

GRAHAM E. BERRY, Bar No. 128503  
Attorney at Law  
3384 McLaughlin Avenue  
Los Angeles, CA 90066  
Telephone: (310) 745-3771  
Email: [grahamberry@ca.rr.com](mailto:grahamberry@ca.rr.com)

Defendant *pro se*

BARRY VAN SICKLE, Bar No. 98645  
Attorney at Law  
1079 Sunrise Avenue  
Roseville, CA 95661  
Telephone: (916) 549-8784  
Email: [bvansickle@surewest.com](mailto:bvansickle@surewest.com)

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 EX PARTE  
APPLICATION TO: (1) RESTORE  
PLAINTIFF AND CROSS DEFENDANTS  
EX PARTE TO THE CALENDAR, AND  
(2) CONTINUE OR STAY THE  
HEARING ON PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT;  
SUPPORTING DECLARATION OF  
GRAHAM E. BERRY AND EXHIBITS.**

Date: April 13, 2010

Dept: 58

Action filed: January 5, 2010

CMC: May 6, 2010

Motion to compel plaintiff's dep. May 6, 2010

Trial Date: None

Unlimited jurisdiction in equity

1 **TO THE HONORABLE COURT AND ALL PARTIES OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on Tuesday, April 13, 2010, at 8-30 a.m., or as soon  
3 thereafter as the matter may be heard in Department 58 of the above-entitled Court, located at  
4 111 Hill Street, Los Angeles, CA 90012, Defendant and cross-complainant Graham E. Berry  
5 (“Berry”) will and does hereby move this Court, *Ex Parte*, for orders to:

- 6
- 7
- 8 1. Restore Plaintiff’s pending *Ex Parte*, filed and stayed March 22, 2010, for hearing  
9 and determination pursuant to the Court’s Minute Order of that same date; and
  - 10 2. Continue Plaintiff’s summary judgment motion, filed on April 7, 2010, in breach of  
11 the stay herein, to a mutually convenient date to enable Defendant and Cross-  
12 Complainant’s cross-motions for summary judgment to be filed, and heard  
13 concurrently; and
  - 14 3. Continue Plaintiff’s summary judgment motion filed April 7, 2010, to a mutually  
15 convenient date to enable Defendant and Cross-Complainant to take necessary  
16 limited discovery including the depositions of the Plaintiff and the Cross-Defendant,  
17 and a limited number of other depositions.
- 18
- 19

20 This *Ex Parte* Application is made pursuant to: **(a)** the Court’s Minute Order herein dated  
21 March 22, 2010, **(b)** Code of Civ Procedure §437c (h), and **(c)** upon the further grounds that good  
22 cause, fair play, a level playing field, the avoidance of ambush, avoidance of prejudice, and the  
23 interests of justice, require the relief requested herein.

24

25

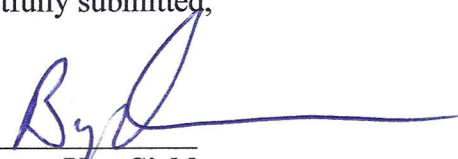
26 This *Ex Parte* Application and motion is based upon this Notice of *Ex Parte* Application  
27 and Motion, the supporting Memorandum of Points and Authorities, the attached declaration of  
28

1 Graham E. Berry and exhibits thereto, and such other matters as may properly be brought before  
2 the Court prior to or at the hearing on this *Ex Parte* Application and motion.

3  
4 In accordance with C.R.C. Rule 3.1203, the Defendant and Cross-Complainant notified  
5 Plaintiff and Cross-Defendant of this application "before 10 a.m. the court day before the *ex parte*  
6 appearance." Berry Declaration, paragraphs 3- 5, Exhibits A - B.  
7

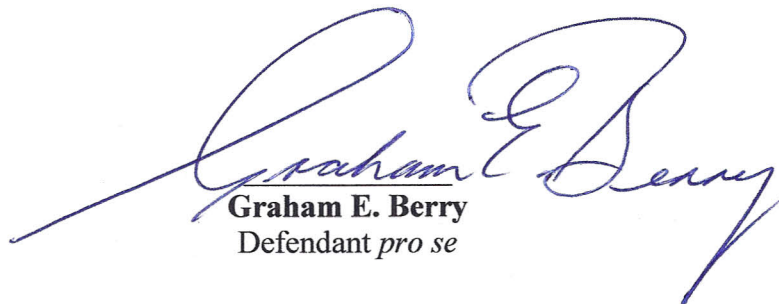
8  
9 Dated: April 13, 2010.

