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Los Angeles Superior Court

MAR 22 2010

John A. Clarke, Executive Officer/Clerk

By E. G. Villa Deputy

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Attorney for cross-complainant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

**KENDRICK MOXON**

Plaintiff,

v.

**GRAHAM BERRY,**

Defendants.

**GRAHAM E. BERRY**, an individual;

Cross-Complainant,

v.

**KENDRICK L. MOXON**, an individual;

Cross-Defendant.

Case No. BC 429217

Assigned to Hon. Rolf M. Treu, Dept. 58

**DEFENDANT AND CROSS-  
COMPLAINANT'S OPPOSITION TO  
PLAINTIFF AND CROSS-  
DEFENDANT'S EX PARTE  
APPLICATION TO DISMISS CROSS-  
COMPLAINT AND/OR IMPLEMENT  
TELEPHONIC STAY (sic)**

Date: March 22, 2010

Dept: 58

Time: 8-30 A.M.

Action filed: January 5, 2010

Case Management Conference: May 6, 2010

Trial Date: None

Unlimited jurisdiction in equity

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. EX PARTE NOTICE RECEIVED**

On Thursday March 18, 2010, defendant and cross-complainant Graham Berry ("Berry") filed and hand served: (a) opposition to plaintiff and cross-defendant Kendrick Moxon's ("Moxon") request for contempt; and (b) Berry's motion to compel the deposition of Moxon, and to bar the assertion of the attorney-client privilege on the ground of the crime-fraud exception in Evidence §956. Less than fifteen minutes after Berry delivered a courtesy copy of these papers to the Court herein, defendant *pro se* Berry (but not his counsel Barry Van Sickle, Esq.) received *ex parte* notices as follows:

- A. **By voicemail message:** "This is Kendrick Moxon. I'm giving you notice that I am going to appear at an *ex parte* hearing to make sure the case is stayed and I don't have to respond further until the court rules whether or not you were permitted to file the cross-complaint. I'll see you Monday morning, 8-30 A.M. Department 58."
- B. **By email message:** (11.55 A.M.) "Mr. Berry, I called and left a message on your answering machine. This is further notice that I will appear in Dept 58 on Monday at 8-30 am to present an *ex parte* application to dismiss your cross-complaint and/or implement the stay required by CCP 391.7. Kendrick Moxon."

### **II. INTRODUCTION**

This unusual *ex parte* application should be summarily denied for: (a) failure to give notice to Barry Van Sickle, Esq., counsel of record for cross-complainant Berry; (b) failure to provide a reasonable exigent basis for the *ex parte* relief requested; and (c) failure to provide a reasonable and good faith basis for the *ex parte* relief requested.

The judgment roll herein reflects that on March 9, 2010 a cross-complaint was timely filed herein as of right and it was signed by Barry Van Sickle, Esq., as attorney for cross-complaint



1 Berry. Instead, Moxon has erected a straw man and proceeds to beat him down to death. However,  
2 there are no facts to support the straw man.

3 When Berry timely filed his original answer, cross-complaint and request to file new  
4 litigation, Moxon responded as expected, and he acted contrary to his representation to Judge  
5 Williams: "All we ask here is that a very limited restraint be imposed upon [Berry]. Very limited  
6 procedural restraint that is found to be constitutional in the court system being imposed upon Mr.  
7 Berry so that we can get on with our business." Transcript of vexatious litigant hearing (Appendix  
8 No. IV, Exhibit T, p.132:6-7 [filed February 22, 2010].)

9  
10 The court obliged Moxon saying, "I happen to be re-elected and I am in my final term. I  
11 can retire in this term, but more importantly I was brought up [to believe] you could be run out of  
12 office doing the right thing, and you can stay in office doing the wrong thing. So I am, as God is  
13 my witness, I am like a Federal Court in a State Court." (Appendix No. IV, Exhibit T, p.195:14-  
14 21[filed February 22, 2010].) Faced with Moxon's continuing use of the fruits of crimes and  
15 frauds in the underlying cases (consequently continuing all original civil and criminal statutes of  
16 limitation), Berry then retained Barry Van Sickle, Esq. to file the cross-complaint herein on March  
17 9, 2010. At the same time, a first amended answer was also filed by Berry acting *pro se* on that  
18 pleading. Moxon should know from past cases with Berry and Van Sickle (such as *Yanny I* and  
19 *Yanny II*), that it is common for attorney defendants to appear as a defendant by counsel and as a  
20 cross-complainant *pro se*, and visa versa.  
21

22 In the absence of any legal authority from Mr. Moxon, at least as of the time of filing,  
23 cross-complainant is unaware of any legal basis for the exigent relief Mr. Moxon is requesting.  
24 Moxon could have filed a regularly noticed motion, or an *ex parte* application to shorten time on a  
25 regularly notice motion. The only ground Mr. Moxon has provided is, "so I do not have to respond  
26 further until the court rules whether or not you were permitted to file your cross-complaint."  
27  
28

1 Similarly, Mr. Moxon claims that by telephoning the clerk of this court [who was also the  
2 court clerk in the underlying *Berry v. Cipriano, et. al.* cases], he can arbitrarily “stay” this case  
3 without any further judicial action or notice. Berry has filed successful actions on behalf of clients  
4 over the past ten years but Moxon’s pre-existing vexatious litigant order has already obstructed  
5 him from recovering over \$450,000 owing to him. (Cross-complaint, March 9, 2010, p. 28, ¶39.)

6 **III. SUMMARY OF ARGUMENT**

7  
8 On March 19, 2010, Moxon noticed this *ex parte* application less than fifteen minutes  
9 after Berry had hand-delivered a courtesy copy of his opposition and motion to compel papers to  
10 the court’s clerk herein who commented to him: “Haven’t you been declared to be a vexatious  
11 litigant? I think there is a contempt order pending against you.” Defendant and cross-complainant  
12 has received no notice of such an order.

