717(b)(2) only apply to dismissal of contract claims, and not to the other non-contractual claims, citing *Santisas v Goodin*, 17 Cal 4th 599 (1998). In that case, the plaintiff brought both contract and tort claims against a seller of real estate occasioned by certain alleged defects in a home the plaintiffs purchased pursuant to a sales agreement. The allegations were grouped into causes of action for breach of contract, negligence, deceit, negligent misrepresentation and suppression of fact. The buyers dismissed the action before trial and the trial court awarded attorneys' fees to the seller based on an attorneys' fee provision in the contract. The Supreme Court first held that section 1717 trumps the provisions of the agreement.

"When a plaintiff files a complaint containing causes of action within the scope of section 1717 (that is, causes of action sounding in contract and based on a contract containing an attorney fee provision) and the plaintiff thereafter voluntarily dismisses the action, section 1717 bars the

defendant from recovering attorney fees incurred in defending those causes of action, even though the contract on its own terms authorizes recovery of those fees" (Emphasis in original), *Santisas*, supra at p. 617.

The Court then said "This bar, however, applies only to causes of action that are based on the contract and are therefore within the scope of section 1717" *Id.*

In other words, only the contract Counterclaim (the Fifth Counterclaim) is eligible for the attorney fee bar.

It would appear, therefore, that while Respondent is the prevailing party on the Demand, under *Santisas* the Claimant is the prevailing party on seven of the eight dismissed Counterclaims.

Respondent argues that all of the Counterclaims qualify for the no attorney fees bar of 1717(b)(2) because each of them was based on a primary contractual right. Respondent contends that *Santisas* actually supports this view because it refers to the dismissal of causes of actions "sounding in contract" and "based on the contract". He asserts that all of his Counterclaims were based on the contractual relationship between the parties.

We first note that the theory of "primary right" is not relevant to this inquiry. It is a theory, usually applied to a narrow field where a plaintiff attempts to divide the right and enforce it in two lawsuits (*Crowley v Kattelman*, 8 Cal 4th 666, 682 [1994]). It refers to the plaintiff's broad right to be free of the particular injury suffered as opposed to the legal theory on which liability for that injury is premised (*Slater v Blockwood*, 15 Cal 3d 791, 795 [1975]).

Santisas is clearly a case based on legal theories, not on primary rights. Respondent expends a great deal of energy on semantic quibbling to prove a proposition which is factually untenable. *Santisas* says that section 1717 only comes into play if there is a contract claim, and then proceeds to explain that 1717(b)(2) only applies to the dismissal of contract claims but not others. All of the claims in *Santisas*, as here, were related to and arose out of the contractual relationship between the buyer and seller, although many sounded in tort. Respondent does not deny that most of his claims sound in tort or other non-contractual duty. After all, many of them include claims against Julien, a non-contracting party. Respondent simply says that all claims were "based on" the contractual relationship, parsing out some language used by the Court to mean something different than Respondent contends. If Respondent's theory were correct, there would be no need for the Court to make the 1717(b)(2) distinction between contractual and non-contractual claims. Respondent's theory is simply contrary to the facts and holdings of the case.

The Arbitrator therefore finds that Respondent is the prevailing party on the Demand, and that Claimant is the prevailing party on all but the Fifth Counterclaim. The question remains whether there are two prevailing parties, only one, or none.

We interpret *Hsu v. Abarra*, 9 Cal. 4th 863 (1995) and cases cited to limit the right of the Arbitrator to finding either one prevailing party in this matter or none. The test is whether there is a clear winner, whether one side received only good news, while the other received bad news, and whether only one party achieved its litigation objective (See *Hsu* supra at pp 875-876). *Hsu* holds that where there is only one clear winner, attorneys' fees must be awarded as a matter of right, but where the results are mixed, the determination of prevailing party is left to the discretion of the court. (*Id.*) We conclude that in this case the results are mixed and thus there is no prevailing party.

Had Respondent not filed and dismissed its Counter claims, he would have clearly been the prevailing party. But to rule in his favor after dismissal of the Counterclaims would be to ignore their potential impact in the case. The Counterclaims were not purely cosmetic, nor does Respondent argue that they were. Respondent presents arguments in support of these claims in his Arbitration Brief and the need to prosecute them was one argument posed by him in favor of

bifurcation. In his original brief on the issue of attorney fees (November 7, 2013), Respondent argues that his litigation "objectives were to retain ownership and right to possession of the 'disputed items' and to defeat [Claimant's] claim for substantial money damages" He only partially succeeded: He never established his right to retain his ownership and possession of the Disputed Items because he dropped his Counterclaim for conversion and his request for a writ of possession. In this connection, the conversion/writ of possession claim was more than colorable given the ruling against Claimant on the Disputed Items. Indeed, at the conclusion of the case, and after dismissing this claim, Respondent asked the Arbitrator to award him possession of the Disputed Items. The Arbitrator declined because there was no action left for possession and it was therefore no longer an issue in the case. In addition, Respondent asserted several unresolved and potentially effective questions in his Second and Eighth counterclaims, raising the issues of whether a violation of the regulatory statute could create independent causes of action for Unfair Competition or violation of statute. Further, other Counterclaims such as breach of fiduciary duty and misrepresentation might have posed problems, at least before the hearing began.

We do not question Respondent's motives or strategies for dismissal. We only note that Claimant would have been obliged to prepare to defend these claims, and would have failed to do so at its peril.

Finally, we are influenced by certain equitable considerations. Claimant lost this case because it failed to follow the statute. Its conduct was otherwise professional and competent. It expended large sums of money to promote and conduct the auction. Most importantly, it treated Respondent fairly and transparently. Respondent, on the other hand, did not show himself to be a good business partner. His testimony was unclear and unreliable and he failed to take responsibility for his actions. The justice scale weighs in favor of Claimant.

