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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 JASON FRANK LAW PLC, a professional
law corporation,

17 Plaintiff,

18 vs.

19 MICHAEL J. AVENATTI, an individual

20 Defendant.
21
22
23

Case No. BC706555
[Hon. Dennis J. Landin, Dept. 51]

[Reservation ID: 495633553918

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR ORDER REQUIRING
DELIVERY OF PROPERTY FOLLOWING
EXAMINATION OF THIRD-PARTY
CHRISTINE CARLIN; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF [CIV. PROC. CODE §§ 708.120,
708.180 and 708.205]**

***[Request for Judicial Notice, Declarations of
Jacob Sarabian, Jason Frank, Andrew Stolper
and Anthony Yannizzi and [Proposed] Order
filed concurrently herewith]***

Date: January 7, 2020
Time: 9:30 a.m.
Judge: Hon. Edward B. Moreton
Dept.: 44

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** that on January 7, 2020, at 9:30 a.m., or as soon
3 thereafter as the matter may be heard, in Department 44 of the above-entitled Court located at 111
4 North Hill Street., Los Angeles, California 90012, Plaintiff Jason Frank Law, PLC (“Plaintiff”) will
5 and hereby does move for order against Christine A. Carlin (“Carlin”) directing Carlin to deliver the
6 following property to Plaintiff for satisfaction of Plaintiff’s judgment against Defendant Michael
7 Avenatti (“Avenatti”) entered by this Court on November 20, 2018 and affixed on April 22, 2019
8 in the amount of \$5,115,984.23 (the “Judgment”):

- 9 (1) Cash in the amount of \$717,723.00 to be delivered to Plaintiff through his
10 counsel, Andrew Stolper, Esq. at Frank Sims & Stolper, LLP (“FSS”);
11 (2) The Mercedes S550, Vehicle No. WDDUG8CB8EA00895, License No.
12 7ETG892, including its title and any other ownership documents, to be delivered
13 through the Los Angeles County Sheriff’s Office, Civil Division, Room 525; and
14 (3) The artwork purchased by Avenatti on August 20, 2019 as more particularly
15 described in Paragraph 20 to the Declaration of Jason Frank filed concurrently
16 herewith to be delivered through the Los Angeles County Sheriff’s Office, Civil
17 Division, Room 525.

18 To the extent Carlin claims an interest in any of the property identified above or denies any debt to
19 Avenatti, Plaintiff further seeks a determination from this Court that Carlin does not possess such
20 an interest and the property may be delivered to Plaintiff in partial satisfaction of Judgment. In the
21 event this Court does not issue the requested relief, Plaintiff requests the Court issue an order
22 forbidding the transfer or other disposition of the property or forbidding the payment of the debt
23 until the interests in the property or existence of the debt is determined.

24 This Motion is based on *Code of Civil Procedure* section 708.205(a), which provides that,
25 at the conclusion of an examination of a third-party taken pursuant to *Code of Civil Procedure*
26 section 708.120, the Court may order the judgment debtor’s interest in property in the possession or
27 control of a third person, be applied to toward the satisfaction of a money judgment. This Motion
28 is further based on *Code of Civil Procedure* section 708.180(a), which provides if a third person

1 examined pursuant to *Code of Civil Procedure* section 708.120 claims an interest in the property
2 adverse to the judgment debtor or denies a debt to the judgment debtor, the Court may, upon request
3 of the judgment creditor, determine the interest in the property or the existence of the debt.

4 This Motion is based on the attached Memorandum of Points & Authorities, the Declarations
5 of Jacob Sarabian, Jason Frank, Andrew Stolper and Anthony Yannizzi and the exhibits thereto filed
6 concurrently herewith, the Request for Judicial Notice filed concurrently herewith, the pleadings,
7 documents and records on file in this action, and such further oral and documentary evidence as
8 may be presented at any hearing on this Motion.

9

10 Dated: December 12, 2019

BROWNE GEORGE ROSS LLP
Eric M. George
Ira Bibbero
Jacob Sarabian

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FRANK SIMS & STOLPER, LLP
Scott H. Sims
Andrew D. Stolper

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By: /s/ Andrew D. Stolper
Andrew D. Stolper
Attorneys for Plaintiff Jason Frank Law PLC

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TABLE OF CONTENTS

I. INTRODUCTION 6

II. STATEMENT OF FACTS..... 7

 A. Plaintiff’s Enforcement Efforts to Date..... 7

 B. Carlin Divorced Avenatti in 2007. 8

 C. On May 8, 2019, Avenatti Sent A Cashier’s Check to Carlin for \$717,723.00. 8

 D. On August 20, 2019, Avenatti Delivered Artwork He Purchased at an Auction to Carlin.
 10

 E. On or about May 30, 2019, Carlin Registers a Mercedes S550 (License No. 7ETG892) in
 her Name that is being used by Avenatti..... 11

 F. The November 25, 2019 Examination of Carlin. 12

III. THE COURT SHOULD ISSUE THE REQUESTED TURNOVER ORDER..... 13

 A. Legal Standards. 13

 B. Plaintiff Has Made A Prima Facie Showing that Avenatti Turned Over his Property to
 Carlin..... 14

 C. Carlin Has Not Offered Any Evidence She Has A Good Faith Claim to the Property or
 Funds that are the Subject of this Motion. 15