13 For the court’s convenience, cross-defendants (sic) <sup>1</sup> opposition to the pending contempt  
14 request is attached hereto as Exhibits A to C and their contents expressly incorporated herein as if  
15 fully set forth. The most pertinent arguments are as follows:

16  
17 **A. The cross-defendant misrepresents the contents of the cross-complaint.**

18 See Exhibit A, p. 2: 2-9, Introduction.

19 **B. Code Civil Procedure no longer applies because attorney Berry has counsel.**

20 See: (i) Exhibit A, p. 11: 10-21, Applicable Law; (ii) Exhibit C, Revised Reply.

21 **C. There is “no pending opposition” to any “request for leave to file action.”**

22 See Exhibit A, pp. 2: 24-3:3, Argument.

23  
24 **D. There is no “Amended Cross-complaint.”**

25 See Exhibit A, pp. 3: 4-10, Argument.

26  
27  
28 <sup>1</sup> Cross-complainant’s opposition was misnamed ‘cross-defendant’s’ opposition; perhaps due to cross-complainant  
and his counsel’s frequency in appearing for attorney cross-defendants and not noticing the caption page error herein.



1 **E. There is no record of any "stay" herein.**

2 See Exhibit A, pp. 3: 12-16, Argument.

3 **F. Cross-defendant ignores the facts and there is no request for re-litigation**

4 See Exhibit A, pp. 3:18-4:8, Argument.

5 **G. There is no basis for contempt or bond.**

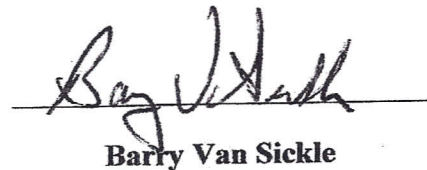
6 See Exhibit A, pp. 3:9 - 14, Argument.

7 Finally, for a factual summary of the underlying events the court is referred to the First  
8 Amended Answer, and the cross-complaint, filed March 9, 2010, pages, 2:2-9:9, Introduction.  
9

10 **IV. CONCLUSION**

11 For the foregoing reasons, plaintiff and cross-defendant Moxon's *ex parte* application  
12 should be denied.  
13

14  
15 DATED: March 19, 2010

16   
17 Barry Van Sickle

18 Attorney for cross-complainant  
19  
20  
21  
22  
23  
24  
25  
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28

**DECLARATION OF GRAHAM E. BERRY**

**I, GRAHAM E. BERRY**, declare and state as follows:

1. I am an attorney duly admitted to practice before all of the courts of the State of California. I have personal knowledge of the matters set forth herein and, if called upon to do so, I believe that I could and would competently testify thereto. I am the plaintiff *pro se* herein. I am also the cross-complainant, represented by attorney Barry Van Sickle.

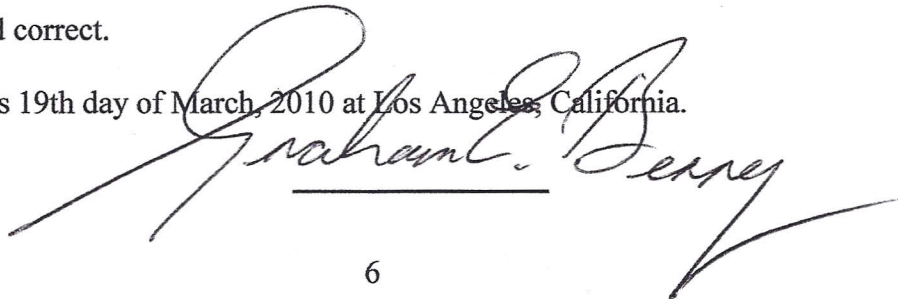
2. I have been an attorney for 37 years (in four countries and five jurisdictions), 24 years in Los Angeles, CA. I had never known a court, or its staff, that did not prefer receiving papers earlier rather than later. Particularly in relation to *ex parte* applications. Judges have frequently complained of having to read *ex parte* papers at the very last minute, when the court is busy with its noticed business and a jury is waiting to continue with a trial.

3. Accordingly, because my counsel had finished, signed and faxed these *ex parte* opposition papers back to me late Friday morning, I spent Friday afternoon on a round trip to the courthouse. My intention was to save the court's staff the time of having to process the opposition at 8-30 AM on Monday morning, and to give the Court the opportunity to read our papers outside of the pressure of Monday morning's motion calendar.

4. I arrived at the court room mid afternoon and was sent away with the papers I had made a special trip to deliver. I was politely told that "they [presumably Mr. Moxon] might still withdraw their *ex parte* notice, the court had enough to do without reading my papers, and to bring them back on Monday morning. *Ex Parte* papers are only received the same day of the hearing."

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of March, 2010 at Los Angeles, California.



The signature is a cursive, handwritten name "Graham E. Berry" written in black ink. It is positioned below the text "Executed this 19th day of March, 2010 at Los Angeles, California." and above the page number "6".



**EXHIBIT A**

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Defendant *pro se*

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Attorney for cross-complainant

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OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAR 18 2010

John A. Clarke, Executive Officer/Clerk  
By RUGENALCIBEZ, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

**KENDRICK MOXON**

Plaintiff,

v.

**GRAHAM BERRY,**

Defendants.

Case No. BC 429217

Assigned to Hon. Rolf M. Treu, Dept. 58

**CROSS-DEFENDANT'S OPPOSITION  
TO REQUEST FOR FINDING OF  
CONTEMPT**

**GRAHAM E. BERRY**, an individual;

Cross-Complainant,

v.

**KENDRICK L. MOXON**, an individual;

Cross-Defendant.

