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14 Attorney for cross-complainant

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
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

) **[Proposed]**

) **ORDER**

) 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

1 UPON READING THE MOVING, OPPOSITION AND REBUTTAL PAPERS submitted in
2 connection with cross-defendant's *Ex Parte* Application filed on March 22, 2010, and defendant
3 and cross-complainant's *Ex Parte* Application filed April 13, 2010, and upon considering the
4 documents filed in support thereof, the oral arguments at the hearing, and upon the record herein,
5 and in all of the circumstances herein,

6 **IT IS HERBY ORDERED THAT:**

- 7
- 8 1. Cross-complainant's *Ex Parte* Application filed April 13, 2010 (to "[r]estore
9 Plaintiff's pending *Ex Parte*, filed and stayed March 22, 2010, for hearing and
10 determination pursuant to the Court's Minute Order of that same date") is granted.
 - 11 2. The stay of this "matter" entered herein, by Minute Order signed March 22, 2010, is
12 lifted.
 - 13 3. The cross-complaint, filed herein on March 9, 2010, was signed by Barry Van Sickle,
14 Esq. as attorney for cross-complainant Graham E. Berry, Esq. The declaration of
15 Barry Van Sickle, Esq., filed April 14, 2010, states (para. 6) that he has reviewed the
16 matters of record herein and is of "the professional opinion that there is a reasonable
17 probability that defendant and cross-complainant should prevail in the pending
18 litigation." The cross-defendant has shown that cross-complainant has been deemed a
19 vexatious litigant but the cross-defendant has made no showing "that there is not a
20 reasonable probability that the cross-complainant will prevail in the litigation." In
21 part, the verified cross-complaint seeks to set aside the vexatious litigant order. In
22 these circumstances, and in the circumstances alleged in the verified cross-complaint
23 herein, cross-defendant's request for a bond is denied.
 - 24 4. The verified cross-complaint filed herein on March 9, 2010, may now proceed.
25 Cross-defendant may file a verified answer or other responsive pleading no later than
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1 April 30, 2010. Should a responsive pleading be filed it shall be calendared for
2 hearing on Monday June 7, 2010.

- 3 5. Counsel for cross-defendant, Barry Van Sickle, has filed a declaration dated April 13,
4 2010, stating that he is undergoing surgery on May 5, 2010 will then be recuperating
5 for three weeks. In these circumstances, defendant and cross-complainant's motion to
6 compel the deposition of plaintiff and cross-defendant, currently calendared for May
7 6, 2010, is continued until Monday June 7, 2010. Opposition papers shall be filed and
8 hand served no later than May 7, 2010.
- 9 6. Counsel for cross-defendant, Barry Van Sickle, has filed a declaration dated April 13,
10 2010, stating that he is undergoing surgery on May 5, 2010 will then be recuperating
11 for three weeks. In these circumstances, the Case Management Conference herein,
12 currently scheduled for May 6, 2010, is continued until Monday June 7, 2010.
- 13 7. Cross-complainant's Ex Parte Application filed April 13, 2010 (to "to continue the
14 hearing on plaintiff's motion for summary judgment ... to permit discovery ... and to
15 enable the filing of a cross-motion for summary judgment by defendant and cross-
16 complainant") is granted in part. Although the defendant would have been entitled to
17 the *ex parte* continuance requested under Code Civ. Proc. §437c (h), the plaintiff's
18 Code Civ. Proc. §437c motion for summary judgment herein was filed only fifty (50)
19 days after the general appearance of the defendant herein, and not "after sixty (60)
20 days" as set forth in Code Civ. Proc. §437c (a). Accordingly, the plaintiff's motion for
21 summary judgment filed herein on April 7, 2010, is now off calendar without prejudice
22 to its later renewal or re-noticing.
- 23 8. Except for the filing of papers (including any appropriate motions) relating to: (a)
24 cross-defendant's response to the March 9, 2010, cross-complaint on file herein, and
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1 (b) plaintiff and cross-defendant's response to the motion to compel his deposition,
2 and (c) the parties case management statements herein; all further action herein,
3 including discovery, is stayed until the Case Management Conference hereby re-
4 scheduled until Monday, June 7, 2010. At that time the stay shall dissolve unless
5 renewed or modified by subsequent Court order.

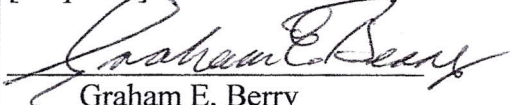
- 6 9. As part of their Case Management Statements herein, and to encourage an orderly
7 and equitable resolution of the issues and evidence to be considered and decided by
8 the Court herein, all parties are ordered to submit their proposed plans and scheduling
9 with regard to: summer vacations, etc. (if any), discovery (if any), requests for
10 judicial notice (if any), motions (if any), and their respective dispositive motions, for
11 discussion and resolution (as may be necessary) by the Court.
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13 **GOOD CAUSE APPEARING THEREFORE, IT IS SO ORDERED**
14

15 Dated: April __, 2010.
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17 _____
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19 **Judge of the Superior Court**
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21 [Proposed] Order submitted by:

22 
23 Graham E. Berry
24 Defendant *pro se*

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26 Barry Van Sickle
27 Attorney for cross-complainant
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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:

[Proposed]

ORDER

by hand to:

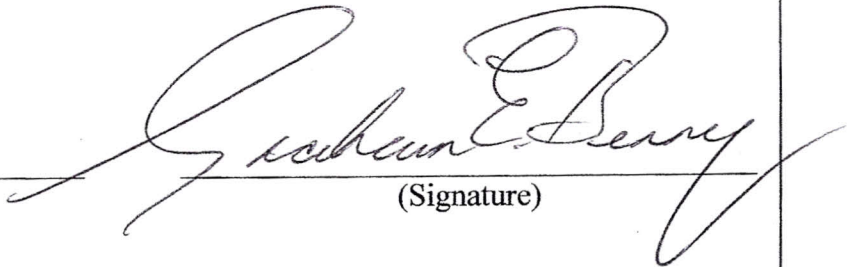
Kendrick L. Moxon, Esq,
Moxon & Kobrin
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Los Angeles, CA 90010

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)