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9 Pro se

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 KENDRICK MOXON

13 Plaintiff,

14 vs.

15 GRAHAM BERRY,

16 Defendant.

Case No. BC429217

**PLAINTIFF'S EX PARTE
APPLICATION FOR ORDER STAYING
CROSS-COMPLAINT PENDING
DETERMINATION OF VEXATIOUS
LITIGANT'S REQUEST TO FILE
NEW LITIGATION**

Dept: 58
Time: 8:30 am
Date: March 22, 2010

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19 Plaintiff Kendrick Moxon, hereby applies, ex parte, for an order staying the
20 cross-complaint filed by defendant Graham Berry, who has been formally designated as
21 a "vexatious litigant," until such time as the Court gives him leave to file such action,
22 in accordance with the automatic stay provisions of C.C.P. §391.7(b) and the Order of
23 Judge William Fahey dated February 25, 2010.

24 Mr. Berry was provided notice of this ex parte action and the relief sought
25 herein both by telephone and email on March 18, 2010. (Declaration of Kendrick
26 Moxon) Defendant's newly added co-counsel, Barry Van Sickle, was also given notice
27 of the application - although Mr. Berry did not substitute out of the case. (*Id.*)
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THE NEED FOR EX PARTE RELIEF

3 The cross-complaint was filed by Mr. Berry *in pro per* without the leave of court
4 required by C.C.P. §391.7(a) and (b). Rather, he filed the cross-complaint
5 simultaneously with a request for leave to do so. The Hon. William Fahey thereafter
6 *denied* Mr. Berry leave to file the cross-complaint, ordering that he may file a noticed
7 motion on the issue.

8 Immediately, Mr. Berry (1) filed an affidavit disqualifying Judge Fahey, and (2)
9 re-filed an amended cross-complaint using a friend as his co-counsel and as a means to
10 attempt to circumvent the law and Judge Fahey's Order. However, the fact that Mr.
11 Berry has acquired co-counsel in the cross-complaint provides no exception to the
12 requirements of acquiring leave to file the action.

13 And, although notice was given to the clerk and to Mr. Berry that the pleading
14 was erroneously accepted by the clerk's office for filing and that it was accordingly
15 automatically stayed pursuant to C.C.P. §391.7(c), Mr. Berry refused to cease litigation
16 thereof, served a lengthy document request in both the claim and cross-complaint, and
17 noticed Mr. Moxon's deposition as to the issues raised in the cross-complaint.

18 Moreover, although Mr. Berry has failed to file a noticed motion for leave to file
19 the cross-complaint, he has since filed a motion to compel the "cross-defendant's"
20 deposition noticed under the cross-complaint that Judge Fahey forbid him to file.

21 This sort of misconduct is typical of the filings of this vexatious litigant
22 elsewhere, creating chaos and confusion in each court in which appears. With the
23 instant ex parte application, Plaintiff seeks to preserve his ability to timely respond to
24 the prohibited cross-complaint which the clerk's office erroneously accepted for filing,
25 and to preserve his ability to respond to the motion to compel Plaintiff's deposition in
26 the event the Court permits the cross-complaint to survive.

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FACTUAL STATEMENT

Attorney Graham Berry initiated considerable litigation against the churches of Scientology and attorneys who have represented the religion, such as plaintiff herein, plaintiff Kendrick Moxon. In the suits filed by Mr. Berry, he was uniformly admonished and sanctioned for the unmeritorious and/or bad faith actions.

In 1998, Mr. Berry brought a civil TRO application in L.A.S.C., against opposing counsel to avoid being deposed in a case he had filed against several Scientologists. He was sanctioned \$2,800 by Judge William C. Beverly, the TRO was denied and the action dismissed. (Ex. A, *Berry v. Rosen.*)¹ The ruling is final.

In September 1998, Mr. Berry sued several churches of Scientology, Mr. Moxon, as well as President Clinton, Madeleine Albright, Sandy Berger and many others, in a 312 page complaint alleging a vast international conspiracy, (Ex.B, cover pages and signature pages of *Pattinson v. Church of Scientology International et al.*, CV-98-3985). Mr. Berry was sanctioned pursuant to rule 11, F.R.Civ.P., and 28 U.S.C. §1927, the court finding, "... the claims alleged [by Mr. Berry] against Moxon were asserted in bad faith," (Ex. B), and it assessed sanctions against him of \$28,484.72. (Ex. C.) The appeal was dismissed by the Ninth Circuit in 2001.

Also in 1999, Mr. Berry was sanctioned by Judge David Minning, in *Pattinson v. Miscavige et al*, BC707364, and another action against a church of Scientology for filing a frivolous lawsuit. (Ex. D.) The ruling is final.

Later in 1999, Mr. Berry was sanctioned by Judge David Doi in *Jeavons v. Church of Scientology International*, BC207363, also for the filing of a frivolous action. (Ex. E.) The ruling is final.

Judge Alexander Williams thereafter dismissed Mr. Berry's *pro per* action in *Berry v. Cipriano*, BC 184355, finding him to be a vexatious litigant pursuant to C.C.P.

¹ Exhibits referenced here are appended to the simultaneously filed declaration of Kendrick Moxon.

1 §391(b), and ordering that he comply with the procedures set forth in §391.7 for any
2 future actions. (Ex. F.) In so ruling, Judge Williams stated, “with all the due respect,
3 sir, I have to sadly state that if there is such a thing on God’s green earth as a vexatious
4 litigant you, sir, sadly, are it.” (Ex. G.) The ruling is final.