Date: No hearing scheduled  
Dept: 58

Action filed: January 5, 2010

Trial Date: None

Unlimited jurisdiction in equity



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Mr. Moxon either misrepresents the contents of the cross-complaint herein or he has failed to read it properly. If he had read it properly he should have “noted” that in the prayer for relief (page 62) only two substantive orders are sought: (a) that the *Pattinson v. CSI* order be set aside; and (b) that the *Berry v. Cipriano* vexatious litigant order be set aside. Furthermore, if Mr. Moxon had read the cross-complaint properly he should have also “noted” that it was signed by attorney Barry Van Sickle, Esq., as counsel for the cross-complainant. Mr. Berry is now a represented party and beyond the “*in propria persona*” radius of Code Civ. Proc. §391.7.

### II. APPLICABLE LAW

Cross-defendant Moxon relies exclusively upon Code Civ. Proc. § 391.7 (a)-(c) for the relief he seeks by way of orders for contempt and a bond of \$198,000.00, to be entered into by cross-complainant Berry before he can proceed to equity herein. However, the procedures set forth in Code Civ. Proc. § 391.7 (a)-(c) are expressly applicable to “*in propria persona*” litigants only. The verified compulsory cross-complaint herein was filed on March 9, 2010, after being signed by Barry Van Sickle, Esq. as attorney for cross-defendant Berry.

Furthermore, cross-defendant Mr. Moxon provides absolutely no authority to support his argument that vexatious litigants who are represented by an attorney must also comply with the pre-filing and bonding requirements of Code Civ. Proc. § 391.7 (a)-(b). Ironically, in light of the *ad hominem* attacks upon Mr. Berry in the pending request, it appears that it is cross-defendant Mr. Moxon who acts frivolously here.

### III. ARGUMENT

#### A. There is no “pending opposition” to any “request for leave to file action.”

Cross-complainant Berry, then acting *pro se*, filed his Request and Order to file New Litigation (Judicial Council Form MC-701) and three supporting Appendices of Exhibits on February 16, 2010. Cross-defendant Moxon, also acting *pro se*, filed an Opposition and Request for Contempt on October 23, 2010. Cross-complainant Berry also filed his Revised Reply on October 23, 2010. Exhibit A hereto. On October 25, 2010 the court faxed it’s denial of cross-

1 complainant's Request to file New Litigation and allowed cross-complainant Berry to file a  
2 noticed motion for the same relief. Exhibit B hereto. Consequently, cross-complainant Berry  
3 submits that the judgment roll herein discloses no "pending Opposition to ... Request for leave."

4 **B. There is no "Amended Cross-complaint."**

5 On March 9, 2010, and acting *pro se*, Mr. Berry filed a First Amended Answer  
6 herein. At the same time, and represented by very experienced counsel Barry Van Sickle, Mr.  
7 Berry filed a Verified Compulsory complaint. No where in the cross-complaint filed on March 9,  
8 2010 is it described as an "amended" cross-complaint. Because Mr. Berry is represented by  
9 counsel on the cross-complaint he is not acting "*in propria persona*," and he therefore does not  
10 require a pre-filing order as incorrectly contended by Mr. Moxon.

11 **C. There is no record of any "stay" herein.**

12 Mr. Moxon contends that "because [he] notified the Court and the clerk on  
13 February 22, 2010 of the alleged failure to obtain court leave of court prior to "[timely] filing a  
14 responsive compulsory cross-complaint and request for permission to file new litigation," ... "the  
15 "action was automatically stayed." However, the judgment roll herein reflects no judicial  
16 recognition of that; and there are multiple actions by different judges since that mooted contention.

17 **D. Cross-defendant ignores the facts and there is no request for re-litigation.**

18 Cross-defendant Mr. Moxon ignores the facts when he repeatedly chants that "the  
19 cross-complaint seeks to re-litigate before this Court, five different lawsuits ... ." However, if  
20 cross-defendant Mr. Moxon had actually read the verified compulsory cross-complaint, and  
21 comprehended its contents, he would have "noted" that the prayer for relief, in connection with the  
22 cross-complaint, seeks only: (1) to set aside the *Pattinson v. CSI* sanctions order upon the grounds  
23 of extrinsic crime and fraud; and (2) to set aside the vexatious litigant ruling upon the grounds of  
24 extrinsic crime and fraud and because it can be seen to be void from the face of the underlying  
25 judgment roll.

26 The grounds and evidence for the two "set aside" orders requested by cross-  
27 complainant Berry, *inter alia*, are set forth in paragraphs 98-100 of the cross-complaint. Indeed, as  
28 suggested on page 10:14 -11:2 of the attached Exhibit A, defendant and cross-complainant Berry



1 are now prepared to move immediately to the filing of a motion for summary judgment and/or  
2 summary adjudication based primarily upon the evidence and documents already before this court  
3 in the form of Appendices No. I-IV (Exhibits A-Z).

4 More-over, defendant and cross-complainant Berry would, in principle, stipulate to  
5 a stay of all litigation herein pending the filing and determination of a motion for summary  
6 judgment and/or summary adjudication of issues by the defendant and cross-complainant. If the  
7 cross-complaint is as frivolous as Mr. Moxon's *ad hominine* attack alleges, he can easily deal with  
8 it then by way of successful opposition and judgment.

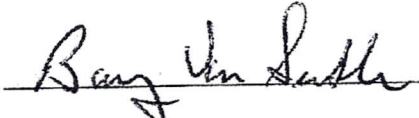
9 **E. There is no basis for contempt or a bond.**

10 On page 11:11-25 of the Revised Reply to Request to file New Litigation, attached  
11 hereto as Exhibit A, cross-complainant Berry denies that there is any reasonable basis for a  
12 contempt order herein and further contends that there is now no statutory basis for any bond,  
13 because he is not "*in propria persona*" in connection with the cross-complaint filed herein by  
14 Barry Van Sickle, Esq. on March 9, 2010.

15 **IV. CONCLUSION**

16 For the foregoing reasons, plaintiff and cross-defendant Moxon's Request for Contempt  
17 and Bond orders should be denied.