Respectfully submitted,

10 

11 **Barry Van Sickle**  
12 Attorney for Cross-Complainant

13  
14 Dated: April 13, 2010

15   
16 **Graham E. Berry**  
17 Defendant *pro se*



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. EX PARTE NOTICE**

3 A. This is a continuation of the hearing of Plaintiff's March 22, 2010 *Ex Parte*  
4 Application which was properly noticed;

5 B. This is also a new *Ex Parte* Application by the Defendant. Notice was given and  
6 responded to as set forth in Exhibits A-B hereto. The relief sought is set forth in II D (1)-(3) below.

7 **II. INTRODUCTION**

8 A. On March 22, 2010 Plaintiff filed an *Ex Parte* Application to stay "the case" and to  
9 "dismiss the cross-complaint." Opposition, p.2:11-19, filed March 22, 2010.

10 B. On March 22, 2010 a hearing was held on Plaintiff's *Ex Parte*. Thereafter the court  
11 issued a Minute Order staying "the matter" and "cross-complaint" until cross-  
12 defendant's counsel could make a personal (and not telephonic) appearance.

13 Defendant understood the court had stayed the entire case. Berry Decl., Ex. C, ¶\_\_.

14 C. On April 7, 2010 Plaintiff mailed served a motion for summary judgment.

15 D. On April 8, 2010 Defendant gave notice (Berry Dec., Ex. A) of this *Ex Parte*  
16 Application to:

17 (1) Restore Plaintiff's pending *Ex Parte* for hearing and determination;

18 (2) Continue Plaintiff's summary judgment motion to a mutually  
19 convenient date to enable Defendant and Cross-Complainant's  
20 cross-motions to be filed, and heard concurrently;

21 (3) Continue Plaintiff's summary judgment motion to a mutually  
22 convenient date to enable Defendant and Cross-Complainant to take  
23 the depositions of the Plaintiff and the Cross-Defendant and a  
24 limited number of other depositions.



### 1        **III.     THE PENDING MOXON EX PARTE**

2            The statutory purpose and history of Code Civ. Proc. §391 is discussed in *In re R.H.*  
3 (2009) 170 Cal.App. 4<sup>th</sup> 678, 688, *Forrest v. Dept. of Corporations* (2007) 150 Cal.App. 4<sup>th</sup> 183,  
4 197, *Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App. 4<sup>th</sup> 43, 48, and *People v. Harrison* (2001)  
5 92 Cal.App. 4<sup>th</sup> 780, 785. It is confirmed by the even more recent authority of *Fink v. Shemtov*  
6 (2010) 180 Cal. App. 4<sup>th</sup> 1160.

7            Cross-defendant's pending application contends that the relevant statute herein should not  
8 be interpreted in accordance with its express and unambiguous language. Cross-defendant's *Ex*  
9 *Parte*, pp.5:8-6:7. Having now had the opportunity to review cross-defendant's citations, cross-  
10 complainant contends otherwise. Unlike the cases cited by the cross-defendant, this case involves  
11 a proceeding in equity to set aside the underlying orders in issue upon the grounds, in essence, that  
12 they were procured by serious and repeated criminal conduct constituting serious frauds upon  
13 multiple courts. Furthermore, all of the cross-defendants cases are distinguishable. Plaintiff's  
14 primary argument is *res judicata*: "I got away with it before and I want to get away with it again."  
15 However, *res judicata* and statutes of limitation are not permissible arguments in equitable matters  
16 of this nature. See generally, Defendant and cross-complainant's opposition filed March 22, 2010,  
17 Exhibit C (Defendant's Revised Reply in Support of Request to file New Litigation, pages 9:7-  
18 10:12).