Respondent also seeks fees for his success in the Action. The Arbitrator is mindful of that success. However, since that Action is not final, and the parties will obviously have to return to District Court, the Arbitrator abstains from awarding any fees with respect thereto, and defers the issue of fees and costs in the Action to the discretion of the District Court Judge who oversaw the proceedings.

For the foregoing reasons we find there is no prevailing party in this matter.

VII CONCLUSION

1. The Agreement was executed by the parties and constituted an agreement for the purposes of this arbitration.
2. Claimant failed to include an inventory in the Agreement prior to the auction in violation of §1812.608(d) (2) of the Calif. Civ.Code
3. The Agreement was void and unenforceable, at least with respect to the Disputed Items, because it violated the above Code section. Any auction for the Disputed items would have been unlawful.
4. Respondent is not estopped from asserting the illegality of the Agreement with respect to the Disputed Items.
5. The Arbitrator makes no finding with respect to ownership or right of possession of the Disputed Items, those issues not being before him.

6. There is no prevailing party for the purpose of attorneys' fees. Each party shall bear their own fees and costs and shall equally share the arbitration fees and arbitrator costs under the arbitration provisions of the Agreement.

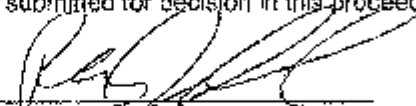
VII: AWARD

1. Claimant's Demand is denied and Claimant shall take nothing by virtue thereof.
2. Respondent's Counterclaims are dismissed with prejudice, having been voluntarily dismissed.
3. Each party shall bear its own attorney fees and costs and shall share equally in the arbitration costs and arbitrator costs.

This award resolves all claims between the parties submitted for decision in this proceeding.

DATED:

December 19, 2013


Richard Posell
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Julien Entertainment.com, Inc. vs. Holyfield, Evander
Reference No. 1220045520

I, Brian Scott, not a party to the within action, hereby declare that on December 26, 2013 I served the attached Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail at Santa Monica, CALIFORNIA, addressed as follows:

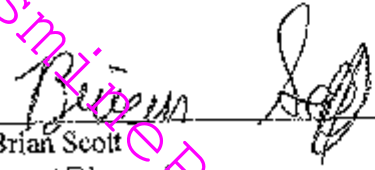
Sonia Lee Esq.
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slee@raineslaw.com
Parties Represented:
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Edward M. Medvene Esq.
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Parties Represented:
Evander Holyfield

Philip D. Dapeer Esq.
L/O Phillip D. Dapeer
2625 Townsgate Rd.
Suite 330
Westlake Village, CA 91361-5749
Phone: 323-954-9144
Phil@DapeerLaw.com
Parties Represented:
Evander Holyfield

I declare under penalty of perjury the foregoing to be true and correct. Executed at Santa Monica,

CALIFORNIA on December 26, 2013.



Brian Scott
bscott@jamsadr.com

theJasmineBRAND.com

theJasmineBRAND.com

theJasmineBRAND.com

EXHIBIT "B"

Philip Dapeer

From: Philip Dapeer
Sent: Saturday, December 28, 2013 5:31 PM
To: Yank Barry; Toi Irvin (artoi2000@yahoo.com); Toi Irvin (ToiIrvin@hotmail.com)
Cc: Ronald A. DiNicola (ronald@dinicolagroup.com); 'Edward Medvene'
Subject: FW: Julien's v. Holyfield

From: Philip Dapeer
Sent: Saturday, December 28, 2013 5:28 PM
To: Sonia Lee; Sheri Guerami (sguerami@raineslaw.com)
Cc: <yankbarry@yahoo.com> (yankbarry@yahoo.com); Ronald A. DiNicola (ronald@dinicolagroup.com); 'Edward Medvene'
Subject: Julien's v. Holyfield

Pursuant to paragraph 20 of the subject auction consignment agreement, Evander Holyfield demands that all of the unsold property, including all of the property identified as the "disputed" or "iconic" items in the arbitration case, be immediately transported and delivered to the bonded warehouse and to the possession of Mr. Yank Barry, at 1544 1st Street, Sarasota, Fla, 34236, tel. 941-552-8486 at your expense and in the same manner and condition the property was delivered to you. For your information, Mr. Yank Barry holds an assignment of the Attorney Lien asserted by former counsel Susan Harrison, and also holds a perfected security interest in the property. You were served with notice of the assignment of the lien. The auction consignment agreement has now terminated and your obligation to return the unsold property is unconditional. Please confirm when the shipment will be made and the details of the shipment. There appears to be no reason why Julien's cannot at least confirm the shipping arrangements by next Friday. Any delay on the part of Julien's in executing this direction for the return of the property will be considered an act of wrongful conversion of the property and will be addressed by an appropriate request for District Court intervention. Will you stipulate to an order confirming the arbitration award, exonerating the undertaking of surety and releasing the funds on deposit with the Clerk of the District Court? Please advise immediately. If you have any questions of Mr. Yank Barry, you may contact his counsel, Mr. Ron DiNicola, at Mr. DiNicola's above listed e-mail address.

Very truly yours,

Philip D. Dapeer

LAW OFFICES OF PHILIP D. DAPEER
A Law Corporation
Offices in Beverly Hills & Westlake Village
(323) 954 9144 & (805) 557-7001

Philip Dapeer


From: Sheri Guerami <sguerami@raineslaw.com>
Sent: Tuesday, January 07, 2014 4:34 PM
To: Philip Dapeer
Cc: Sonia Lee
Subject: Holyfield return of items

Phil –

Per our conversation, by early next week we will email you a list of items that will be returned to Holyfield. Once you confirm, we will make arrangements for you to pick up the items from the warehouse.