18  
19 DATED: March 16, 2010

  
Barry Van Sickle

Attorney for cross-complainant

**EXHIBIT B**



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/25/10

DEPT. 78

HONORABLE WILLIAM F. FAHEY

JUDGE

K. SILVY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G. YOUNG, CA

Deputy Sheriff

NONE

Reporter

8:00 am

BC429217

Plaintiff

Counsel

KENDRICK MOXON

NO APPEARANCE

Defendant

Counsel

VS

GRAHAM BERRY

## NATURE OF PROCEEDINGS:

## COURT ORDER:

## In Chambers:

The Court is in receipt of "Request and Order to file new litigation by vexatious litigant".

The request is DENIED. Defendant may file a noticed motion.

Notice to defendant.

CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 02-25-10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 02-25-10

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/25/10

DEPT. 78

HONORABLE WILLIAM F. FAHEY

JUDGE K. SILVY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G. YOUNG, CA

Deputy Sheriff

NONE

Reporter

8:00 am BC429217

Plaintiff

Counsel

KENDRICK MOXON

NO APPEARANCE

Defendant

Counsel

VS

GRAHAM BERRY

## NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By:

Kim Silvy

Graham Berry  
ATTORNEY AT LAW  
3384 Mc Laughlin Ave.  
Los Angeles, Ca. 90066-2005

## **EXHIBIT C**



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Defendant and Cross-Complainant *pro se*

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Los Angeles Superior Court

FEB 23 2010

John A. Clarke, Executive Officer/Clerk

*[Signature]*  
PAUL SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

**KENDRICK MOXON**

Plaintiff,

v.

**GRAHAM BERRY,**

Defendants.

**GRAHAM E. BERRY**, an individual;

Cross-Complainant,

v.

**KENDRICK L. MOXON**, an individual;

Cross-Defendant.

Case No. BC429217

**DEFENDANT AND CROSS-  
COMPLAINANT'S REVISED REPLY IN  
SUPPORT OF REQUEST TO FILE NEW  
LITIGATION AND REBUTTAL  
EXHIBITS.**

Action filed: January 5, 2010

COMES NOW the defendant and cross-complainant **GRAHAM E. BERRY** and submits his *Revised*<sup>1</sup> Reply and Rebuttal exhibits in response to the opposition of Kendrick L. Moxon received late Saturday afternoon February 20, 2010. Over 20,000 people (and more every day) are now following this matter and reading the documents. One commentator provided a pertinent response to Mr. Moxon's *res judicata* arguments.

"Yes, Mr. Berry is a vexatious litigant per the court's decisions, but it provides no manner of *critical thinking or devil's advocacy* to simply beat that drum over and over. Failure to take into account the series of events in which the vexations litigant decision was obtained is *willful ignorance*. Willful ignorance that solely benefits [Mr. Moxon's] intended behavior of continually insulting Graham Berry."

[www.whyweprotest.net](http://www.whyweprotest.net) (Moxon v. Berry/Berry v. Moxon).

In addition, this case is to be highlighted on an Australian Sixty Minutes type show which recorded the footage last week in Los Angeles, and it will soon be part of a major German documentary which was recorded in Los Angeles two weeks ago. The wrongful conduct that was the basis of the three consolidated Berry cases, and the wrongful conduct that occurred during the three consolidated Berry cases, continues to this day with Mr. Moxon taking regular judgment debtors examination of him and using the underlying rulings for filings in unrelated matters, and publications around the world, to smear and discredit him. Had Mr. Moxon not obtained and published the May 5, 1994 declaration of Robert Cipriano, Mr. Berry's professional and personal; life would not have been destroyed and this saga would not have happened. App. IV, Ex. A & B, Z. Mr. Moxon began the "investigation" of Mr. Berry following Berry's win in the *Fishman-Geertz* case (Appendix IV, Exhibits A & B, Appendix III, Exhibit F, page 1). At that time, Mr. Berry had recently finished successfully representing the United States District Court Disciplinary

<sup>1</sup> On February 23, 2010 Mr. Moxon called Mr. Berry and advised him that the opposition under reply had not been filed until the 22<sup>nd</sup>, that a new opposition had been filed that corrected typos and added an authenticating declaration. That is incorrect. Mr. Berry files this revised reply primarily addressing the additional material. This filing is 2/23/10.

1 Committee as lead counsel before the three judge federal panel (with a former U.S. Attorney  
2 General as opposing counsel) in the *U.S. District Court Standing Committee on Discipline v.*  
3 *Stephen Yagman* proceeding. Mr. Berry later argued the appeal to the Ninth Circuit in the first ever  
4 televised proceeding from that court. Accordingly, Mr. Moxon's wild and wide allegations may  
5 merit some closer scrutiny.

6  
7 The opposition is long on shrill accusations of "baseless allegations" that are "frivolous on  
8 their face." (Opposition, p.4:20, p. 6:20). However, the cross-complaint is verified and it includes  
9 supporting and unassailable deposition testimony, declarations and other materials which have  
10 never reviewed by a court in the context alleged by Mr. Moxon. The amazing *Hurtado*, *Apodaca*  
11 and *Cipriano* material in Appendix No. 1, the brief of Edith Matthai, Esq., is merely one example.

12 NEVER HAS MR. MOXON DENIED ANY OF THIS AND HE DOES NOT DO SO HEREIN.

13 HIS ONLY ARGUMENTS ARE RES JUDICATA AND LACHES. However, it is all PUFFERY.

14 See Declaration of Federal Judge James M. Ideman (Appendix 4, Exhibit Y, p. 279:19. This is a  
15 classic case for the relief requested by cross-complainant. In that regard it is interesting to note that  
16  
17 **Mr. Moxon and his New York co-counsel had the vexatious litigant proceedings temporarily**  
18 **sealed and wanted Judge Williams to permanently seal the entire vexatious litigant**

19 **proceedings** and order Mr. Berry to file a copy of the vexatious litigant ruling in every court in  
20 which he appeared whether as counsel of record or *pro se*. App. No. 4, Ex. T, pp. 191: 20- 196: 9.