19            *Muller v. Tanner* (1969) 2 Cal.App. 3d 438 is clearly inapplicable to the case at bar. Muller  
20 had been deemed a vexatious litigant on August 28, 1967. Two weeks he filed a subsequent action  
21 that was identical in every respect to the earlier action except that the name of an attorney had  
22 been added to the pleading. *Id.* at p. 442. In addition, the earlier identical action was still pending.  
23 In those clearly abusive circumstances, the First Department (Div. One) held that "[t]he fact that  
24 plaintiff retained an attorney to lend his name to the subsequently filed complaint avails him  
25 naught." *Id.* at p. 444. See also, *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App. 4<sup>th</sup> 1494,  
26 1502-1504, *In re Natural Gas Anti-Trust Cases* (2006) 137 Cal.App. 4<sup>th</sup> 387, 393-394.

27            Unlike *Muller*, the cross-complaint filed herein (March 9, 2010) does not seek to re-litigate  
28 the two underlying and related cases. It seeks only to set aside the sanctions order in *Pattinson v.*



1 *Church of Scientology*, and the vexatious litigant order in *Berry v. Cipriano*, upon the principal  
2 grounds they were the product of serious criminal conduct and extrinsic frauds directed at the  
3 integrity of the judicial and legal process.

4 *In Re Shieh* (1993) 17 Cal.App. 4<sup>th</sup> 1154 is similarly distinguishable and inapposite.  
5 Ironically, cross-complainant Berry was also sued by *Sheih* several times, along with the then  
6 Chief Justice of the United States, the Chief Justice of California and a host of other federal and  
7 state officials and judges. In *Sheih* the facts were similar but even more egregious than in *Muller*.  
8 It is difficult to calculate the number of identical or similar lawsuits involved in the *Sheih* case.  
9 However, the decision refers to “at least 14 appeals in 9 separate matters.” *Id.* at p. 1156. More-  
10 over, a “bench warrant [was] currently outstanding for *Sheih*. *Id.* at p. 1164. The Second DCA  
11 ruled that *Sheih* had been declared a vexatious litigant in the United States District Court and by  
12 two separate courts in three different cases and that there was “no likelihood he would prevail in  
13 the instant case. He had turned his counsel in earlier cases into defendants in subsequent cases.”  
14 *Id.* at p. 1167. In those specific, perhaps unique, circumstances, the Second DCA held that it “was  
15 immaterial that *Shieh* is presently represented by counsel.” *Id.* at p. 1167. It was also in these rare  
16 if not unique circumstances that the Second DCA entered a special case specific order that *Shieh*  
17 could not file new litigation, whether *pro se* or through counsel, without first obtaining a Code  
18 Civ. Proc. §391.7 (b) pre-filing order.

19 Cross-defendant’s reliance upon *Camarado Ins. Agency v. Superior Court* (1993) 12  
20 Cal.App. 4<sup>th</sup> 838 is equally misplaced. *Camarado* involved a motion for a Code Civ. Procedure  
21 §391 (1) order and a security bond for the first time within the case at bar. The Third DCA  
22 observed that a motion for security under Code Civ. Proc. §(a) and (d) “must be based on the  
23 ground, and supported by showing, that the plaintiff is a vexatious litigant and that there is not a  
24 reasonable probability that he will prevail in the litigation against the moving defendant.” *Id.* at p.  
25 841. Emphasis added. See also, *Fink v. Shemtov* (2010) 180 Cal.App. 4<sup>th</sup> 1160, 1175 (“The motion  
26 must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious  
27 litigant and that there is not a reasonable probability that he will prevail in the litigation against the  
28 moving defendant”). No-where in his series of motions herein has Plaintiff and Cross-defendant



1 even attempted to show that there is not a reasonable probability that he will prevail in the  
2 litigation against the moving defendant.” Mr. Moxon utterly ignores that mandatory requirement  
3 because he cannot meet it upon the evidence now on the record herein (E.g. Appendices I-IV).  
4 Indeed, a mere cursory reading of the argument and supporting evidence set forth in the pending  
5 May 6, 2010 ‘motion to compel the deposition of plaintiff and to bar the attorney client privilege,’  
6 should compel the conclusion that “there is a reasonable probability that [Berry] will prevail  
7 against [Moxon]” herein. Moreover, in the case at bar (*Moxon v. Berry/Berry v. Moxon*) the  
8 validity of the underlying vexatious litigant order itself is at issue.