5 The California Bar then prosecuted Mr. Berry for his misconduct in litigation
6 involving churches of Scientology. In a plea agreement, he acknowledged his plea was
7 “the same as an admission of culpability,” (Ex. H) for a “Multiple/Pattern of
8 Misconduct” and “multiple acts of wrongdoing.” (*Id.*, p. 2.) Mr. Berry also purportedly
9 “demonstrated remorse and recognition of his wrongdoing.” (*Id.*, p. 3), and was ordered
10 to receive psychiatric treatment. (*Id.*) Yet, the cross-complaint he seeks to pursue
11 herein, asserts that the many cases in which he was sanctioned were not because of his
12 misconduct as previously admitted, but rather, were the result of “fraud” by his victims,
13 and that all the jurists who sanctioned him were deluded or had conflicts of interest.
14 Thus, the assertions giving rise to his cross-complaint are contrary to his admissions to
15 the Bar when seeking leniency for his stipulated misconduct.

16 **FAILURE TO FOLLOW REQUIRED PROCEDURE IN THE CURRENT CASE**

17 Although Mr. Berry was suspended, in part, for failure to pay the sanctions
18 against him in the *Pattinson* case referenced above, he has declined these last 10 years
19 to pay the sanctions. The instant action was filed for the *sole purpose* of renewing the
20 judgment for an additional 10 years to permit collection thereof.

21 In order to file a cross-complaint, Mr. Berry was required by the terms of Judge
22 Williams Order and by §391.7, to first obtain leave to do so by the presiding judge of
23 this Court. He did not. Rather, Mr. Berry filed the cross-complaint simultaneously
24 with a request for leave to do so, admitting he was a vexatious litigant, but refusing to
25 follow the applicable rules relating thereto. At the same time, he issued a notice of
26 deposition OF Mr. Moxon as counsel *in pro per* in the cross-complaint and served a
27 lengthy document demand seeking essentially all records, transcripts and materials in
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1 the actions in which he was sanctioned over a decade ago - tens of thousands of pages -
2 *also* before he had leave to file the action.

3 By Minute Order dated February 25, 2010, Judge Fahey *denied* Mr. Berry's
4 request for leave to file the cross-complaint, ordering that he may file a noticed motion.
5 The following week, he re-filed the cross complaint, doubling it in size, and adding a
6 co-counsel to the papers. He did *not*, however, file a noticed motion for leave to file
7 the Amended cross-complaint.

8 Mr. Berry is expected to argue that his acquisition of co-counsel for his
9 Amended Cross-complaint eliminates the need for leave of court to file the cross-
10 complaint. He is quite mistaken. Section 391.7 provides no such exception to the *pro*
11 *per* vexatious litigant even if co-counsel is on the papers. Indeed, he had counsel in his
12 *pro per* action in which he was found to be a vexatious litigant before Judge Williams.

13 Other vexatious litigants have tried the same tactic, without success. As stated
14 in *Muller v. Tanner*, (1969) 2 Cal.App.3d 438, 444:

15 The fact that plaintiff secured an attorney to lend his name to the
16 subsequently filed complaint avails him naught. The provisions of the
17 vexatious litigant statute, which the court acted to protect in this action,
18 do not preclude a stay or dismissal because an attorney is used in the
19 action in which the motion is made. [citations omitted] Therefore, the use
20 of an attorney in this case should not deprive the court of the power to
21 protect itself from abuse of the judicial process.

22 The vexatious litigant statute has been specifically found to apply to persons
23 who commence an action *in pro per*, but subsequently appear through counsel. *In re*
24 *Shieh* (1993) 17 Cal.App.4th 1154, 1166-76; *Camerado Ins. Agency, Inc. v. Superior*
25 *Court* (1993) 12 Cal.App.4th 838, 842-43. Moreover, although the language of the
26 statute refers to a person who is representing himself *in pro per*, it has also been applied
27 to a person represented by counsel "where counsel acts as a mere puppet or conduit for
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1 the client's abusive litigation tactics." *In Re Natural Gas Anti-Trust Cases* (2006) 137
2 Cal.App.4th 387.

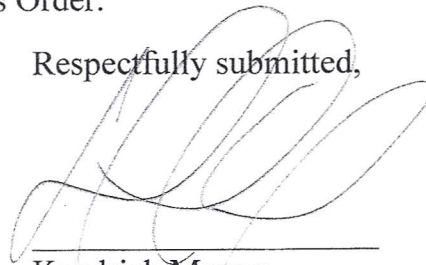
3 Thus, the inclusion of co-counsel to attempt to circumvent both §391 *et seq.* and
4 Judge Fahey's Order, is incapable of doing either. The inclusion of co-counsel is
5 irrelevant to application of the stay provision; to the pre-filing approval provision; the
6 litigation security bond provision; or to the contempt provision of the vexatious litigant
7 statutes.

8 **CONCLUSION**

9 The cross-complaint was erroneously accepted for filing by the clerk's office
10 before leave to do so was given by the Court. The cross-complaint should accordingly
11 be stayed as required by § 391.7(c) or simply dismissed for failure of Mr. Berry to
12 comply with the law and Judge Fahey's Order.

13 Dated: March 22, 2010

Respectfully submitted,



Kendrick Moxon
MOXON & KOBRIN

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PROOF OF SERVICE

I am employed in Los Angeles County, California, at Moxon & Kobrin, 3055 Wilshire Blvd., Ste. 900, Los Angeles, CA, 90010.

On March 22, 2010, I personally served the foregoing the following document:

PLAINTIFF'S EX PARTE APPLICATION FOR ORDER STAYING CROSS-COMPLAINT PENDING DETERMINATION OF VEXATIOUS LITIGANT'S REQUEST TO FILE NEW LITIGATION

on the following person:

Graham Berry
3384 McLaughlin Ave.
Los Angeles, CA 90066

Executed on March 22, 2010, in Los Angeles, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Kendrick Moxon