Best,

Sheri Guerami

 **Raines Feldman** LLP

Sheri Guerami

RAINES FELDMAN LLP | 9720 Wilshire Boulevard, Fifth Floor | Beverly Hills, California 90212
Phone: 310-440-4100 | Direct: 424-239-2518 | Fax: 310-765-7050

E-mail: sguerami@raineslaw.com
www.RainesLaw.com

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Quantity**Item****Property Consigned but Deemed Unsuitable for Auction**

1	Metal Coffee Table Base (No Top)
1	Floral Artwork (Framed)
1	Elephant Torchere Lamp
1	Wood & Leather Large Desk Top (no legs)
1	Bed Footboard (or headboard - not sure which as only piece)
1	Bed Footboard (or headboard - not sure which as only piece)
8	Plaster Pillars
3	Boxes of Misc. Property
1	Top Hat (Brown)
6	Bed Frame planks
1	Chest of Drawers (no top)
1	Italian Rococo table base (no top)
2	Wood Round Table Bases (no tops)
1	Wood Round table base (no top)
1	Wood / Plaster table base (ornate - no top)
1	Wrought Iron table with plaster top

**Property Consigned but received too late to include in auction or
unable to attribute as to use in fight**

6 pairs	Boxing boots - worn & signed
1 pair	Worn boxing gloves - unable to attribute to a fight
1 pair	Signed Everlast Boxing gloves
1	Signed Holyfield / Kronk boxing trunks
2	Holyfield Ironhead brand corner jackets
1	Holyfield "Todd 1" boxing trunks - white w/ red stripe
1	Holyfield "Apex" black boxing trunks
1	No brand yellow & black boxing trunks
1	No brand yellow & blue boxing trunks
2 Pairs	Used hand wraps - signed

**Rings / Pendants - Duplicates of those sold in auction - were to be
sold in future auction**

1	Undisputed Champion ring
1	2x Champ Ring
1	2x Champ Ring
1	2x Champ Ring
1	2x Champ Ring
1	2x Champ Pendant
1	3x Champ Ring
1	3x Champ Ring

- 3 3x Champ Pendant
- 1 4x Champ Ring

Withdrawn / Disputed Items

- 1 Father of the Year Award
- 1 40th B Day Artwork from MSG
- 1 "The Corner" litho
- 1 Golden Gloves Ring
- 1 1983 Pan Am Silver Medal
- 1 USA Boxing Robe
- 1 1984 Olympic Bronze Medal
- 1 Olympic Coin Set
- 1 1984 Olympic Ring
- 1 First Pro Fight Robe
- 1 Pair First Pro Fight worn gloves
- 1 vs. Qawi I fight worn robe
- 1 vs. Buster Douglas fight worn robe
- 1 Pair vs. Mike Tyson I fight worn gloves
- 1 1986 WBA Junlor Heavyweight belt
- 1 1990 WBA Heavyweight Champ belt
- 1 1990 IBF Heavyweight Champ belt
- 1 1990 WBC Heavyweight Champ belt
- 1 1993 WBA Heavyweight Champ belt
- 1 1993 IBF Heavyweight Champ belt

Unsold Lot from Auction

- 1 Lot #372 - EH 1993 WBA Comeback Award Belt
- 1 Lot #386 - partial - Louis Vuitton bag - not real LV bag / fake

Notes

60 x 38 x 19 inches
46 x 37 inches
Height - 60 inches
108 x 48 x 6 inches
82 x 7 x 47 inches
73 x 2.5 x 30 Inches
9 x 9 x 86.5 inches

In Stetson box
78 x 6 x 6 inches
42 x 21 x 33 inches
36 x 36 x 28 inches
38 x 28 x 30
26 x 26 x 28
36 x 36 x 30
40 x 40 x 29 inches

Engraved - Isom Coley
Blank
Engraved - Eddie Gilbert
Engraved - Willie Crowder
Engraved - Vaughn Ralham

Engraved - Dr. Ivan
Blank

Blank

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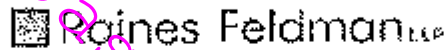
Philip Dapeer

From: Sonia Lee <slee@raineslaw.com>
Sent: Friday, January 10, 2014 2:14 PM
To: Philip Dapeer
Cc: Sheri Guerami; Tawny Almaguer
Subject: Copy of Evander Holyfield Current Inventory as of January 2014.xlsx
Attachments: Copy of Evander Holyfield Current Inventory as of January 2014.xlsx

Philip,

Please see enclosed an inventory of all property currently at Julien's gallery in Beverly Hills or the Warehouse in Culver City. Please review the same and advise when you will arrange for their pickup. With respect to the pickup, the items must all be picked up on the same day and with sufficient notice so that we can have our staff available to supervise.

Thank you,
Sonia



Sonia Y. Lee
Co-Chair of the Litigation Department
9720 Wilshire Boulevard, 50th Floor | Beverly Hills, California 90212
Main: 310 440-4100 | Direct: 310 734-0399 | Fax: 424 239-2242
E-mail: slee@raineslaw.com
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Philip Dapeer

From: Philip Dapeer
Sent: Friday, January 10, 2014 2:18 PM
To: 'Sonia Lee'
Subject: RE: Copy of Evander Holyfield Current Inventory as of January 2014.xlsx

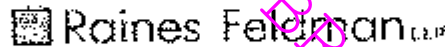
Your e-mail has been sent to the client for instructions.

From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, January 10, 2014 2:14 PM
To: Philip Dapeer
Cc: Sheri Guerami; Tawny Almaguer
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Philip Dapeer

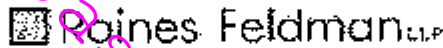
From: Sonia Lee <slee@raineslaw.com>
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

Please advise when you will arrange for pick up or shipping of the items.