9 Mr. Moxon’s reliance upon *In Re Natural Gas Anti-Trust Cases* (2006) 137 Cal.App. 4<sup>th</sup>  
10 387 is also wrong. There the Fourth DCA Div. One reversed the trial court’s order that an attorney  
11 was a vexatious litigant. In so doing it held that “[t]here are several problems with the court’s  
12 analysis. First in *Providian*, Thayer was acting as counsel for Kelly Moreau rather than on his own  
13 behalf ...” *Id.* at p. 397. This is the identical situation to the underlying case of *Pattinson v. CSI*. It  
14 is also pertinent to the underlying case of *Jeavons v. CSI*, relied upon by Moxon for vexatious  
15 litigant purposes but in which Berry merely ghost-wrote a complaint for the *pro se* litigant to file.  
16 Accordingly, the *In Re Natural Gas Antitrust Cases* cited by Mr. Moxon actually support the  
17 substantive relief prayed for in the cross-complaint filed herein. Indeed, in the *Berry v. Cipriano*  
18 case and the *Berry v. Rosen* case, both relied upon for vexatious litigant purposes by Mr. Moxon,  
19 Mr. Berry was represented by counsel. Finally, *Fink v. Shemtov* (2010) 180 Cal.App. 4<sup>th</sup> 1160,  
20 1174-1175, expressly holds that Code Civ. Proc. §391.7 is a form of injunction that can be set  
21 aside by “a material change in the facts upon which the injunction was granted” ... “or that the  
22 ends of justice would be served by the modification or dissolution of the injunction ... .”

#### 23 **IV. THE NEW BERRY EX PARTE APPLICATION**

24 On March 22, 2010 the defendant and cross-complainant understood that the entire case  
25 had been stayed. On Sunday April 11, 2010 Mr. Moxon faxed and emailed a Notice of Ruling and  
26 a copy of the Court’s Minute Order stating: “The Court orders the matter stayed. The cross-  
27 complaint is ordered stayed until [this *ex parte* application is made].” Berry Decl., Ex. C.  
28 However, on April 7, 2010 Mr. Moxon served a motion for summary judgment on the complaint



1 herein and calendared it for July 1, 2010. Mr. Moxon has ignored and refused to attend his noticed  
2 deposition in connection with the complaint (and the cross-complaint). See Motion to Compel  
3 calendared herein for May 6, 2010. Furthermore, Mr. Moxon has not yet filed a responsive  
4 pleading to the cross-complaint herein and is trying every tactic to avoid doing so.

5 The affirmative defenses to the Mr. Moxon's complaint are a mirror of the allegations and  
6 claims within the Mr. Berry's cross-complaint. In the particular circumstances, Mr. Berry seeks  
7 some necessary discovery. As previously noted, Mr. Moxon has now taken about twenty days of  
8 deposition of Mr. Berry, and about twenty days of other depositions, and failed to produce one  
9 credible witness to the original defamatory publications still being broadcast around the world and  
10 causing great damage to defendant for over sixteen years. Mr. Moxon, relying upon a "disqualified  
11 jurist" and an army of lawyers from a number of America's largest law firms, has prevented Mr.  
12 Berry from taking even one single deposition.

13 The summary judgment statute (Code Civ. Proc. §437c - §438) expressly provides that a  
14 summary judgment motion may be continued at the request of an opposing party seeking  
15 discovery in the matter. Indeed, §437c (h) provides that "[t]he application to continue the motion  
16 to obtain necessary discovery may also be made by ex parte motion at any time on or before the  
17 date the opposition response to the motion is due." Emphasis added.

