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INVESTORSHUB.COM, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KENNETH EADE,

Plaintiff,

v.

INVESTORSHUB.COM, INC., a

Florida corp., DOE 1, aka NO

DUMMY, DOE 2, aka JANICE

SHELL, DOE 3, aka FASTER183,

DOE 4, aka STOCK MAVIN, DOE 5,

aka RENEE, DOE 6, aka VIRTUAL

DREW, DOE 7, aka BOB 41, DOE 8

aka OVERACHIEVER, DOE 9, aka

DOBERMAN, and DOE 10,

Defendants.

Case No. CV11-01315 JAK (CWx)

**DEFENDANT INVESTORSHUB.COM,
INC.'S OFFERS OF PROOF RE
KENNETH EADE'S FAILURE TO
COMPLY WITH COURT ORDERS**

Date: July 11, 2013

Time: 1:30 pm

Courtroom: 750

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to the Court's April 18, 2013 Order, Defendant Investorshub.com, Inc. through its counsel of record herein, hereby sets forth the evidentiary Offers of Proof for Defendant's claims that Kenneth Eade ("Eade") is in violation of the Court's Orders and, therefore, in contempt of Court.

I.

BACKGROUND FOR CONTEMPT

The underlying Libel lawsuit filed by Eade was dismissed in favor of Defendants on a Special Motion to Strike pursuant to California Code of Civil Procedure §425.16 et seq (Anti-SLAPP motion) on July 12, 2011. (Docket 53, Court's Minutes (In Chambers) Order, dated July 12, 2011). Subsequent to that Order, a motion was brought for the Recovery of Attorney's Fees and Costs Pursuant to the California Code of Civil Procedure §425.16(c). The Court granted Investorshub.com, Inc.'s Motion on September 27, 2011 and ordered costs and fees in the amount of \$49,000.00 to be paid by Eade to Investorshub.com, Inc. within thirty (30) days. (Docket 60, Court's Order Awarding Attorney's Fees, dated September 27, 2011).

Eade did not abide by the Court Order and did not pay the costs and fees award as required. (Docket 62, Plaintiff Kenneth Eade's Opposition to Motion for Contempt, dated January 9, 2012, and Declaration of Christopher B. Good, ¶ 3). While Defendant believes that the failures by Eade to comply with the financial components of the Court's Order are contempt in and of itself, based on his ability to pay the order and his refusal to provide complete and truthful financial information, as is made clear by the Courts' April 18, 2013 order, neither this brief nor the hearing seek contempt for Eade's failures to pay the fees. Rather, Defendant seeks contempt based on Eade's repeated and chronic failures to obey this Court's orders.

1 On December 9, 2011, a Motion for Sanctions against Plaintiff Kenneth Eade
2 was filed by Defendant Investorhub.com, Inc. On February 13, 2012, the Court
3 stated in its Civil Minutes that “Plaintiff failed to submit any evidence of his inability
4 to pay the awarded attorney’s fees and comply with the Court’s prior Order...the
5 Court’s tentative view is that the Court will set an Order to Show Cause re: Contempt
6 subject to the submission of supplemental briefing of the parties...” The Court
7 further went on to state that “Plaintiff shall file supplemental evidence of his inability
8 to comply with the Court’s previous Order on or before March 5, 2012.” (Docket 69,
9 Court’s Minute of Defendant Investorhub.com Inc.’s Motion for Contempt and/or
10 Sanctions Against Plaintiff for Failure to Comply with Courts Order Re Payment of
11 Attorneys Fees, dated February 13, 2012.)

12 In response to the Court’s Order to provide supplemental information, Eade
13 provided a declaration to the Court purportedly identifying his assets. (Docket 70,
14 Plaintiff Kenneth Eade’s Supplemental Declaration and Memorandum of Points and
15 Authorities in Opposition to Motion for Contempt, dated March 19, 2012).

16 As identified in Defendant’s Response, Eade withheld substantial financial
17 information from the Court, not limited to but including his failure to disclose his
18 ownership of in excess of 7 million shares of Independent Film Development
19 Corporation (“IFLM”). (Docket 71, Defendant Investorhub.com, Inc’s Response to
20 Plaintiff Kenneth Eade’s Supplemental Declaration, dated March 26, 2012.)