Regards,
Sonia



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Philip Dapeer

From: Philip Dapeer
Sent: Friday, February 07, 2014 2:40 PM
To: 'Sonia Lee'
Subject: RE: Holyfield Auction Items

We will address this promptly.

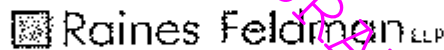
From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

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Philip Dapeer

From: Phillip Dapeer
Sent: Sunday, February 09, 2014 10:55 AM
To: 'Sonia Lee'
Subject: RE: Holyfield Auction Items

Please provide an accounting of what items sold at auction have not as yet been paid for by the buyer.


From: Sonia Lee [<mailto:slee@raineslaw.com>]
Sent: Friday, February 07, 2014 2:37 PM
To: Phillip Dapeer
Cc: Shari Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

Please advise when you will arrange for pick up or shipping of the items.

Regards,
Sonia

 **Raines Feldman** LLP

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Philip Dapeer

From: Sonia Lee <slee@raineslaw.com>
Sent: Sunday, February 09, 2014 3:33 PM
To: Philip Dapeer
Subject: RE: Holyfield Auction Items

I will check and advise.

From: Philip Dapeer [mailto:phil@dapeerlaw.com]
Sent: Sunday, February 09, 2014 10:55 AM
To: Sonia Lee
Subject: RE: Holyfield Auction Items

Please provide an accounting of what items sold at auction have not as yet been paid for by the buyer.

From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Phillip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

Please advise when you will arrange for pick up or shipping of the items.

Regards,
Sonia

 **Raines Feldman** LLP

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Main: 310 440-4100 | Direct: 310 734-0399 | Fax: 424 239-2742
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www.RainesLaw.com

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Philip Dapeer

From: Philip Dapeer
Sent: Sunday, February 09, 2014 7:20 PM
To: 'Sonia Lee'
Subject: RE: Holyfield Auction Items

Thank you.

From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Sunday, February 09, 2014 5:33 PM
To: Philip Dapeer
Subject: RE: Holyfield Auction Items

I will check and advise.

From: Philip Dapeer [mailto:phil@dapeerlaw.com]
Sent: Sunday, February 09, 2014 10:55 AM
To: Sonia Lee
Subject: RE: Holyfield Auction Items

Please provide an accounting of what items sold at auction have not as yet been paid for by the buyer.

From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

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theJasmineBRAND.com

theJasmineBRAND.com

theJasmineBRAND.com

Philip Dapeer

From: Philip Dapeer
Sent: Wednesday, February 12, 2014 11:48 AM
To: 'Sonia Lee'
Subject: RE: Holyfield Auction Items

Please call me to discuss.


From: Sonia Lee [<mailto:slee@raineslaw.com>]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

Please advise when you will arrange for pick up or shipping of the items.

Regards,
Sonia

 **Raines Feldman** LLP

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Philip Dapeer

From: Philip Dapeer
Sent: Monday, February 17, 2014 10:12 AM
To: 'Sonia Lee'
Subject: RE: Holyfield Auction Items

What is the volume of the property you are holding. Please call me.


From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

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Sonia

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Co-Chair of the Litigation Department
9720 Wilshire Boulevard, Fifth Floor | Beverly Hills, California 90212
Main: 310 440-4100 | Direct: 310 731-0399 | Fax: 324 239-2242
E-mail: sjlee@raineslaw.com
www.RainesLaw.com

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Philip Dapeer

From: Sonia Lee <slee@raineslaw.com>
Sent: Tuesday, February 18, 2014 11:24 AM
To: Philip Dapeer
Subject: Re: Holyfield Auction Items

Trying to determine info. Am in trial. Will have Sheri call.

Sent from my iPhone

On Feb 17, 2014, at 10:11 AM, "Philip Dapeer" <phil@dapeerlaw.com> wrote:

What is the volume of the property you are holding. Please call me.

From: Sonia Lee [mailto:slee@raineslaw.com]
Sent: Friday, February 07, 2014 2:37 PM
To: Philip Dapeer
Cc: Sheri Guerami
Subject: Holyfield Auction Items

Philip,

It has been a considerable time since we provided you with the inventory of Holyfield's items being held by Julien's Auctions. We need to have these items removed from our premises as soon as possible as we need the space for other collections.

Please advise when you will arrange for pick up or shipping of the items.

Regards,
Sonia

<image001.png>

Sonia Y. Lee
Co-Chair of the Litigation Department
9720 Wilshire Boulevard, Fifth Floor | Beverly Hills, California 90212
Main: 310 440-4100 | Direct: 310 734-0395 | Fax: 424 239-2242
E-mail: slee@raineslaw.com
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theJasmineBRAND.com

theJasmineBRAND.com

theJasmineBRAND.com

EXHIBIT "C"

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the "Security Agreement") is made and dated as of December 29, 2013, by and between Holyfield Management, Inc. ("HMI"), a Georgia corporation and Evander Holyfield, on the one hand, (the "Borrowers"), and Yank Barry, individually, or his Order, on the other hand (the "Lender(s)").

RECITALS

A. As of the date of this Agreement, Lenders loaned Borrowers the sum of \$ 621,133 and such future additional funds as may from time to time be agreed upon by Lenders and Borrowers (the "Loan"), pursuant to the terms of a Secured Promissory Note dated December 29, 2013 with this Agreement executed by Borrowers in favor of Lender in the principal amount of \$621,133 (the "Promissory Note").

B. As a material inducement for Lenders to make the Loan to Borrowers pursuant to the terms of the Promissory Note, Borrowers have agreed to provide collateral security for the performance of their obligations and liabilities under the Promissory Note, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Obligations. The obligations secured by this Security Agreement (collectively and severally, the "Obligations") shall consist of any and all present and future obligations of Borrowers to Lenders under any and all loans, advances, credit, and other financial accommodations extended by Lenders to Borrowers, and all debts, obligations, and liabilities of Borrowers to Lenders, of any kind and nature, whether due or not due, and whether the obligations may be or hereafter become otherwise invalid or unenforceable (including, without limitation, costs and expenses incurred by Lender in enforcing its rights under this Security Agreement).