21 Interestingly, it is implicit in Mr. Moxon's allegations and argument that the *Cipriano*, *Hurtado* and  
22 *Apodaca* matters had a full hearing in other courts that a reasonable judge would not be outraged  
23 that they had occurred at the hands of an officer of the court (the plaintiff and cross-defendant).

24 How can Mr. Moxon even suggest that a reasonable fully informed jurist would tolerate the  
25 matters set forth in the four volumes of exhibits hereto, particularly what Mr. Moxon did with  
26 Cipriano, Hurtado and Apodaca (Appendix No. I – III)? In addition, Mr. Moxon has never denied  
27  
28



1 the now apparent major monetary links, at the very least, between Judge William's then fiancée  
2 and now wife, Mr. Moxon, other counsel and the main defendants in the underlying *Berry* matters  
3 now at issue herein. Appendix IV, Exhibit V. See also, Append. No. 1, Exhibit A, pp. 2-15.

4 Few lawyers would have shamelessly solicited the representation of clients (Cipriano,  
5 Hurtado and Cipriano) and let alone in a case where that lawyer (Mr. Moxon) was to be a principal  
6 defendant and percipient witness, avoid ever having to respond to the original allegations, obtain  
7 court orders with demonstrable crime and fraud, spend the next ten years destroying and harassing  
8 Mr. Berry into near suicide with those orders, shamelessly appear in this court and ignore all that  
9 crime and fraud, and then shamelessly request this court to again deprive Mr. Berry of a hearing,  
10 and to ironically demand that it be Mr. Berry who be found in contempt and prevented from being  
11 heard on his verified claims without a prohibitive bond; and then claim that it is he (Mr. Moxon)  
12 who is the victim! No wonder so many people around the world are now watching this travesty to  
13 see if our justice system can still right its own wrongs, after failing so miserably in the underlying  
14 matters. No wonder documentaries are being made, book proposals solicited and movies suggested  
15 about this scandalous saga. The magnitude of the underlying attorney crime and fraud, and the  
16 enormous cover-up that followed, is like none other in the case books, and it can no longer be  
17 ignored. See Exhibits A-Z.

#### 20 21 **I. THE EVIDENCE AND THE FACTS HAVE NEVER BEEN DENIED BY MOXON**

22 Most significantly, plaintiff and cross-defendant Kendrick L. Moxon ("Mr. Moxon") has  
23 never denied, at least under oath, any of the testimony set forth in the four appendices of testimony  
24 submitted with the responsive pleading and application herein. He cannot do so without invoking  
25 Fifth Amendment protection! However, Mr. Moxon did conduct a withering, embarrassing and  
26 self-incriminating cross-examination of his own former client Cipriano and his fifty documents  
27 (many signed by Mr. Moxon himself) [see Appendix I, II and III (Exhibit E)] during the *Hurtado*  
28

1 case, before he dismissed it on the eve of a formal crime-fraud ruling by the judge. (Appendix 1,  
2 pages 4-12, Robie & Matthai [Edith Matthai, Esq.] law firm brief re privilege and the crime-fraud  
3 exception regarding some of the very same evidence herein). These matters have never faced a  
4 court since Mr. Moxon voluntarily dismissed the *Hurtado* state court case on the eve of a ruling  
5 that Mr. Moxon had engaged in the very same crime and fraud that is alleged in the proposed  
6 cross-complaint herein.  
7

8       Furthermore, Mr. Moxon never appealed the denial of his Code Civ. Proc. §425.16 motion  
9 by Hon. Ernest Hiroshige who found that Mr. Berry, in the related, consolidated *Berry v. Cipriano*,  
10 *Berry v. Barton*, *Berry v. Miscavige*, *Moxon*, *Ingram*, *Rinder* cases, had “established a probability  
11 that he would prevail on [his] claims [later ruled to be vexatious by Judge Alexander Williams, III  
12 (now retired)].” Code. Civ. Proc. §425.16 (3). Not one of the Code Civ. Proc. §391.7 statutory  
13 requirements were satisfied. More-over, there were substantial settlements by several non-  
14 Scientology parties named in the *Berry v. Cipriano* case (Appendix IV, Exhibit R, pp.80-81).  
15 Finally, for present purposes, and as observed by former California Supreme Court Justice David  
16 N. Eagleson observed, Mr. Berry was represented by counsel for most of the underlying litigation  
17 in which he was deemed vexatious by Judge Williams. Appendix IV, Ex. O, p. 22-25. No lawyer  
18 who has objectively viewed the vexatious litigant papers and hearing can understand the staggering  
19 unjust result and why the judge would even be discussing sealing the proceedings from public  
20 view and requiring Mr. Berry to do things so totally beyond the scope and interpretation of the  
21 statute (C.C.P. §391.7), which provides little opportunity for relief, review and/or correction. This  
22 may explain why Mr. Moxon and his co-counsel had the proceedings sealed and fought to keep  
23 them sealed. Appendix No. 4, Exhibit T, pp. 191: 20- 196: 9.  
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26  
27       Instead of appealing his unsuccessful SLAPP suit motion, Mr. Moxon had the three related  
28 and consolidated *Berry* cases transferred to another judge (upon a Code Civ. Proc. §176.6