 D. Carlin’s Refusal to Provide Testimony Based on the Fifth Amendment is not Grounds to
 Deny this Motion..... 17

IV. CONCLUSION 19

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25
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TABLE OF AUTHORITIES

Page(s)

Cases

Evans v. Paye (1995)
32 Cal.App.4th 265 6, 14, 15, 17

Imperial Bank v. Pim Electric, Inc. (1995)
33 Cal.App.4th 540 13

In re Marriage of Sachs (2002)
95 Cal.App.4th 1144 17, 18

Sea Foods Co., Ltd. v. O.M. Foods Co., Ltd. (2007)
150 Cal.App.4th 769 *passim*

Troy v. Sup. Ct. (Rourke) (1986)
186 Cal.App.3d 1006 – 1013 17

Waltrip v. Kimberlin (2008)
164 Cal.App.4th 517 19

Yolanda’s, Inc. v. Kahl & Goveia Commercial Real Estate (2017)
11 Cal. App. 5th 509 13

Statutes

California Code of Civil Procedure § 708.120..... 6, 13

California Code of Civil Procedure § 708.180..... 13, 17

California Code of Civil Procedure Code § 708.180(a)..... 6, 13

California Code of Civil Procedure § 708.205(a) 6, 13

Other Authorities

CACI No. 107 17

1 **I. INTRODUCTION**

2 California *Code of Civil Procedure* section 708.205(a)¹ provides that, after the examination
3 of a third-party taken pursuant to Section 708.120, this Court may order the third-party to deliver
4 any property of the judgment debtor in the third-party’s possession or control to the judgment
5 creditor, or pay the judgment creditor any debt the third-party owes to the judgment debtor. If the
6 third-party claims an interest in the property adverse to judgment debtor, or denies the debt, this
7 Court may conclusively determine the interests in the property upon request by the judgment
8 creditor pursuant to Section 708.180(a).

9 Plaintiff conducted the examination of Carlin on November 25, 2019 pursuant to Section
10 708.120. As established herein, Avenatti provided the following property to Carlin: (a)
11 \$718,723.00; and (b) artwork purchased by Avenatti at an auction on August 20, 2019. Avenatti is
12 also driving a Mercedes S550 registered in Carlin’s name in May 2019. At her examination, Carlin
13 refused to answer any questions about this property pursuant to the Fifth Amendment, so it is unclear
14 if she is claiming any interest in the property.

15 In the event Carlin does claim an interest in the property, then this Court may conclusively
16 determine whether the property belongs to Avenatti and should be turned over to satisfy Plaintiff’s
17 Judgment. Where, as here, Plaintiff makes a prima facie showing that Avenatti provided his property
18 to Carlin, the burden shifts to Carlin to prove by a preponderance of the evidence that she has a good
19 faith claim to the property. (*Sea Foods Co., Ltd. v. O.M. Foods Co., Ltd.* (2007) 150 Cal.App.4th
20 769, 711.) Carlin “cannot satisfy this burden simply by offering an explanation which, on its face,
21 is not patently frivolous or an obvious sham.” (*Evans v. Paye* (1995) 32 Cal.App.4th 265, 270.)
22 “Rather, the court must consider the totality of the circumstances in determining whether the third
23 person has established good faith by a preponderance of the evidence.” (*Id.*)

24 Carlin has not and cannot make this showing. As such, this Court should order the property
25 to be delivered to Plaintiff in partial satisfaction of the Judgment, so that Avenatti’s efforts to evade
26 the Judgment are not permitted to succeed.

27
28

¹ All statutory references are to the *Code of Civil Procedure* unless otherwise specified.

1 **II. STATEMENT OF FACTS**

2 **A. Plaintiff's Enforcement Efforts to Date.**

3 Plaintiff obtained the Judgment against Avenatti on November 20, 2018 for \$5,054,287.75.
4 (Declaration of Jacob Sarabian ("Sarabian") ¶ 2, Ex. A.) On April 22, 2019, the clerk affixed
5 Plaintiff's attorney's fees and costs to the Judgment, yielding a total judgment amount of
6 \$5,115,984.23. (*Id.* ¶ 3, Ex. B.) Since securing the Judgment, Plaintiff has undertaken extensive
7 measures to collect on the monies it is owed.

- 8 • On December 7, 2018, Plaintiff obtained a judgment lien on Avenatti's personal
9 property by recording a Notice of Judgment Lien in the office of the Secretary of
10 State. (Sarabian ¶ 5, Ex. C.)
- 11 • On January 14, 2019, Plaintiff recorded an Abstract of Judgment in Orange County.
12 (*Id.* ¶ 4.)
- 13 • On January 15, 2019, Plaintiff served levies on Bank of America, California Bank
14 and Trust, City National Bank, JP Morgan Chase, Boston Private Bank and Trust
15 Company, and Charles Schwab. (*Id.* ¶ 6.)
- 16 • On February 14, 2019, Plaintiff recorded an Abstract of Judgment in Los Angeles
17 County. (*Id.* ¶ 7.)
- 18 • On February 25, 2019, City National Bank was served with a second levy. (*Id.* ¶ 8.)
- 19 • On March 25, 2019, earning withholding orders were served on Avenatti's
20 companies Eagan Avenatti, LLP ("EA"), Avenatti & Associates, APC ("AA") and
21 Avenatti LLP. (*Id.* ¶ 9.)
- 22 • On April 12, 2019, Plaintiff served levies on Bank of America, City National Bank,
23 Geragos & Geragos, APC, Stegmeier, Gelbart, Schwartz & Benavente, LLP and
24 Richard Platt. (*Id.* ¶ 11.)
- 25 • On July 18, 2019, Plaintiff served a levy on JPMorgan Chase Bank. (*Id.* ¶ 12.)
- 26 • On July 24, 2019, Plaintiff served a levy on Wells Fargo Bank. (*Id.* ¶ 13.)