2. Grant of Security Interest. In order to secure payment and performance of the Obligations, Borrowers hereby pledges, assigns and grants to Lenders a security interest in all right, title and interest of Borrowers in and to all of the assets of Borrowers including, but not limited to, any and all memorabilia associated with his professional boxing career, personal property, fixtures, equipment, inventory, cash and cash equivalents, deposit accounts, accounts, receivables, notes, documents, instruments, chattel paper, general intangibles, choses in action, causes of action, contract rights,

rights to payment of money, real property, properties in the hands of third party, leasehold interest, leasehold improvements, all now owned and hereinafter acquired and all proceeds thereof, as well as all now existing and hereafter acquired books, records, writings, information and other property relating to, embodying, incorporating or referring to, any of the foregoing assets (collectively and severally, the "Collateral"). The boxing memorabilia referred to herein is listed in Schedule A attached heretoon.

3. Representations and Warranties. Borrowers hereby represent and warrants that:

(a) Borrowers are the sole owner of and have good and marketable title to the Collateral (or, in the case of after-acquired Collateral, at the time Borrowers acquire rights in the Collateral) and, except as otherwise disclosed in writing to Lenders, no person has (or, in the case of after-acquired Collateral, at the time Borrowers acquire rights therein, will have) any right, title, claim or interest (by way of security interest, mortgage, pledge, lien, charge or other encumbrance in), against or to the Collateral;

(b) To the knowledge of Borrowers after diligent inquiry, all information heretofore, herein or hereafter supplied to the Lenders by or on behalf of Borrowers with respect to the Collateral and the business of Borrowers is accurate and complete in all material respects;

(c) The exact legal name of HMI as to the extent applicable that name appears on its articles of incorporation, the type and jurisdiction of organization of HMI, and the chief executive office of HMI are as set forth herein;

(d) HMI is duly organized, existing and in good standing under the laws of the state of its incorporation and in every other state in which it is doing business; and

(e) The execution, delivery and performance of this Security Agreement are within the corporate power of HMI, have been duly authorized, are not in contravention of law or any of the terms of HMI's articles of incorporation or bylaws, or of any other indenture, agreement or undertaking to which HMI is a party or by which it is bound.

4. Covenants and Agreements of the Borrowers. Borrowers hereby agree, at no cost or expense to Lenders:

(a) To do all acts (including execution of such other documents as Lenders may request) that may be reasonably necessary to maintain, preserve, protect, and defend the Collateral, including Borrowers' title thereto, and the security interest of Lenders therein;

(b) To not, without the prior written consent of Lenders, pledge, mortgage, encumber, or otherwise permit the Collateral to be subject to any lien, security, or charge other than those that may be in place as of the date of this Security Agreement;

(c) To not, without the prior written consent of Lenders, remove the Collateral or any records concerning the Collateral from its chief executive office of HMI;

(d) To not change HMI's legal name, location, mailing address, type of organization, jurisdiction of organization, or chief executive office prior to giving at least ten (10) Business Days' written notice to Lenders; and

(e) To allow, at all reasonable times, and from time to time, without the necessity of any prior notice or demand, Lenders by or through any of their officers, agents, attorneys, accountants, or other representative, to examine or inspect the Collateral wherever the same may be located and to examine, inspect, and make copies of Borrowers' books and records respecting any or all of the Collateral.

5. Authorized Action by Lenders. Borrowers hereby agrees that, at any time, without presentment, or demand, and without affecting or impairing in any way the rights of the Lenders with respect to the Collateral, the obligations of Borrowers hereunder or the Obligations, Lenders may, but shall not be obligated to and shall incur no liability to Borrowers or any third party for failure to, take any action that Borrowers are obligated by this Security Agreement to do and to exercise such rights and powers as Borrowers might exercise with respect to the Collateral, (including the execution, filing and perfection of a UCC Financing Statement in any state or jurisdiction that Lenders deem necessary or appropriate to perfect, maintain and continue the security interest), granted by Borrowers to Lenders in the Collateral, and Borrowers hereby irrevocably appoint Lenders as their attorney-in-fact to exercise such rights and powers. Borrowers agree to reimburse Lenders upon demand for any costs and expenses, including, without limitation, reasonable attorney's fees, Lenders may incur while acting as Borrowers' attorney-in-fact hereunder, all of which costs and expenses are included in the Obligations secured hereby. Borrowers further agree that Lenders will not be responsible for any error, negligence, or for any sort of act or omission not amounting to willful misconduct, arising out of the exercise of the rights and powers of Borrowers by Lenders as attorney-in-fact.

6. Remedies.

(a) As used herein, the term "Event of Default" shall mean, with respect to Borrowers, the occurrence of any of the following:

(1) Failure of Borrowers at any time to pay in full and as and when due any Obligations or failure of Borrowers to perform any of the warranties, covenants or provisions contained or referred to herein or in any agreement, document or other instrument evidencing any of the Obligations;

(2) Subjection by Borrowers of any of the Collateral to execution or other judicial process, or the loss, theft, substantial damage, destruction, transfer (other than in the ordinary course of Borrowers' business) or the encumbrance of any of the Collateral;

(3) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrowers or any guarantor or surety for the Obligations; and

(4) A breach by Borrowers of any term of this or any other agreement between Borrowers and Lenders.

(b) Upon the occurrence of an Event of Default, Lenders:

(1) Shall have and may exercise all rights and remedies accorded to Lenders by the California Uniform Commercial Code.