18 Accordingly, defendant and cross-complainant hereby requests the motion for summary  
19 judgment be taken off calendar (as breaching the stay herein), or continued at least ninety days to  
20 after October 1, 2010, in order to permit the defendant and cross-complainant to take at least the  
21 following depositions: (1) Kendrick Moxon, (2) Elliot Abelson, Esq., (3) Eugene Ingram, (4)  
22 Michael Rinder (formerly Moxon's superior and commanding officer), (5) Martin C. Rathbun  
23 (formerly Moxon and Rinder's superior and commanding officer). In addition, there is the issue of  
24 the deposition testimony taken in the *Hurtado v. Berry* case which Moxon filed and maintained.  
25 Upon the testimonial and documentary evidence now available from the *Hurtado v. Berry* case, it  
26 is clear and convincing that the Plaintiff's complaint and evidence herein relies upon Plaintiff's  
27 own serious and now proven criminal conduct and extrinsic frauds involving the underlying cases.

1 Much of the relevant testimony is set forth in the pending motion to compel the plaintiff's  
2 deposition herein and to bar the assertion of the attorney-client privilege therein. Mr. Moxon or his  
3 partner Ava Paquette, Esq. attended those depositions and had the opportunity to cross-examine  
4 the deponents therein. Indeed, Mr. Moxon cross-examined his own former client Robert Cipriano  
5 for over a day. Accordingly, where as here, judicial notice could be taken of those transcripts,  
6 those approx. six depositions should not have to be re-taken just to confirm the truth and accuracy  
7 of the prior testimony.

8 Finally, if the Court denies this motion to continue the plaintiff's summary judgment  
9 motion, or to take it off calendar, there will be a duplication of judicial effort. The defendant and  
10 cross-complainant will also be making motions for summary judgment and, in all of the  
11 circumstances of this proceeding in equity, the competing cross-motions should be filed and heard  
12 together. Defendant suggests that the court order the plaintiff's summary judgment motion off  
13 calendar and set a status conference for 120 days out to discuss an appropriate date by which all  
14 parties should file their motions for summary judgment. The 75 day notice period thereafter could  
15 be reduced by stipulation and order as to the filing dates for opposition and reply papers.

16 **V. CONCLUSION**

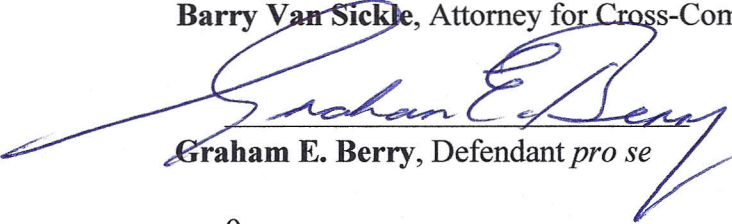
17 For the foregoing reasons, plaintiff and cross-defendant Moxon's Request for  
18 Contempt, Dismissal, Motion and Bond orders should be denied. Defendant and cross-  
19 complainant's motion to continue the hearing date on plaintiff's motion for summary judgment  
20 should be granted. The stay order should be lifted and Mr. Moxon permitted to file his responsive  
21 pleading to the cross-complaint, and his opposition to the pending motion to compel his  
22 deposition, on dates the Court determines to be appropriate.

23 Respectfully submitted,

24 Dated: April 13, 2010

25 **Barry Van Sickle**, Attorney for Cross-Complainant

26  
27 Dated: April 13, 2010

28   
**Graham E. Berry**, Defendant *pro se*



**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 States 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.

2. I am appearing as defendant *in propria persona* herein. I am also the cross-complainant herein, appearing by and through my attorney of record on the cross-complaint, Barry Van Sickle, Esq. who has practiced law in California for over thirty years.

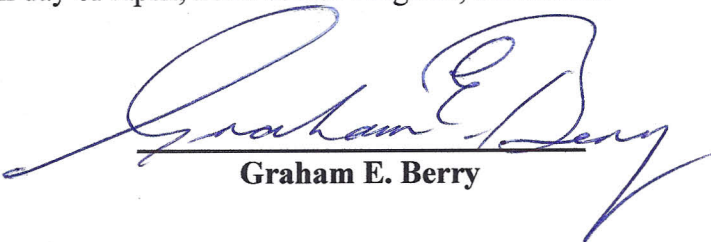
3. On April 9, 2010, I faxed and emailed opposing counsel the letters attached hereto as Exhibit A.