27 Plaintiff has incurred thousands of dollars in fees and costs to effectuate these levies.
28 (Sarabian ¶ 14.) For all of its efforts, Plaintiff has recovered less than \$25,000; less than half of one

1 percent of all the money it is owed. (Sarabian ¶ 15.)

2 **B. Carlin Divorced Avenatti in 2007.**

3 Christine A. Carlin (“Carlin”) was married to Avenatti from May 1994 to December 2006.
4 (Declaration of Jason Frank (“Frank”), Ex. A, § I. B., p. 1; Request for Judicial Notice (“RJN”).)
5 They have two minor children, ages 17 and 13. (*Id.*) They legally separated on June 1, 2006. (*Id.*)
6 A Dissolution Judgment was entered by the Superior Court for the County of Los Angeles (Case
7 No. YD 051533) on July 23, 2007. (*Id.*)

8 The Dissolution Judgment provides that Carlin’s right to spousal support ended on
9 December 31, 2012 or upon her remarriage, whichever came first. (Frank Ex. A, § IV.G., p. 17.).
10 Carlin remarried in or around 2009. (Frank Ex. N at 50:14 – 51:1.).

11 The Dissolution Judgment provides for child support payments of \$4,070 per month
12 commencing on June 1, 2006. (Frank Ex. A, § III. A, p. 7.) According to the court records, there
13 have not been any modifications of the Dissolution Judgment filed with the court. (Frank ¶ 3, Ex.
14 B; RJN.)

15 **C. On May 8, 2019, Avenatti Sent A Cashier’s Check to Carlin for \$717,723.00.**

16 On or about April 30, 2019, Chubb insurance company issued a check in the amount of One
17 Million Dollars to “Michael Avenatti Esq.” (Frank Ex. L, p. 6.). The check states that: (a) the
18 “Claimant” was “Erica Schmit”; (b) the “Policy Holder” was “Six Continents Hotels, Inc.” and (c)
19 the “Reason for Payment” was “1/3 of settlement funds for full and final settlement of Eric (sic).”
20 (*Id.*) In other words, the check appears to be a contingency fee for Avenatti’s legal services. (*Id.*)

21 **CHUBB** ACE American Insurance Company
ACE Property and Casualty Insurance Company
Westchester Fire Insurance Company

Bank of America **DN50174772**
51-44
119

POLICY SYMBOL NO. ND0G71095678	CLM GRP K	FILE IDENTIFICATION: KY19K2173875	DATE 04/30/2019	AMOUNT *****\$1,000,000.00
DATE OF EVENT 03/03/2019	CLAIMANT Schmit, Erica	POLICY HOLDER SIX CONTINENTS HOTELS, INC.		
REASON FOR PAYMENT 1/3 of settlement funds of full and final settlement of Eric				

22 **ONE MILLION DOLLARS AND ZERO CENTS *******

23 **TO THE ORDER OF Michael Avenatti, Esq.**

24 **PAY TO THE ORDER OF** **1000000000**

25 **CHUBB**®

26 **CHUBB**®

27 **CHUBB**®

28

Void Over 1,000,000.00
Please deposit or cash within 90 days
\$250,000.01 and over will require 2nd signature
Maryellen Berg

1 On or about May 7, 2019, Avenatti opened a new account at JPMorgan Chase Bank under
2 the title "Michael J. Avenatti POD Christine Carlin-Avenatti." (Frank Ex. L, p. 45.) This was a
3 Payable on Death ("POD") account with Carlin named as the beneficiary upon Avenatti's death.
4 (*Id.*)