1 peremptory challenge) because Judge Hiroshige was allegedly prejudiced against his clients (and  
2 himself who was to be named as a principal defendant after a Code Civ. Proc. §1714.10 motion).  
3 The three *Berry* cases were: *Cipriano* against the non-Scientology parties who provided the  
4 defamatory material; *Barton* against those who published the defamatory material; and  
5 *Miscavige/Ingram/Moxon/Rinder* against those who procured the defamatory material].  
6 Interestingly, Cipriano has testified that Mr. Moxon informed him that “Judge Hiroshige was  
7 lame” and that the *Berry* cases were being transferred to a judge who was “friendly” to  
8 Scientology. Mr. Moxon has always argued that the three cases were identical, as was *Pattinson*,  
9 and the three *Berry* cases were consolidated for all purposes. Appendix No. 4, Ex. S, pp. 92:4-7:2.  
10 As a result of the preemptory challenge to Judge Hiroshige, the *Berry* cases were re-assigned to  
11 Hon. Alexander Williams, III where they were later consolidated for all purposes. Appendix No.  
12 2, Exhibit M.  
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15 Judge Williams accepted the misrepresentations of Mr. Moxon and his New York co-  
16 counsel that there was discovery priority in California and because defendant Robert Cipriano  
17 (through Mr. Moxon) had served his deposition of Mr. Berry first, Mr. Berry could take no  
18 deposition discovery at all until his deposition was concluded by Mr. Moxon. Since then Mr.  
19 Moxon has taken nearly twenty days of Mr. Berry’s deposition and examination but Mr. Berry has  
20 not been permitted as much as one second of any deposition discovery (and virtually no document  
21 discovery) throughout the entire history of the three consolidated *Berry* cases now involved herein.  
22 See generally, Appendix IV, Ex. P. Subsequently, and just before the vexatious litigant hearing, it  
23 was revealed that the fiancée of Judge Williams was employed as a translator by the Church of  
24 Scientology International which was a party in the litigation, it is/was one of Mr. Moxon’s clients,  
25 it pays most of Mr. Moxon’s income, and it is the actual physical location of Mr. Moxon’s own  
26 office. More than this, it now appears that the Judge’s then fiancée (and now second wife) was the  
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1 fifty per cent proprietor of a large translation services company providing services in over ninety  
2 different languages to the Church of Scientology International and its affiliates. When challenged  
3 on this, Judge Williams refused to recuse himself (to refer the recusal motion to another judge), a  
4 resulting writ was denied, and the subsequent appeal papers disappeared from the files. Appendix  
5 IV, Exhibit V.

6  
7 Although the cross-complaint herein satisfies the “meritorious case” requirement, as also  
8 evidenced by Judge Hiroshige’s denial of Mr. Moxon’s initial “SLAPP” motion, in this particular  
9 matter there is no meritorious case requirement in connection with the requested review of the  
10 vexatious litigant ruling at issue herein; because there is “an exception from the meritorious case  
11 requirement when the judgment was rendered by a judge who was disqualified from hearing in the  
12 case by reason of a financial interest in or bias [Code Civ. Proc. §§170.1-170.5].” California  
13 Forms of Pleading and Practice Annotated, Chapter 489, Relief from Judgments and Orders,  
14 §§489.166, 489.264 [1]. Appendix IV, Ex. V. On the basis of this summary alone it should be  
15 apparent that the vexatious litigant ruling is void from the face of the judgment roll itself and that  
16 there was much irregularity associated with it. For example, see Appendix IV, Exhibits K-V.  
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## 19 **II. THE PRE-FILING ARGUMENT IS SPECIOUS**

20 The opposition demands Mr. Berry be found in contempt and required to post a bond of at  
21 least \$100,000.00 in order to be heard herein; because he did not obtain prior leave of the court  
22 pursuant to Code Civ. Proc. §391.7. However, Mr. Moxon served Mr. Berry with a complaint that  
23 required a responsive pleading within thirty days. A pre-filing motion, accompanied by the  
24 completed papers, would have required two to three months of moving, opposition, reply and  
25 hearing procedure (or *ex parte* applications and motions on shortened notice supporting by  
26 pleadings and exhibits not then ready). Applicable law required Mr. Berry to assert any related  
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1 claims against Mr. Moxon in a compulsory cross-complaint. Accordingly, Mr. Berry filed the pre-  
2 filing request (Judicial Council Form MC 701 and Exhibits A-J) with the responsive pleading; an  
3 unverified answer and verified cross-complaint. Mr. Moxon should not be permitted to benefit  
4 from this procedural Catch-22. "Equity looks to substance over form."

### 5 6 **III. THE OPPOSITION IGNORES THE APPLICABLE LAW**

7 Mr. Moxon's opposition to Mr. Berry's responsive pleading and request to file new  
8 litigation totally ignores the entire body of applicable equity and case-law. See generally,  
9 California Judges Bench Book, Civil Proceedings, After Trial, §§ 142-347, West's California  
10 Jurisprudence 3D, Volume 40A Judgments, §280, *et. seq.*, California Forms of Pleading and  
11 Practice Annotated, Chapter 489, Relief from Judgments and Orders. Stated most succinctly, Mr.  
12 Moxon's opposition ignores the following matters of black letter law:  
13

#### 14 15 **A. This Court has inherent jurisdiction to grant the equitable relief requested.**

16 "Equitable relief from a judgment may be obtained either by a separate suit" [and] "does not  
17 have to be tried by the court that rendered the judgment." West's California Jurisprudence 3D,  
18 Volume 40A Judgments, §301. "California courts may set aside the void orders of federal courts.  
19 West's California Jurisprudence 3D, Volume 40A Judgments, §§301, 305 (citing *Sato v. Hall*  
20 (1923) 191 Cal. 510). The answer and cross-complaint filed herein are, *inter alia*: (1) a collateral  
21 attack upon the validity of the vexatious litigant ruling which is void upon the face of the record  
22 [e.g. *Bennet v. Hibernia Bank* (1956) 47 Cal. 2d 540, 554, and (2) an independent action in equity  
23 to have the requested judgments/orders declared void on the ground of extrinsic fraud or mistake  
24 [e.g. *Estate of Sanders* (1985) 40 Cal. 3d 607, 614, *Sullins v. State Bar of California* (1975) 15  
25 Cal. 3d 609, *Westphal v. Westphal* (1942) 20 Cal. 2d 393, 397, *Smith v. Jones* (1917) 174 Cal.  
26 513, 517-518, *Russell v. Dopp* (1995) 36 Cal. App. 4<sup>th</sup> 765, 774-779. The concept of "extrinsic  
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28