4. Also, on April 9, 2010, Mr. Moxon emailed me the letter attached hereto as Exhibit B.

5. On April 11, 2010, Mr. Moxon emailed and faxed the Notice of Ruling attached as Ex. C.

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

Executed this 12th day of April, 2010 at Los Angeles, California.

  
**Graham E. Berry**



## **EXHIBIT A**

**Last Transaction**

| Date  | Time   | Type     | Station ID  | Duration<br>Digital Fax | Pages | Result |
|-------|--------|----------|-------------|-------------------------|-------|--------|
| Apr 9 | 5:19PM | Fax Sent | 12134875385 | 0:55<br>N/A             | 3     | OK     |

**Note:**

Image on Fax Send Report is set to Off

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

## **Graham Berry**

---

**From:** Graham Berry [grahamberry@ca.rr.com]  
**Sent:** Friday, April 09, 2010 5:15 PM  
**To:** kmoxon@earthlink.net  
**Cc:** 'Barry Van Sickle'; 'Graham Berry'  
**Subject:** Ex Parte Notice. April 13. Moxon v. Berry

**Importance:** High

**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)**

April 8, 2010 5-15 PM approx.

### **NOTICE OF EX PARTE APPLICATION**

By Email and Fax

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

**Re: Moxon v. Berry/Berry v. Moxon**

Dear Mr. Moxon:

In accordance with the Court's ruling upon your pending *Ex Parte* Application, Notice is hereby given that on Tuesday, April 13, 2010, at 8-30 AM or as soon thereafter as the parties may be heard in Department 58 of the Los Angeles Superior Court at 111 North Hill Street, Los Angeles, CA 90012, Defendant *Pro Se* and Barry Van Sickle, Counsel for Cross-Complainant, will:

- A. Apply to restore your pending pending *Ex Parte* Application for hearing and determination; and
- B. Apply *Ex Parte* for order (s): (1) taking your Summary Judgment motion filed in breach of the stay requested by you off calendar; or (2) Continuing your summary judgment motion to a mutually covenant date to enable Defendant and Cross-complainant's cross-motions for summary judgment to also be heard; and (3) Continuing your summary judgment motion to a mutually covenant date to enable Defendant and Cross-complainant to take the depositions of yourself and a limited number of other witnesses (including Michael Rinder, Martin C. Rathbun and Eugene Ingram).



Please advise me and my counsel on the cross-complaint whether you will be appearing at the *Ex Parte* hearings noticed above and whether you will be opposing our own *Ex Parte*.

Very truly yours,

Graham E. Berry

Cc: Barry Van Sickle, Esq. Counsel for cross-complainant.

**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)**

April 9, 2010, at 5-20 PM approx.

**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)

3 pages including this transmittal sheet.

**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)**

April 8, 2010 5-15 PM approx.

**NOTICE OF EX PARTE APPLICATION**

**By Email and Fax**

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

Re: **Moxon v. Berry/Berry v. Moxon**

Dear Mr. Moxon:

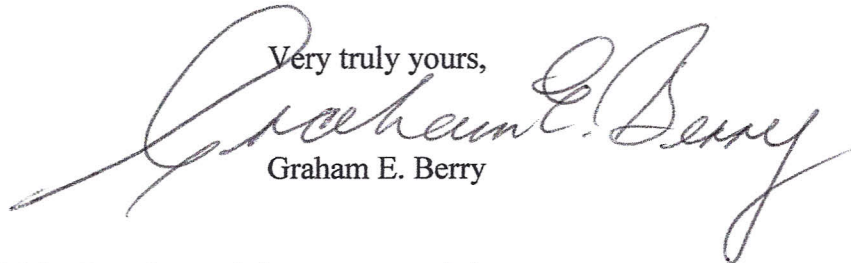
In accordance with the Court's ruling upon your pending *Ex Parte* Application, Notice is hereby given that on Tuesday, April 13, 2010, at 8-30 AM or as soon thereafter as the parties may be heard in Department 58 of the Los Angeles Superior Court at 111 North Hill Street, Los Angeles, CA 90012, Defendant Pro Se and Barry Van Sickel, Counsel for Cross-Complainant, will:

- A. Apply to restore your pending pending Ex Parte Application for hearing and determination; and
- B. Apply *Ex Parte* for order (s): (1) taking your Summary Judgment motion filed in breach of the stay requested by you off calendar; or (2) Continuing your summary judgment motion to a mutually covenant date to enable Defendant and Cross-complainant's cross-motions for summary judgment to also be heard; and (3) Continuing your summary judgment motion to a mutually covenant date to enable Defendant and Cross-complainant to take the depositions of yourself and a limited number of other witnesses (including Michael Rinder, Martin C. Rathbun and Eugene Ingram).



Please advise me and my counsel on the cross-complaint whether you will be appearing at the *Ex Parte* hearings noticed above and whether you will be opposing our own *Ex Parte*.

Very truly yours,

A handwritten signature in cursive script, reading "Graham E. Berry". The signature is written in dark ink and is positioned to the right of the typed name "Graham E. Berry".

Graham E. Berry

Cc: Barry Van Sickle, Esq. Counsel for cross-complainant.

## **EXHIBIT B**

**From:** kmoxon@earthlink.net [mailto:kmoxon@earthlink.net]  
**Sent:** Saturday, April 10, 2010 5:30 PM  
**To:** Graham Berry  
**Cc:** 'Barry Van Sickle'; 'Graham Berry'  
**Subject:** Re: Ex Parte Notice. April 13. Moxon v. Berry

Mr. Berry,

Yes I would oppose such relief, which makes no sense given the court's rulings at the ex parte hearing. I urge you to reconsider wasting the Court's time and my time with this frivolous matter. I will appear.

Please email me your ex parte papers prior to the hearing that I may see the actual issues presented, whether or not any exhibits are also sent.

Kendrick Moxon

-----Original Message-----

From: Graham Berry  
Sent: Apr 9, 2010 5:15 PM  
To: kmoxon@earthlink.net  
Cc: 'Barry Van Sickle', 'Graham Berry'  
Subject: Ex Parte Notice. April 13. Moxon v. Berry

## **EXHIBIT C**

## Graham Berry

---

**From:** kmoxon@earthlink.net  
**Sent:** Sunday, April 11, 2010 5:43 PM  
**To:** Graham Berry  
**Cc:** 'Barry Van Sickle'; 'Graham Berry'  
**Subject:** Re: Ex Parte Notice. April 13. Moxon v. Berry  
**Attachments:** CCF04112010\_00000.pdf

Mr. Berry,

I could not find a record of having served you with notice of the court's ruling given orally at the hearing on March 22nd. I therefore serve it now, along with the minute order, so that you and Mr. Van Sickle are clear on the erroneous assertions in your ex parte notice. If you still intend to go forward with the ex parte, please let me know so I may attend.

Kendrick Moxon

-----Original Message-----

**From:** Graham Berry  
**Sent:** Apr 9, 2010 5:15 PM  
**To:** [kmoxon@earthlink.net](mailto:kmoxon@earthlink.net)  
**Cc:** 'Barry Van Sickle', 'Graham Berry'  
**Subject:** Ex Parte Notice. April 13. Moxon v. Berry



1 Kendrick L. Moxon, State Bar No. 128240  
2 MOXON & KOBRIN  
3 *kmoxon@earthlink.net*  
4 3055 Wilshire Boulevard, Suite 900  
5 Los Angeles, California 90010  
6 Telephone: (213) 487-4468  
7 Facsimile: (213) 487-5385

8 Attorney for Plaintiff  
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

**NOTICE OF RULING**

17  
18 On March 22, 2010, Plaintiff Kendrick Moxon and Defendant Graham Berry,  
19 appeared in pro per in Department 58 on plaintiff's ex parte application to stay the  
20 cross-complaint.