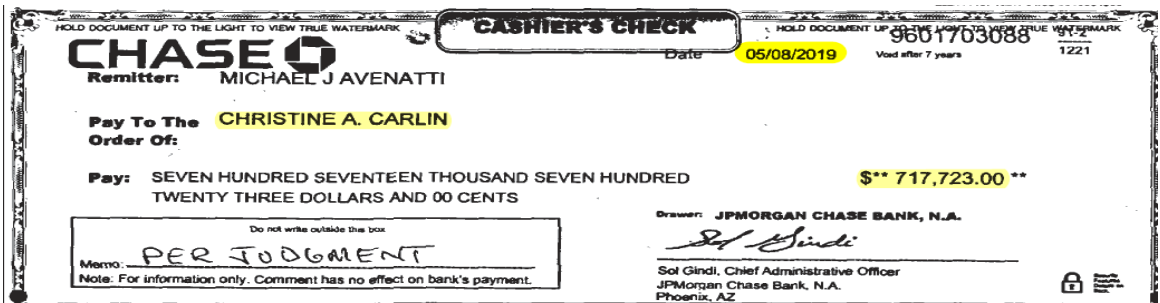


Personal Electronic Signature Card

TAX RESPONSIBLE ID # [REDACTED]	DATE OPENED 05/07/2019
PERSONAL ADDRESS 10000 SANTA MONICA BLVD UNIT 2107 LOS ANGELES, CA 90067-7021 United States/US Territories	ISSUED BY New Account JPMorgan Chase Bank, N.A Newport Center and Fashion Island
	BRANCH CITY/STATE Newport Beach (CA)
	BANK # BRANCH 740917
	PHONE # GARRETT M SCHAEFFER (949) 759-0657
TYPE OF OWNERSHIP Individual - POD	

ACCOUNT TITLE	ACCOUNT NUMBER / ACCOUNT TYPE
MICHAEL J AVENATTI	[REDACTED] 0911 Chase Private Client Checking
POD CHRISTINE CARLIN-AVENATTI	

13 On the same day he opened the account (May 7, 2019), Avenatti deposited the One Million
14 Dollar check from Chubb into the account. (Frank Ex. , pp. 1, 5-6.) The next day (May 8, 2019),
15 Avenatti issued a cashier's check to "Christine A. Carlin" in the amount of \$717,723.00. (*Id.*, p.
16 41.) The check has the endorsement signature of "Christine A. Carlin" on the back. (*Id.*)



⑈9601703088⑈ ⑆122100024⑆ [REDACTED] 2234⑈

FOR INFORMATION CONCERNING THIS INSTRUMENT
CONTACT:
JPMORGAN CHASE BANK, N.A.
1-800-933-0333

Security features on this document include a
Microprint Endorsement Line, Watermark and Visible Fibers.
Reflect these in comparison with a Chase Payment Services Authentication
Device.

M9910000224 6582819
E 6431 ID 438 PKT 61
7578717838

WARNING - DO NOT CASH CHECK
WITH A NOTING WATERMARK.
HOLD TO LIGHT TO VERIFY WATERMARK.
DO NOT WRITE / SIGN / STAMP BELOW THIS LINE
DEPOSITOR BANK ENDORSEMENT

1 Carlin refused to answer any questions about this payment based on her Fifth Amendment
2 Privilege against self-incrimination. (Frank Ex. P at 13:21-14:1, 14:8-16:3).

3 **D. On August 20, 2019, Avenatti Delivered Artwork He Purchased at an Auction**
4 **to Carlin.**

5 On August 20, 2019 the Orange County Sheriff conducted an auction of certain artwork
6 previously owned by Avenatti. (Frank ¶ 19.) The Sheriff conducted the auction pursuant to a writ
7 of execution issued in the Avenatti’s family law case with his second ex-wife, Lisa Avenatti. (*Id.*)

8 Despite apparently having no funds subject to a levy during the preceding ten months,²
9 Avenatti was the highest bidder, paying approximately \$18,000.00 in cash for the artwork. (Frank
10 ¶ 20.) Avenatti took possession of the artwork on the same day of the auction, August 20, 2019.
11 (*Id.* ¶ 21.) Frank, who attended the auction, informed the Sheriff in front of Avenatti that Plaintiff
12 would be seeking an emergency writ for the artwork, but by the time he obtained the necessary
13 documentation, Avenatti had already removed it from the facility. (*Id.*)

14 Plaintiff successfully obtained a turnover order from this Court requiring Avenatti to transfer
15 the artwork to Plaintiff. (Frank ¶ 22, Ex. M.) However, upon execution of the order, Avenatti
16 claimed he no longer had the artwork in his possession. (*Id.*)

17 Avenatti testified he provided the artwork to Carlin on the same day as the auction on August
18 20, 2019. (Frank Ex. N at 27:12 – 29:19.) According to Avenatti, prior to the auction, he told Carlin
19 he was going to attend the auction and might “bid on some items.” (*Id.* at 17:7-11, 17:14-22, 18:1-
20 7.) After he purchased the art for \$18,000.00, he claims he informed Carlin about the purchase and
21 Carlin demanded he turn over the artwork to her in exchange for a \$20,000.00 credit. (*Id.* at pp.
22 22:12 – 23:23.) Avenatti testified he subsequently drove the artwork to a storage facility, but he
23 does not remember the name of the facility or the city where it is located. (*Id.* at 27:12 – 29:19.)
24 He then met Carlin at the facility and gave her the artwork. (*Id.*)

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26
27 ² Plaintiff is informed and believes that Defendant currently resides in the luxurious Ten Thousand
28 apartment complex, where his monthly rent is in excess of \$10,000. (Frank Decl. ¶ 18.)

1 When asked if any of this was true during her examination, Carlin refused to answer based
2 on the Fifth Amendment privilege against self-incrimination. (Frank Ex. P at 9:18-24, 11:8-12:2).