1 fraud” and “extrinsic mistake” are given a very broad meaning by the courts. California Forms of  
2 Pleading and Practice Annotated, Chapter 489, Relief from Judgments and Orders, §§70.483. For  
3 example, in *Caldwell v. Taylor* (1933) 218 Cal. 471, 479, the Supreme Court held that “extrinsic  
4 fraud” is that fraud practiced by an opposing party which prevents the unsuccessful party from  
5 presenting all of his or her case to the court.  
6

7 **B. There is no statute of limitations in proceedings of this nature.**

8 “A collateral attack on a judgment or order void on its face may be made at any time.”  
9  
10 West’s California Jurisprudence 3D, Volume 40A Judgments, §314 (citing *Falahati v. Kondo*  
11 (2005) 127 Cal. App. 4<sup>th</sup> 823, *Schwab v. Southern California Gas Co.* (2004) 114 Cal.App. 4<sup>th</sup>  
12 1308. Similarly, a judgment or order procured through extrinsic fraud or mistake [particularly by  
13 an officer of the court] may be set aside by collateral attack at anytime. *Harkins v. Fielder* (1957)  
14 150 Cal.App. 2d 528-535-536. See also, California Forms of Pleading and Practice Annotated,  
15 Chapter 489, Relief from Judgments and Orders, §489.200. Indeed, “the courts have ruled that  
16 equity must allow [a] separate action regardless of any earlier opportunity to move for the same  
17 relief in which the judgment was entered” and the “making of a prior motion for relief may not bar  
18 a subsequent action in equity.” California Forms of Pleading and Practice Annotated, Chapter 489,  
19 Relief from Judgments and Orders, §489.266. Laches and prejudice are not grounds for objection.  
20 West’s California Jurisprudence 3D, Volume 40A Judgments, §314 (citations omitted). All  
21 appropriate remedies are available. *Caldwell v. Taylor* (1933) 218 Cal. 471, 475, *Brink v. Taylor*  
22 (1984) 155 Cal.App.3d 218, 222.  
23  
24

25 **C. Res Judicata and Collateral Estoppel are not applicable in proceedings of this nature.**

26 “The doctrine of *res judicata* is inapplicable to void judgments.” West’s California  
27 Jurisprudence 3D, Volume 40A Judgments, §305 (citing *Rochin v. Pat Johnson Manufacturing*  
28



1 Co., (1998) 67 Cal. App. 4<sup>th</sup> 1228, as modified on rehearing). “ See also, California Forms of  
2 Pleading and Practice Annotated, Chapter 489, Relief from Judgments and Orders, §489.223. An  
3 order denying a motion to vacate a judgment, if it gives rise to a void judgment, is itself void and  
4 appealable.” West’s California Jurisprudence 3D, Volume 40A Judgments, §305 (citation  
5 omitted).

6  
7 **D. Discovery may be taken in proceedings of this nature.**

8  
9 In a proceeding of this nature, where an independent action in equity has been asserted to  
10 set aside a judgment or order, the plaintiff/cross-complainant “would be entitled to bring unwilling  
11 witnesses to court by subpoena and to take their depositions.” California Forms of Pleading and  
12 Practice Annotated, Chapter 489, Relief from Judgments and Orders, §489.266.

13  
14 **IV. DISCOVERY OR DISPOSITIVE MOTION?**

15 The deposition notice served herein upon Mr. Moxon was done in the same way as Mr.  
16 Moxon’s own pattern and practice of serving a deposition notice and document demand before  
17 even appearing or answering, and then claiming that no other party can conduct depositions until  
18 his are all finished. Mr. Moxon has advised Mr. Berry, in writing, that he will totally ignore the  
19 deposition notice and document demand without seeking any judicial relief. Notwithstanding, Mr.  
20 Berry believes that he has sufficient deposition testimony, declaration testimony, and admissible  
21 exhibits, with which to proceed immediately to the filing of a motion for summary judgment on  
22 both the complaint and cross-complaint. Fifty per cent of that material is already before the court  
23 in the four appendices of exhibits. Accordingly, defendant and cross-complainant proposes that  
24 the court stay all further proceedings and permit him to file a motion for summary judgment. This  
25 is a substantial task and defendant and cross-complainant requests until July 9, 2010 in order to do  
26 so (before he attends his Dad’s 85<sup>th</sup> birthday in New Zealand). If the motion for summary  
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1 judgment is unsuccessful then the court could tailor a case management order in respect of any  
2 discovery the parties may desire at that time.

3  
4 **V. THE OPPOSITION CONCEDES THAT THE CASES ARE INTERTWINED**

5 The opposition does not dispute the allegations of judicial estoppel arising from Mr.  
6 Moxon's repeated assertions (in papers and arguments) in the federal and state courts that Mr.  
7 Berry should be sanctioned and deemed vexatious for life because the *Pattinson* and *Berry* cases  
8 were related. For example, see Appendix IV, Ex. Q, p.64-65, Appendix IV, Ex. R, p.92-93,  
9 Appendix IV, Ex. T.