(2) May declare all unperformed Obligations, in whole or in part, of Borrowers immediately due and payable without demand or notice.

(3) May require Borrowers to take any and all action necessary to make the Collateral available to Lenders.

(c) Borrowers expressly waives any constitutional or other right to a judicial hearing prior to the time Lenders takes possession or disposes of the Collateral upon occurrence of an Event of Default.

(d) Any deficiency with respect to the Secured Obligations that exists after the disposition or liquidation of the Collateral shall be a continuing liability of the Borrowers to the Lenders and shall be immediately paid by the Borrowers to or for the benefit of the Lenders.

(e) All of Lenders's rights and remedies, whether evidenced by this Security Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lenders to pursue any remedy shall not exclude pursuit of any other remedy.

7. Miscellaneous.

(a) The terms of this Security Agreement may not be changed, varied, modified or altered except by a writing signed by both parties and specifically referring to this Security Agreement.

(b) All notices given by any party to the other shall be in writing unless otherwise provided for herein, delivered by facsimile transmission, by personal delivery or by overnight courier, addressed to the party as set forth below. Any party may change the address to which notices are to be sent by notice of such change to each other party given as provided herein. Such notices shall be effective on the date received. All notices given by any party to the other shall be in writing unless otherwise provided for herein, delivered by facsimile transmission, by personal delivery or by overnight courier, addressed to the party as set forth below. Any party may change the address to which notices are to be sent by notice of such change to each other party given as provided herein. Such notices shall be effective on the date received.

(c) This Security Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to its choice of law rules except to the extent that the California Uniform Commercial Code would apply the law of another jurisdiction. Venue over all disputes arising under or related to this Security Agreement shall be in the U.S. District Court for the Central District of California.

(d) Borrowers agree that a facsimile copy of this Security Agreement shall be considered an original and shall be admissible in a court of law to the same extent as the original document.

IN WITNESS WHEREOF, the parties hereto have signed this Security Agreement as of the day and year first above written.

Yank Barry [or His Order]

Holyfield Management, Inc.

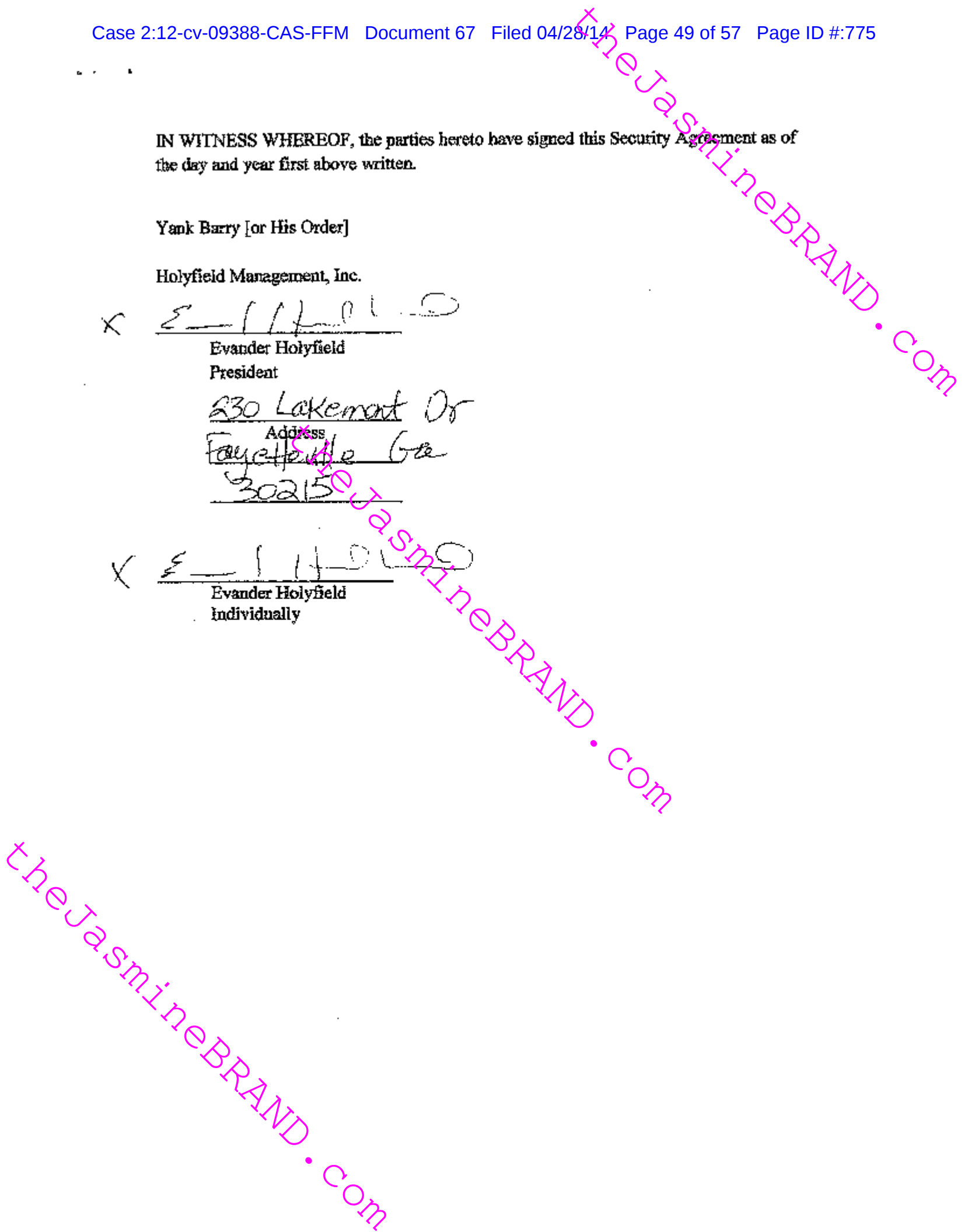
X Evander Holyfield

Evander Holyfield
President

230 Lakemont Dr
Address
Fayetteville Ga
30215

X Evander Holyfield

Evander Holyfield
individually



14-7397234838

01/28/2014 17:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
 Ronald A. DiNicola, 814-450-3174