3 **E. On or about May 30, 2019, Carlin Registers a Mercedes S550 (License No.
4 7ETG892) in her Name that is being used by Avenatti.**

5 Avenatti testified he drove to the auction on August 20, 2019, but he refused to answer
6 questions about the vehicle he drove based on the Fifth Amendment. (Frank Ex. N at 14:24 – 15:11.)
7 Plaintiff’s process server attended the auction and observed Avenatti drive away in a Mercedes
8 S550, with the License No. 7ETG892. (Declaration of Anthony Yannizzi (“Yannizzi”), ¶¶ 2-4.)
9 The process server took photographs of the vehicle as Avenatti left the auction. (*Id.*, Ex. B.)



19 Plaintiff pulled the On-Line Vehicle Record for this vehicle and discovered it was
20 registered to Carlin on May 30, 2019. (Frank ¶ 25, Ex. O.)

21 -----
22 ON-LINE VEHICLE RECORD FOR THE STATE OF CA
23 -----
24 ITEM REQUESTED: 7ETG892
25 -----BASIC RECORD-----
26 LICENSE: 7ETG892 VEH ID NO: WDDUG8CB8EA008895
27 MODEL YEAR: 14 MAKE/BUILDER: MERZ POWER/FUEL: G - GAS
28 VLF CLASS: NE (\$48,800 TO \$48,999.99) *-YEAR: 19 LEG OWNER CD: 3
DATE EXPIRES: 04/16/20 REGISTRATION ISSUE DATE: 05/30/19
SOLD/PURCHASED: 00/00/14 OWNERSHIP ISSUE DATE: 05/30/19
BODY CODE: 0 - SEDAN 4 DR
BODY TYPE MODEL: 4D - SEDAN 4 DR
TYPE LICENSE: 11 - REGULAR AUTO
TYPE VEHICLE: 12 - AUTOMOBILE-USED
-----REGISTERED OWNER-----
CARLIN CHRISTINE A

1 Notably, this car was registered in Carlin’s name less than three weeks after Avenatti
2 deposited the \$1 Million check into his Chase account and sent Carlin a cashier’s check in the
3 amount of \$717,723.00. (Frank Ex L, pp. 1, 5-6, 41.)

4 At his subsequent debtor’s exam before this Court on October 18, 2019, Avenatti testified
5 he took an Uber to the courthouse. (Frank Ex. N at 62:11-16.) However, when Plaintiff and his
6 counsel were leaving the courthouse after the examination, they observed the same Mercedes S550
7 (License No. 7ETG892) parked outside the Olive street entrance. (Declaration of Andrew Stolper
8 (“Stolper”), ¶¶ 3-4, Ex. 1; Frank ¶ 26.) In the front seat was Avenatti’s personal driver, James
9 Cameron – who they recognized as he was Avenatti’s personal driver when Frank and Stolper
10 worked at EA. (*Id.*)



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21 When asked questions about this vehicle, Carlin refused to answer based on the Fifth
22 Amendment privilege against self-incrimination. (Frank Ex. P at 5:4-9, 12:3-23.)

23 **F. The November 25, 2019 Examination of Carlin.**

24 On October 18, 2019, Carlin was personally served with: (i) an Order for Appearance and
25 Examination; (ii) an application in support of the Order for Appearance and Examination
26 specifically identifying the artwork, Mercedes and cash received from Avenatti; (iii) a civil
27 subpoena requiring Carlin to produce certain documents at the examination; and (iv) a check for
28 witness fees. (Frank ¶ 27.)

1 On November 25, 2019, Carlin attended the examination, but refused to answer most of the
2 questions based on the Fifth Amendment privilege. (Frank ¶ 28.) She also refused to produce any
3 documents based on the privilege. (*Id.*, Ex. P at 7:17-23.)

4 **III. THE COURT SHOULD ISSUE THE REQUESTED TURNOVER ORDER**

5 Having completed the examination of Carlin pursuant to *California Code of Civil Procedure*
6 section 708.120, Plaintiff now seeks a turnover order for (a) the \$717,723.00 provided by Avenatti
7 to Carlin via a cashier’s check dated May 8, 2019; (b) the title to the Mercedes S550 (License No.
8 7ETG892); and (c) the artwork purchased by Avenatti at the August 20, 2019 auction.

9 **A. Legal Standards.**

10 The “policy of the law favors the enforcement of judgments.” (*Yolanda’s, Inc. v. Kahl &*
11 *Goveia Commercial Real Estate* (2017) 11 Cal. App. 5th 509, 515.) “There is no policy favoring
12 the concealment of the judgment debtor’s assets from the judgment creditor.” (*Id.*)

13 Pursuant to Section 708.205(a), after the examination of a third-party, the Court may order
14 the third-party to deliver any property or funds in which the judgment debtor has an interest “to be
15 applied to satisfy the money judgment.” (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th
16 540, 546-47. Specifically, a court “may order the person examined, be it the judgment debtor or
17 *third person*, to deliver property or funds to a levying officer or directly to the judgment creditor”
18 (*Id.* (emphasis added) (citing *Lewis v. Neblett* (1961) 188 Cal.App.2d 290, 296-98.)) Such an order
19 creates a lien on the property and is enforceable by contempt. (*Id.*) “Moreover, the court . . . may
20 order that execution be issued to collect the sum due.” (*Id.*)

21 If the third-party claims an interest in the property adverse to the judgment debtor or denies
22 the debt, the court may determine whether the third-party has an interest in the property upon request
23 by the judgment creditor. (Civ. Proc. Code § 708.180(a).) “The determination is conclusive as to
24 the parties to the proceeding and the third person.” (*Id.*)³ The purpose of this statute is “to preclude
25 a third person who has acted in bad faith from delaying the matter by compelling the judgment
26

27 ³ The court may also, if it determines the judgment debtor probably owns an interest in the property
28 or that the debt is probably owed to the judgment debtor, make an order forbidding transfer or other
disposition of the property. (Civ. Proc. Code § 708.180).