10  
11 **VI. THERE IS NO BASIS FOR CONTEMPT OR A BOND**

12  
13 Defendant and cross-complainant opposes the request for contempt sanctions ironically  
14 made by plaintiff and cross-defendant. Furthermore, and as a direct result of the Cipriano, Hurtado  
15 and Apodaca matters solicited and suborned by the plaintiff and cross-defendant, the defendant  
16 and cross-complainant has lost his career, condo, car, retirement, all property, and survives largely  
17 upon donations from outraged citizens. To the extent the defendant and cross-complainant handles  
18 any legal matters he usually does so *pro bono* and has absolutely no office assistance of any  
19 nature. Much of his life is spent under the surveillance of Mr. Moxon's private investigators. In  
20 any event, should the request to file the cross-complaint be denied there are other attorneys ready  
21 and willing to moot Mr. Moxon's chicanery by entering their appearance as defendant and cross  
22 complainant's counsel of record herein. However, that should not be necessary as a matter of both  
23 law and equity.  
24

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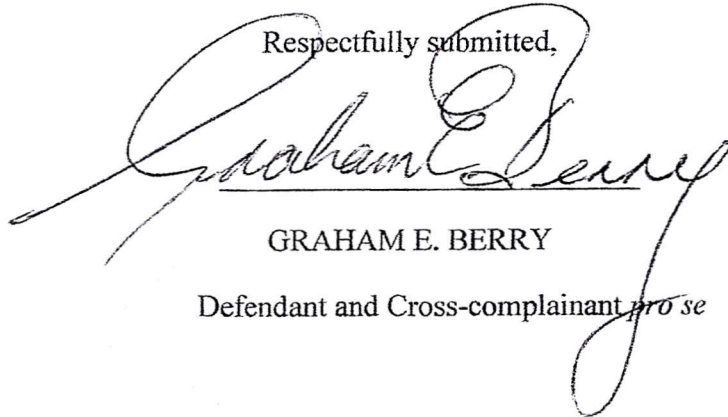
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1 **VII. CONCLUSION**

2 The defendant and cross-complainant should now be permitted to proceed with an  
3 immediate motion for summary judgment as requested herein. That will provide the court with a  
4 better basis with which to adjudge the arguments made in the opposition under reply. For the  
5 foregoing reasons, the pending Judicial Form MC-701 (C.C.P. §391.7) should be approved and the  
6 cross-defendant's opposition and other requests denied.  
7

8 Dated: February 23, 2010

Respectfully submitted,

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12 GRAHAM E. BERRY  
13 Defendant and Cross-complainant *pro se*  
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**PROOFS OF SERVICE**

## Graham Berry

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**From:** Graham Berry [grahamberry@ca.rr.com]  
**Sent:** Friday, March 19, 2010 1:02 PM  
**To:** kmoxon@earthlink.net  
**Cc:** 'Barry Van Sickle'; grahamberry@ca.rr.com  
**Subject:** OPPOSITION TO EX PARTE APPLICATION  
**Attachments:** ex parte\_opposition\_032210.doc

**Importance:** High

Please see attached opposition, also faxed and first class mailed, to your Ex Parte Application for Monday morning in Moxon v. Berry and Berry v. Moxon.

Incidentally, a national investigative documentary team wants to know if you would be willing to be interviewed in connection with a special investigation of the *Moxon v. Berry* case and its history? As you know, an Australian national television crew has already been here to interview me, and I am being flown to Germany and, among other things, interviewed by German national television in Hamburg later next week. They are also doing a one hour television special documentary on *Moxon v. Berry* and what occurred in the underlying cases. It would seem you have given the American justice system a bad name among our allies.

Sincerely,

Graham Berry

**GRAHAM E. BERRY**  
**ATTORNEY & COUNSELOR AT LAW**  
**3384 McLAUGHLIN AVENUE**  
**LOS ANGELES, CA 90066**  
**Telephone and Facsimile: (310) 745-3771**  
**Email: [grahamberry@ca.rr.com](mailto:grahamberry@ca.rr.com)**

March 19, 2010 at \_\_\_\_\_

**FAX**

**Kendrick L. Moxon, Esq,**  
Moxon & Kobrin  
3055 Wilshire Boulevard, Suite 900  
Los Angeles, CA 90010

Telephone: (213) 487-4468  
Facsimile: (213) 487-5385  
Email: [kmoxon@earthlink.net](mailto:kmoxon@earthlink.net)

28 pages including this transmittal sheet.



**Last Transaction**

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Mar 19	12:04PM	Fax Sent	12134875385	10:41 N/A	28	OK

**Note:**

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An image of page 1 will appear here for faxes that are sent as Scan and Fax.

1  
2 **PROOF OF SERVICE BY MAIL, FAX AND EMAIL**

3 STATE OF CALIFORNIA )  
4 ) ss.:  
5 COUNTY OF LOS ANGELES )  
6 *MOXON V. BERRY BC42917*

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18.  
8 My business address is 3384 McLaughlin Avenue, Los Angeles, CA 90066. I am an officer of the  
9 court herein.

10 On March 19, 2010, I served on interested parties in said action the within:

11 **DEFENDANT AND CROSS-COMPLAINANT'S OPPOSITION TO PLAINTIFF  
12 AND CROSS-DEFENDANT'S EX PARTE APPLICATION TO DISMISS CROSS-  
13 COMPLAINT AND/OR IMPLEMENT TELEPHONIC STAY (sic)**

14 by **FAX** and by **EMAIL** and by **first class mail** placing a true copy thereof in sealed envelope(s)  
15 addressed as stated below:

16 Kendrick L. Moxon, Esq,  
17 Moxon & Kobrin  
18 3055 Wilshire Boulevard, Suite 900  
19 Los Angeles, CA 90010

20 Telephone: (213) 487-4468  
21 Facsimile: (213) 487-5385  
22 Email: kmoxon@earthlink.net

23 I am readily familiar with this firm's practice of collection and processing correspondence  
24 for mailing. Under that practice it would be deposited with the U.S. postal service on that same  
25 day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of  
26 business. I am aware that on motion of party served, service is presumed invalid if postal  
27 cancellation date or postage meter date is more than 1 day after date of deposit for mailing in  
28 affidavit.

Executed on March 19, 2010, at Los Angeles, California.

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

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