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

Ronald A. DiNicola, Esq.
 DiNicola Law Offices
 1001 State Street, Suite 1400
 Erie, Pennsylvania 16501



FILED

CALIFORNIA
 SECRETARY OF STATE

SOS



41351299002 UCC FILING

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME: Holyfield | FIRST NAME: Evander | MIDDLE NAME: N/A | SUFFIX: N/A

1c. MAILING ADDRESS: 230 Lakemont Drive | CITY: Fayetteville | STATE: GA | POSTAL CODE: 30215 | COUNTRY: USA

1d. ADDL INFO RE ORGANIZATION: DEBTOR | 1e. TYPE OF ORGANIZATION: | 1f. JURISDICTION OF ORGANIZATION: | 1g. ORGANIZATIONAL ID# (if any): NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME: Holyfield Management, Inc.

OR

2b. INDIVIDUAL'S LAST NAME: | FIRST NAME: | MIDDLE NAME: | SUFFIX: |

2c. MAILING ADDRESS: P.O. Box 143420 | CITY: Fayetteville | STATE: GA | POSTAL CODE: 30214 | COUNTRY: USA

2d. ADDL INFO RE ORGANIZATION: DEBTOR | 2e. TYPE OF ORGANIZATION: Corporation | 2f. JURISDICTION OF ORGANIZATION: Georgia | 2g. ORGANIZATIONAL ID# (if any): NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME: Babny | FIRST NAME: Yank | MIDDLE NAME: Gerald | SUFFIX: |

3c. MAILING ADDRESS: 26 Tzanko Tzerkovski Street Floor 3 | CITY: Sofia | STATE: | POSTAL CODE: 1164 | COUNTRY: BG

4. THE FINANCING STATEMENT covers the following collateral:

In all right, title and interest of Debtors in and to all of the assets of Debtors including, but not limited to, any and all memorabilia associated with his professional boxing career, personal property, fixtures, equipment, inventory, cash and cash equivalents, deposit accounts, accounts, receivables, notes, documents, instruments, chattel paper, general intangibles, choses in action, causes of action, contract rights, rights to payment of money, real property, properties in the hands of third party, leasehold interest, leasehold improvements, all now owned and hereinafter acquired and all proceeds thereof, as well as all now existing and hereafter acquired books, records, writings, information and other property relating to, embodying, incorporating or referring to, any of the foregoing assets (collectively and severally, the "Collateral"). Certain of the boxing memorabilia referred to herein is listed below and continued on UCC Financing Statement Addendum.

1. Item No. 37706 Titled "40th Birthday Artwork"
2. Item No. 37704 "The Corner" lithograph signed by Evander Holyfield to his mother
3. Item No. 37652 The 1998 Father of the Year Award
4. Item No. 37736 The 1996 Tyson fight worn gloves

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILEE | SELLER/BUYER | AG. UEN | NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for records) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | 7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) (All Debtors) | Debtor 1 | Debtor 2 (optional) | [ADDITIONAL FEES]

8. OPTIONAL FILER REFERENCE DATA

thejasminebrand.com

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

Holyfield Evander N/A

41361290002

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or contain initials

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE FEDERAL CODE COUNTRY

11d. TYPE OF ORGANIZATION 11e. JURISDICTION OF ORGANIZATION 11f. ORGANIZATION'S STATE 11g. ORGANIZATION'S TYPE NONE

12. ADDITIONAL SECURED PARTY'S (or) ASSIGNOR(S) & NUMBER - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE FEDERAL CODE COUNTRY

13. This FINANCING STATEMENT covers greater to less or all-abstracted collateral, or is filed for a future class.

14. Description of real estate (if Debtor does not have a record interest):

15. Additional collateral description:

Evander Holyfield Memorabilia Continued

5. Item No. 37362 The 1984 Byam fight worn gloves
6. Item No. 37633 The 1993 WBA championship belt
7. Item No. 37634 The 1993 IBF championship belt
8. Item No. 37476 The 1990 WBA championship belt
9. Item No. 37638 The 1990 IBF championship belt
10. Item No. 37639 The 1990 WBC championship belt
11. Item No. 37628 1988 WBA junior heavyweight belt
12. Item No. 37052 The 1983 Pan Am Games silver medal
13. Item No. 37331 The 1994 Golden Gloves ring
14. Item No. 37351 Olympics ring
15. Item No. 38010 Olympic coin set
16. Item No. 37377 The 1990 Douglas fight robe
17. Item No. 37947 The 1988 Qawi fight robe
18. Item No. 37678 The Olympics robe
19. Item No. 37379 The 1994 Byam fight robe

16. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.
Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSFERING ENTITY
 Filed in connection with a Manufacturing-Export Transaction - effective 30 years
 Filed in connection with a Public-Private Transaction - effective 30 years

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EXHIBIT "D"

Philip Dapeer

From: Philip Dapeer
Sent: Thursday, March 27, 2014 1:07 PM
To: Ronald A. DiNicola (ronald@dinicolagroup.com); <yankbarry@yahoo.com>
(yankbarry@yahoo.com); 'Yank Barry'
Subject: FW: Holyfield

From: Philip Dapeer
Sent: Thursday, March 27, 2014 4:06 PM
To: Sonia Lee
Cc: 'Edward Medvene'
Subject: Holyfield

This constitutes my request for the required meeting of counsel pursuant to District Court local rule 7-3. I have ready to file immediately a motion to confirm the arbitration award, for an order requiring your client to ship and return plaintiff's property to plaintiff at your clients' expense, for an accounting and a verified inventory under oath of the Holyfield property now in your client's possession, custody and control, as well as the sold property that remains unpaid by the successful bidder, for release by the Clerk of the security deposited re the temporary restraining order, and for attorney's fees. Your clients' time to move to vacate, correct or modify the arbitration award has now expired. Please call me to conduct the required meeting of counsel. Hopefully, most of the issues to be addressed can be resolved by stipulation. If stipulations are not reached, then my motion will go forward on the open issues in dispute. I am available all day tomorrow and Monday for the required meeting of counsel. I am also available over the weekend.