1 creditor to resort to a creditor’s suit to determine the existence of the debt.” (*Sea Foods Co., Ltd. v.*
2 *O.M. Foods Co., Ltd.* (2007) 150 Cal.App.4th 769, 710-11.)

3 Once the judgment creditor has presented “prima facie evidence” the judgment debtor has
4 provided his property to a third-party, the “burden shifts to the third person to show by a
5 preponderance of the evidence” that his or her claim to the property is “made in good faith.” (*Evans*
6 *v. Paye* (1995) 32 Cal.App.4th 265, 270; *Sea Foods*, 150 Cal.App.4th at 711 (“The third-party
7 claiming an interest in the property or denying the debt has the burden of proving, by a
8 preponderance of the evidence, that the claim is made in good faith.”).)

9 “The third person *does not* satisfy this burden simply by offering an explanation which, on
10 its face, is not patently frivolous or an obvious sham.” (*Evans*, 32 Cal.App.4th at 270.) As the
11 *Evans* court explained, “[o]therwise, the third person could defeat the purpose of the statutory
12 scheme by presenting any facially plausible explanation for denying the debt, regardless of what
13 weaknesses become evident when the explanation is scrutinized together with other evidence
14 received by the court.” (*Id.*) “Rather, the court must consider the totality of the circumstances in
15 determining whether the third person has established good faith by a preponderance of the
16 evidence.” (*Id.*)

17 **B. Plaintiff Has Made A Prima Facie Showing that Avenatti Turned Over his**
18 **Property to Carlin.**

19 Plaintiff has made a prima facie showing that Avenatti turned over his property to Carlin.

20 *First*, the evidence establishes Avenatti deposited a check for \$1 million into his account on
21 May 7, 2019 and immediately transferred \$717,723.00 of that money to Carlin on May 8, 2019.
22 (Frank Ex. L, pp. 1, 5-6, 41.)

23 *Second*, the evidence establishes Avenatti is in possession of and using a Mercedes vehicle
24 that was registered under Carlin’s name on or about May 30, 2019 – less than three weeks after
25 transferring the money to her. (Frank ¶ 25, Ex. O; Yannizzi ¶¶ 2-4 Ex. B; Stolper ¶¶ 2-4, Ex. 1.)

26 *Third*, the evidence establishes that Avenatti gave the artwork he purchased at the August
27 20, 2019 auction to Carlin on the same day as the auction. (Frank Ex. N at 27:12 – 29:19.)

28 Having made this prima facie showing, the burden now shifts to Carlin to prove, by a

1 preponderance of the evidence, that she has a good faith claim to the property or money. (*Sea Foods*,
2 150 Cal.App.4th at 711.)

3 **C. Carlin Has Not Offered Any Evidence She Has A Good Faith Claim to the**
4 **Property or Funds that are the Subject of this Motion.**

5 Carlin refused to answer any questions as to whether she had a good faith claim to the (a)
6 \$717,723.00, (b) the Mercedes or (c) the artwork. (Frank Ex. P at 5:22-24, 8:25-9:17, 19:20-25 and
7 20:8.) As such, she has not satisfied her burden of proving her right to this property by a
8 preponderance of the evidence. The Court’s analysis should end here.

9 Notwithstanding the foregoing, the totality of the evidence likewise demonstrates she does
10 not have a good faith claim. (*Evans*, 32 Cal.App.4th at 270 (“The third person *does not* satisfy this
11 burden simply by offering an explanation which, on its face, is not patently frivolous or an obvious
12 sham.”).)

13 For example, there is no credible evidence the \$717,723.00 cashier’s check was paid to
14 Carlin in May 2019 pursuant to a 12-year old Dissolution Judgment entered in 2007. As noted
15 above, the Dissolution Judgment provides that Carlin’s rights to spousal support ended upon her
16 remarriage or no later than December 2012. (Frank Ex. A, § IV.G., p. 17.). Carlin remarried in
17 around 2009. (Frank Ex. N at 50:14 – 51:1.). Further, the monthly child support payments of
18 \$4,070.00 commencing on June 1, 2006 would equate to a total of \$634,920.00 through May 2019.
19 (\$4,070.00 x 156 months = \$634,920.00.) Plaintiff has obtained bank records from Avenatti’s
20 companies showing Avenatti paid Carlin at least \$963,840.00 during just the six-year period
21 between September 2012 and October 2018. (Frank ¶¶ 5-13, Exs. E, H, I.)

