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Appearing In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA, SMALL CLAIMS DIVISION

Steven T. Kirsch

Plaintiff,

v.

Charles Cunningham, *et al.*

Defendants

Case No: 2-04-SC-001187

(also 2-04-SC-001188 through 2-04-SC-001199, 2-04-SC-001214, 2-04-SC-001215, 2-04-SC-001718)

NOTICE OF MOTION AND MOTION FOR ASSIGNMENT ORDER AND FOR ORDER RESTRAINING JUDGMENT DEBTOR

Date: May 26, 2005
Time: 9 am
Dept: 15
Judge:

TO: CHARTERED FINANCIAL & INVESTMENT CORPORATION (“Judgment Debtor”) AND TO ANY ATTORNEY(S) OF RECORD FOR THE JUDGMENT DEBTOR:

NOTICE IS HEREBY GIVEN that on May 26 at 9am in Dept. 15 of the Court located at 191 N. First Street, San Jose CA 95113, Steven T. Kirsch, the judgment creditor, will move the Court for an order instructing the judgment debtor to assign the judgment debtor's interest in all ordinary accounts receivable payments and all rights to payment thereunder, to the judgment

1 creditor to the extent necessary to pay the judgment creditor's judgment in full, including accrued
2 interest through the date of payment.

3
4 The judgment creditor will also move the court for an order restraining the judgment debtor and
5 any servant, agent, employee or attorney for the judgment debtor and any person(s) in active
6 concert and participating with the judgment debtor from encumbering, assigning, disposing or
7 spending the account receivable payments and all rights to payment thereunder.

8 This motion is made on the grounds that the judgment creditor has a judgment against the
9 judgment debtor, the balance due on which, including accrued interest to the date of this hearing,
10 is \$ 34,005, and that the judgment debtor has an assignable right to the payments described
11 herein and that there is a need to restrain the judgment debtor.

12 This motion will be based on this notice, the attached declaration of Steven T. Kirsch, the
13 memorandum of points and authorities set forth below, and the complete files and records of this
14 action.

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16 Dated Judgment Creditor

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 THE COURT MAY ORDER THE JUDGMENT DEBTOR TO ASSIGN A RIGHT TO
4 PAYMENT TO THE JUDGMENT CREDITOR

5 Code of Civil Procedure Section 708.510 authorizes a Court to issue an order directing the
6 judgment debtor to assign to a judgment creditor (or to a receiver) all or part of a right to
7 payment due or to become due, including wages due from the federal government that are not
8 subject to withholding under an earnings withholding order, rents, commissions, royalties,
9 payments due from a patent or copyright, insurance policy loan value, accounts receivable,
10 general intangibles, judgments and instruments although the Court may take into consideration
11 all relevant factors, the sole constraints placed on the Court are that the right to payment be
12 assigned only to the extent necessary to satisfy the creditor's money judgment and that, where
13 part of the payments are exempt, the amount of the payments assigned should not exceed the
14 difference between the gross amount of the payments and the exempt amount.

15 [Code of Civil Procedure Section 708.510 (c), (d), (e) and (f)]

16 II.

17 THE RIGHT TO PAYMENT MAY BE ASSIGNED UP TO THE FULL AMOUNT DUE ON
18 THE JUDGMENT

19 As shown in the accompanying declaration, the current balance due on the judgment is
20 \$34,005. This balance, of course, accrues interest at the rate of 10% per annum. [Code of Civil
21 Procedure Section 685.010(a)] Therefore, the Court may order assignment of the right to
22 payment in an amount necessary to pay off the judgment in full, including accrued interest.

23 III.

24 AN ASSIGNMENT ORDER MAY BE ISSUED BECAUSE THE JUDGMENT MAY BE
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Since the judgment was entered and/or renewed less than 10 years ago, and since no order exists staying enforcement of the judgment, this Court is authorized to issue an assignment order for the judgment creditor.

IV.

THE COURT CAN RESTRAIN THE JUDGMENT DEBTOR

Code of Civil Procedure Section 708.520 authorizes the Court to restrain the judgment debtor from assigning or otherwise disposing of the right to payment sought to be assigned upon a showing of need. Such a showing of need is set forth in the declaration that accompanies this memorandum. Consequently, the debtor must be restrained so that the right to payment sought to be assigned will be available to be applied to the judgment creditor's judgment.

Dated

Judgment Creditor