Philip Dapeer

Very truly yours,

Philip D. Dapeer

LAW OFFICES OF PHILIP D. DAPEER
A Law Corporation
Offices in Beverly Hills & Westlake Village
(323) 954 9144 & (805) 557-7001

Philip Dapeer

From: Sheri Guerami <sguerami@raineslaw.com>
Sent: Tuesday, April 08, 2014 2:56 PM
To: Philip Dapeer; Sonia Lee
Subject: RE: Holyfield

Mr. Dapeer,

Julien's stands firm on its position that it is not required to ship and return Holyfield's property at Julien's expense. We have explained to you on many occasions that Julien's has no obligation to ship items that were never offered for sale at the auction. We have also requested on multiple occasions that the items be picked up from Julien's warehouse. Please indicate as soon as possible when your client intends to pick up his items or otherwise, we will have to charge storage fees for the time we have been required to keep the items on Holyfield's behalf.

With respect to the other requests in your email, please be advised as follows:

- 1) We will provide an updated accounting; along with the accounting, we will indicate whether the sold property has been paid for by the bidder or remains unpaid;
- 2) While we have already provided you a complete inventory of all property in our possession, custody and control, we will agree to provide a verified inventory under oath; and
- 3) We agree to release the bond.

With regard to the arbitration award, any time to file any petition to vacate or challenge the award has already lapsed. Accordingly, the award is "final" and there is no need to file any motion to confirm the award. Nevertheless, if you would like a formal confirmation, we are agreeable to stipulating to its confirmation.

Thank you,
Sheri



Sheri Guerami

RAINES FELDMAN LLP | 9720 Wilshire Boulevard, Fifth Floor | Beverly Hills, California 90212
Main: 310-440-4100 | Direct: 424-239-2518 | Fax: 310-765-7056

E-mail: sguerami@raineslaw.com
www.RainesLaw.com

Confidentiality Notice: The information contained in this email and any attachments(s) to it is intended only for the use of the intended recipient and may be confidential and/or privileged. If any recipient of this communication is not the intended recipient, unauthorized use, disclosure or copying of this email and any accompanying attachments(s) or other information contained herein is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return email, and destroy the email, and any and all copies thereof, including any attachments(s), without reading them or saving them in any manner. Thank you.

From: Philip Dapeer [<mailto:phil@dapeerlaw.com>]
Sent: Wednesday, April 02, 2014 5:42 PM

To: Sonia Lee; Sheri Guerami
Subject: FW: Holyfield

Please respond. Otherwise, I will file the motion and will advise the court that there was no meet and confer because there was no response to my e-mail below.

From: Philip Dapeer
Sent: Thursday, March 27, 2014 4:06 PM
To: Sonia Lee
Cc: 'Edward Mechene'
Subject: Holyfield

This constitutes my request for the required meeting of counsel pursuant to District Court local rule 7-3. I have ready to file immediately a motion to confirm the arbitration award, for an order requiring your client to ship and return plaintiff's property to plaintiff at your clients' expense, for an accounting and a verified inventory under oath of the Holyfield property now in your client's possession, custody and control, as well as the sold property that remains unpaid by the successful bidder, for release by the Clerk of the security deposited re the temporary restraining order, and for attorney's fees. Your clients' time to move to vacate, correct or modify the arbitration award has now expired. Please call me to conduct the required meeting of counsel. Hopefully, most of the issues to be addressed can be resolved by stipulation. If stipulations are not reached, then my motion will go forward on the open issues in dispute. I am available all day tomorrow and Monday for the required meeting of counsel. I am also available over the weekend.

Philip Dapeer

Very truly yours,

Philip D. Dapeer

LAW OFFICES OF PHILIP D. DAPEER
A Law Corporation
Offices in Beverly Hills & Westlake Village
(323) 954 9144 & (805) 557-7001

PROOF OF SERVICE

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 2625 Townsgate Road, Suite 330, Westlake Village, California 91361-5749.

On April 24, 2014, I served the document(s) described as **NOTICE OF MOTION AND MOTION FOR ORDER CONFIRMING ARBITRATION AWARD AND EXONERATING SECURITY; SUPPORTING DECLARATION AND MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows: (See Attached Service List)

BY MAIL: I caused such envelope to be deposited in the mail at Westlake Village, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postage service on same day in the ordinary course of business. I am aware that on motion of the party serviced, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing an affidavit.

BY OVERNIGHT DELIVERY: Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed on the next business day.

BY FACSIMILE: I caused such document to be sent via facsimile transmission on this date during regular business hours to the addressee(s). The facsimile machine utilized complies with California Rules of Court 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court 2008(4), I caused the machine to print a record of the transmission.

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

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2014, at Westlake Village, California.


Philip D. Dapeer

Evander Holyfield v. Julien Entertainment.Com, et al.
United States District Court, Central District of California
Case No.: CV-12-09388 CAS-FFMx

SERVICE LIST

Sonia Y. Lee
Raines Feldman, LLP
9720 Wilshire Boulevard
5th Floor
Beverly Hills, CA 90212

Attorneys for Defendants

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