22

YEAR	PAYMENTS TO CARLIN FROM AA / EA
2012 (Starting September 2012)	\$35,000.00
2013	\$173,000.00
2014	\$178,000.00
2015	\$147,300.00
2016	\$140,390.00

23
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2017	\$173,300.00
2018 (Through October 2018)	\$116,550.00
TOTAL	\$963,840.00

And this \$963,840.00 is in *addition* to any money Carlin received prior to September 2012.⁴ (*Id.*)

As these bank records demonstrate, Avenatti typically paid Carlin on a monthly basis and the annual amounts (for complete years) ranged from \$140,000.00 to \$178,000.00. (Frank ¶ 12, Ex. I.) The notion that suddenly in May 2019, Avenatti owed Carlin an additional \$717,723.00 under the Dissolution Judgment is farcical on its face.

In contrast, the evidence Avenatti was attempting to hide his money under Carlin’s name to avoid Plaintiff’s Judgment is straightforward. Avenatti gets a check for \$1,000,000.00. (Frank ¶ 16, Ex. L, p. 6.) He opens a new bank account and deposits the million-dollar check the same day. (*Id.*, pp. 1, 5-6.) The next day, he withdraws over \$871,821.00 in cash and issues a cashier’s check to Carlin for \$717,723.00. (*Id.*, pp. 1, 41.) By sending the money via a cashier’s check, rather than a direct wire, Avenatti conceals the bank account where the money is deposited. (*Id.*) Approximately three weeks later, on May 30, 2019, Carlin obtains a Mercedes in her name that Avenatti is driving. (Frank ¶¶ 24-26, Ex O.). It is obvious what is going on.

Avenatti’s story about the art auction only furthers the farce. According to Avenatti, he tells his ex-wife he might “bid on some items.” (Frank Ex. N at 17:14 – 18:20.). Even though he supposedly owes substantial sums of money to his ex-wife, she does not demand he pay her the cash he intends to use at the auction. (*Id.*). Instead, he buys the artwork for \$18,000.00 in cash, upon which Carlin immediately demands he turnover the artwork to her *that same day* in exchange for a \$20,000.00 credit on the Dissolution Judgment. (*Id.* at 22:12 – 23:23.) He drives the artwork to a storage facility -- but he conveniently cannot remember the name or city it is located – and then Carlin presumably has to pay the storage fees. (*Id.* at 27:12 – 29:19.) And by transferring the artwork that same day, Avenatti avoids Plaintiff’s judgment collection efforts. *Does Avenatti expect*

⁴ Plaintiff’s subpoena was limited to the time period between 2012 and October 2018. (Frank, ¶¶ 6, 9.)

1 anyone to believe this story? Suffice it to say it is not surprising Carlin is refusing to provide any
2 testimony to support Avenatti's story under oath.

3 Avenatti is mocking the system. This Court has the power to stop it. Section 708.180 was
4 specifically enacted to prevent judgment debtors and third parties from frustrating and delaying
5 collection efforts through bad faith claims. (*Sea Foods*, 150 Cal.App.4th at 710-11.) It gives this
6 Court the authority to see through the nonsense and conclusively determine whether Carlin has
7 satisfied her burden of demonstrating a good faith claim to the property based on a "preponderance
8 of the evidence" and the "totality of the circumstances." (*Evans*, 32 Cal.App.4th at 270.) And the
9 Court as the trier of fact can disregard testimony that is not credible. (*Id.*; see also CACI No. 107
10 ("if you decided that a witness did not tell truth about something important, you may choose not to
11 believe anything that witness said.")).⁵ Accordingly, given her failure to satisfy her burden of proof,
12 this Court should grant the Motion.

13 **D. Carlin's Refusal to Provide Testimony Based on the Fifth Amendment is not**
14 **Grounds to Deny this Motion.**

15 Based on previous arguments of her counsel, Plaintiff anticipates Carlin will argue it is unfair
16 to grant this Motion in light of her assertion of the Fifth Amendment. But California courts have
17 consistently found that the assertion of the Fifth Amendment does not prevent judgment collection
18 efforts. (See, e.g., *Troy v. Sup. Ct. (Rourke)* (1986) 186 Cal.App.3d 1006, 1010 – 1013; *In re*
19 *Marriage of Sachs* (2002) 95 Cal.App.4th 1144, 1151-52.) In fact, as established in Plaintiff's
20 concurrently filed Motion to Compel, Carlin's assertion of the Fifth Amendment is not well taken
21 and should be overruled.

22 In order to properly assert the privilege against self-incrimination in a judgment debtor
23 proceeding, the privilege may not be asserted by merely declaring that an answer may incriminate.

24
25 _____
26 ⁵ To this end, Defendant has already lied repeatedly under oath in this courtroom. For example, at
27 his March 15, 2019 judgment debtor exam, when asked if he owned or had an interest in Augustus
28 LLP – the artwork was previously held at a storage facility under the name "Augusts LLP" –
Defendant claimed he did not own any such interest. (Frank ¶¶ 29-30, Ex. Q at 96:21 – 97:3.).
However, Plaintiff then obtained the LLP registration for Augustus LLP filed with the Secretary of
State – which showed that Augustus LLP was formed by Defendant in December 2018 and
Defendant identified himself as a "partner" in the company. (*Id.*, Ex. R.)

