

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

4 Defendant *pro se*

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

8 Attorney for cross-complainant

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10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 **CENTRAL DISTRICT**

13 **KENDRICK MOXON**

14 Plaintiff,

15 v.

16 **GRAHAM BERRY,**

17 Defendants.

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

19 Cross-Complainant,

20 v.

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

22 Cross-Defendant.

) Case No. BC 429217

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

) **DECLARATIONS OF BARRY VAN**
) **SICKLE AND GRAHAM BERRY RE**
) **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.**

) Date: April 14, 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

DECLARATION OF BARRY VAN SICKLE

I, **Barry Van Sickle**, 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 counsel of record for cross-complainant Graham E. Berry, who I have known professionally for twenty years.

3. Pursuant to proper notice of the within *Ex Parte* Application, on April 13, 2010, I appeared in Dept. 58 of this Court, along with my client the cross-complainant, and opposing party Kendrick Moxon. Although the Court staff accepted the moving and opposition papers I was informed that the matter would not proceed without a proposed order and that a handwritten order was unacceptable. The Court staff advised me that the *Ex Parte* application would have to be re-noticed.

4. Accordingly, in the court room, I gave notice to Mr. Moxon of this matter being heard tomorrow morning, April 14, 2010, in the same court room to seek the same relief as previously noticed in Defendant and Cross-Complainant's instant *Ex Parte* Application before this Court.

5. The pending *ex parte*, among other things, is to restore Mr. Moxon's March 22, 2010 *Ex Parte* Application for Stay to the hearing calendar, now that I am available to make a personal and not telephonic appearance herein. In relation to this pending *Ex Parte* Application initiated by Mr. Moxon, a proposed order had been filed by Mr. Moxon

6. On the basis of my review of the record herein, including but not limited to the evidence, facts and arguments set forth in the pending motion to compel the deposition of Mr. Moxon and Appendices I-IV filed herein in connection with Mr. Berry's Request to File New Litigation, it is my professional opinion that that there IS a reasonable probability that Defendant and Cross-

1 Complainant Graham E. Berry should prevail in the pending litigation involving Plaintiff and
2 Cross-Defendant.

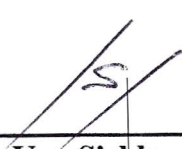
3 7. Although I now live in Sacramento I continue to handle cases in Southern California and
4 generally spend a number of days or weeks in Los Angeles every month for that purpose.

5 However, I have been recently disabled by the need for surgery to replace my hip. At this time,
6 movement and travel is difficult and often very painful. I have previously had the other hip
7 replaced. Among other things, I suffer from the lingering physical consequences of playing
8 competitive football in my younger years.
9

10 8. I had been scheduled for this hip-replacement surgery on April 15, 2010, but it has now been
11 delayed until May 5, 2010. I expect to be recuperating and largely confined to my home for the
12 following two to three weeks (until the end of May). I then expect to be fully mobile again and
13 able to resume my normal activities and movement.

14 I declare under penalty of perjury according to the laws of the State of California that the
15 foregoing is true and correct.
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17 Executed this 13th day of April, 2010 at Los Angeles, California.

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20 **Barry Van Sickle**
21 Attorney for Cross-Complainant Graham E. Berry
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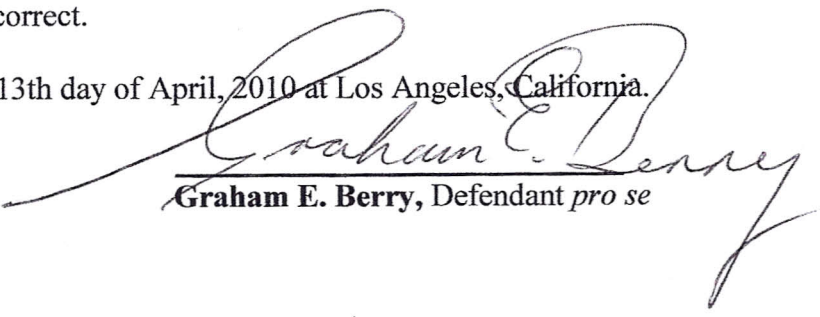
DECLARATION OF GRAHAM E. BERRY

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. Pursuant to proper notice of the within *Ex Parte* Application, on April 13, 2010, I appeared in Dept. 58 of this Court, along with my counsel on the cross-complaint Barry Van Sickle, and opposing party Kendrick Moxon. Although the Court staff accepted the moving and opposition papers I was informed that the matter would not proceed without a proposed order and that a handwritten order was unacceptable. The Court staff advised me that the *Ex Parte* application would have to be re-noticed.
4. Accordingly, in the court room, I gave Mr. Moxon notice of this matter being heard tomorrow morning, April 14, 2010, in the same court room to seek the same relief as previously noticed in Defendant and Cross-Complainant's instant *Ex Parte* Application before this Court.
5. This is an *Ex Parte* Application to restore Mr. Moxon's March 22, 2010 *Ex Parte* to the calendar for hearing and a proposed order had already been filed in relation to that *Ex Parte*.

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

Executed this 13th day of April, 2010 at Los Angeles, California.


Graham E. Berry, Defendant *pro se*

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 14, 2010, I personally served on interested parties in said action the within:

DECLARATIONS OF BARRY VAN SICKLE AND GRAHAM BERRY RE 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.

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 14, 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)