21 After consideration of the papers and following argument by the parties, the  
22 Court ruled that the cross-complaint, but only the cross-complaint, is stayed pending  
23 further order of the Court, stating in its Minute Order:

24 The cross-complaint is ordered stayed until application is  
25 made by counsel for defendant Mr. Van Sickle personally  
26 through ex parte application.

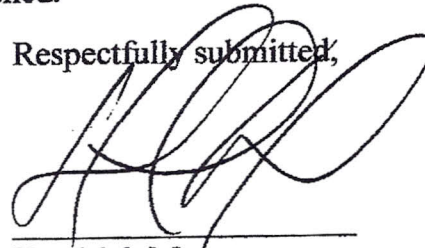
1 The Court also ruled that Mr. Berry's motion to compel set for May 6, 2010,  
2 shall remain on calendar to provide Barry Van Sickle an opportunity to appear in  
3 person to seek to lift the stay, stating in its Minute Order:

4 If the time limitation under CCP 1005 have been transgressed  
5 by reason of the failure to reopen this matter by counsel, Mr.  
6 Van Sickle, the motion set for 5/6/10 will be placed off  
calendar.

7 The Court's Minute Order is attached.

8 Dated: April 11, 2010

Respectfully submitted,



Kendrick Moxon  
MOXON & KOBRIN

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/22/10

DEPT. 58

HONORABLE ROLF M. TREU

JUDGE

E.C. VILLA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. LEE

CA

Deputy Sheriff

L. MILLER, CSR #6457

Reporter

8:30 am

BC429217

Plaintiff

KENDRICK L. MOXON (X)

Counsel

KENDRICK MOXON

VS

Defendant

GRAHAM BERRY

Counsel

GRAHM E. BERRY (X)

IN PRO PER

FOR BARRY VAN SICKLE

170.6-JUDGE FAHEY by deft

## NATURE OF PROCEEDINGS:

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

The Court has read and considered the application  
and declaration in support thereof.

The Court orders the matter stayed. The cross-  
complaint is ordered stayed until application is  
made to unstay by counsel for defendant, Mr.  
Van Sickle personally through ex parte application.

If the time limitation under CCP 1005 have been  
transgressed by reason of the failure to reopen  
this matter by counsel, Mr. Van Sickle, the  
motion set for 5/6/10 will be placed off calendar.

Plaintiff to give notice.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

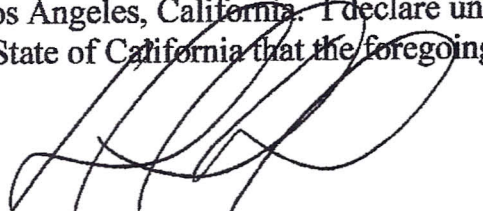
I am employed in Los Angeles County, California, at Moxon & Kobrin, 3055 Wilshire Blvd., Ste. 900, Los Angeles, CA, 90010.

On April 11, 2010, I served the foregoing the following document, **NOTICE OF RULING**, by first class mail, postage prepaid and by fax to Mr. Berry (Mr. Van Sickle has no fax number on record) and by email, on:

Graham Berry  
3384 McLaughlin Ave.  
Los Angeles, CA 90066  
310-745-3771  
grahamberry@ca.rr.com

Barry Van Sickle  
1079 Sunrise Avenue  
Suite B-315  
Roseville, CA 95661  
bvansickle@surewest.com

Executed on April 11, 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

**PROOF OF SERVICE BY HAND**

STATE OF CALIFORNIA

ss.:

COUNTY OF LOS ANGELES

MOXON V. BERRY BC42917

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

On April 13, 2010, I personally served on interested parties in said action the within:

**DEFENDANT AND CROSS-COMPLAINANT'S EX PARTE APPLICATION TO:  
(1) RESTORE PLAINTIFF AND CROSS-COMPLAINANT'S EX PARTE TO THE  
CALENDAR, AND (2) CONTINUE OR STAY THE HEARING ON PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT; SUPPORTING DECLARATION OF  
GRAHAM E. BERRY AND EXHIBITS.**

by placing a true copy thereof by hand to the addressee Kendrick L. Moxon, Esq.

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

Executed on April 13, 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.

Graham E. Berry  
(Type or print name)

(Signature)