1 (*Troy*, 186 Cal.App.3d at 1010.) It must be “evident from the implications of the question, in the
2 setting in which it is asked, that a responsive answer to the question or an explanation of why it
3 cannot be answered might be dangerous because injurious disclosures could result.” (*Id.* (quoting
4 *Brunswick Corp. v. Doff* (9th Cir. 1981) 638 F.2d 108, 110).) In other words, the privilege only
5 protects against “real dangers,” and not “remote and speculative possibilities.” (*Id.*). Consequently,
6 “some discretion must rest in the court whereby it may prevent the mantle of protection from being
7 turned into a cloak for fraud and trickery.” (*Id.*)

8 For example, in *Troy*, the judgment debtor had been previously convicted on charges of
9 conspiracy and mail fraud in connection with a multimillion-dollar land fraud scheme. (*Id.*, 186
10 Cal.App.3d at 1009). The judgment debtor refused to answer questions about his assets or personal
11 information, based on the theory that such responses may provide a “link in the chain” of evidence
12 that any number of prosecuting agencies and creditors might use to prosecute new charges. (*Id.* at
13 1012). The Court of Appeal found the judgment debtor had amply demonstrated his fear of
14 prosecution, but his “fear alone is not enough to invoke the Fifth Amendment privilege.” (*Id.*). The
15 court noted there was no criminal prosecution pending against the judgment debtor, nor was there
16 evidence of any investigation that might lead to criminal prosecution. (*Id.* at 1013). The court
17 explained that “[w]ere we to accept [the judgment debtor’s] argument . . . a defrauder who makes it
18 big can always be cloaked and immune from a subsequent judgment debtor examination because
19 there’s always, quote, somebody out there who can come around and initiate a prosecution.” (*Id.*).
20 Accordingly, the privilege objections were properly overruled and the court of appeal affirmed the
21 trial court’s order finding the debtor in contempt. (*Id.* at 1014.)

22 Similarly, in *Sachs*, a judgment debtor was not allowed to use his Fifth Amendment privilege
23 to refuse to sit for a judgment debtor examination or produce certain financial documents, including
24 his tax returns, even though he claimed the evidence would tend to incriminate him on contempt
25 charges pending in another matter. (*Id.*, 95 Cal.App.4th at 1159-60.) In affirming the trial court’s
26 order to compel the debtor to answer questions and produce his financial records, the Court of
27 Appeal explained “[i]t is the duty of the court, while it protects the witness in due exercise of the
28 privilege, to take care that he does not, under the pretense of defending himself, screen others from

1 justice.” (*Id.* at 1159.)

2 In the present case, there is no evidence Carlin is the subject of a criminal prosecution or
3 investigation. If she is legitimately the owner of the Mercedes, there is no reason why answering
4 questions about the Mercedes would pose a “real danger” of incrimination. Similarly, if the
5 cashier’s check and artwork were, in fact, paid to satisfy an actual debt owed under the Dissolution
6 Judgment, then there would likewise be no “real danger” of incrimination in providing such
7 evidence. This is why her refusal to answer and produce records should be overruled by this Court.

8 But as it relates to this Motion, Carlin cannot have it both ways. She cannot ask this Court
9 to assume she has a good faith claim to the property at issue in this Motion, while simultaneously
10 failing to put forward any evidence to support such a claim. It is her burden to demonstrate a good
11 faith claim superseding Plaintiff’s right to the property as a secured judgment creditor. (*Sea Foods*,
12 150 Cal.App.4th at 710-11; see also *Waltrip v. Kimberlin* (2008) 164 Cal.App.4th 517, 529 (by
13 filing a notice of judgment lien with the Secretary of State, the creditor obtains a judgment lien over
14 the debtor’s property which has priority over any later filed liens or unsecured creditors).)

15 Carlin has not satisfied this burden. To hold otherwise would allow the Fifth Amendment
16 privilege to be improperly used as a sword and a shield – allowing Carlin to claim she has a right to
17 the property without any evidence, while simultaneously preventing Plaintiff from conducting
18 discovery on her claim. The end result being that a judgment issued in this Court is not being
19 enforced.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiff requests the Court issue an order requiring Carlin to
22 directly deliver to Plaintiff (a) the sum of \$717,723.00, (b) title to the Mercedes S550 (License No.
23 7ETG892), as well as the vehicle itself if it is in her possession, and (c) the artwork.

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Dated: December 12, 2019

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Make a Reservation

JASON FRANK LAW PLC VS MICHAEL J AVENATTI

Case Number: BC706555 Case Type: Civil Unlimited Category: Other Breach of Contract/Warranty (not fraud or negligence)

Date Filed: 2018-05-16 Location: Stanley Mosk Courthouse - Department 51

Reservation

Case Name: JASON FRANK LAW PLC VS MICHAEL J AVENATTI	Case Number: BC706555
Type: Motion re: (Turnover Order)	Status: RESERVED
Filing Party: PLC Jason Frank Law (Plaintiff)	Location: Stanley Mosk Courthouse - Department 44
Date/Time: 01/07/2020 9:30 AM	Number of Motions: 1
Reservation ID: 495633553918	Confirmation Code: CR-GUEKGMJZDPVGDUSXF

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX4978	Authorization: 120514

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