21 In response to the additional briefing, the Court imposed sanctions of \$2,500
22 against Eade. The Court further indicated that Eade had not presented information
23 regarding his ownership of 7 million shares of stock, required Eade to participate in a
24 debtor’s examination and ordered Eade to “submit monthly updates in writing to
25 defense counsel regarding the status of the French proceedings...” (Docket 72,
26 Court’s Minutes of Defendant Investorhub.com Inc.’s Motion for Contempt and/or
27 Sanctions Against Plaintiff for Failure to Comply with Courts Order Re Payment of
28 Attorneys Fees, dated March 26, 2012.)

1 Pursuant to the Court's Order, the Examination of Kenneth Eade was
2 conducted on June 21, 2012. As identified in the Status Report filed by Defendant
3 subsequent to the examination, it was uncovered that Eade was in possession of a
4 2002 Maserati and that Eade owned in excess of 10 million shares of IFLM that he
5 transferred to his wife subsequent to the September 27, 2011 Court Order. (Docket
6 74, Defendant Investorhub.com, Inc's Status Report, dated June 27, 2012.) These
7 assets had not been disclosed by Eade.

8 At the July 2, 2012 Court hearing, the Court admonished Judgment Debtor for
9 not appearing as there were many lines of inquiry the Court wished to discuss with
10 Judgment Debtor regarding his assets; including, but not limited to, his ability to pay
11 for an extended trip to Mexico while claiming a lack of financial resources, his failure
12 to explain the ownership of the Maserati, the status of his family law proceeding, the
13 present value of his stock and the status of the French property. (Docket 79, Court
14 Minutes of Status Conference, dated July 2, 2012.)

15 On August 8, 2012, Eade filed an Ex Parte Request seeking to appear for the
16 October 1, 2012 Hearing telephonically. Again Eade states that the "only asset I have
17 available to satisfy the judgment herein is my house in France that I own jointly with
18 my ex-wife." (Docket 80, pg. 4:14-19, Plaintiff Kenneth Eade's Ex Parte Motion to
19 Appear by Telephone, dated August 13, 2012).

20 As identified in Defendant's Opposition, this declaration was not truthful
21 because Eade's declaration failed to disclose a judgment that Eade had just been
22 awarded. (Docket 82, Defendant Investorhub.com, Inc's Opposition to the Ex Parte
23 Motion to Appear by Telephone of Kenneth Eade, dated August 15, 2012). Eade
24 would later admit to the judgment in his subsequent declaration. This judgment was
25 in the amount of \$125,000 and also awarded Eade 3 million in IFLM shares. (Docket
26 84, Plaintiff Kenneth Eade's Declaration Regarding Status of Motion for Contempt,
27 and/or Monetary Sanctions, dated September 20, 2012.)
28

1 Subsequent to Eade's failures to abide by the multiple Court Orders, Defendant
 2 filed an Application for Contempt against Kenneth Eade on March 4, 2013 (Docket
 3 98).

4 On April 18, 2013, an Order to Show Cause Hearing Regarding civil contempt
 5 was held and the Court found sufficient support to proceed with a Contempt Hearing.
 6 The Court set a Contempt Hearing for July 11, 2013 regarding Eade's alleged
 7 violations of various Court Orders. The Court further ordered that Defendant file
 8 Offers of Proof on or before May 13, 2013. (Docket 106.)

9 II.

10 OFFERS OF PROOF RE CONTEMPT

11 A. Eade's Failure to Comply with the Order to Provide Monthly Updates 12 Regarding the Status of the French Property

13 On March 26, 2012, the Court Ordered as follows:

14 "The Court orders Plaintiff to submit monthly updates in writing
 15 to defense counsel regarding the status of the French proceedings,
 16 each of which shall include a time estimate as to when the real
 17 property will be sold and the estimated net proceeds of the sale to
 18 Plaintiff and others. The first such update shall be submitted to
 19 defense counsel on or before April 30, 2012."

20 At no point since the March 26, 2012 Hearing has Eade provided a written
 21 update to counsel that is in compliance with the Court's March 26, 2012 Order
 22 regarding the French Property. On just two separate occasions, Eade has identified in
 23 e-mails that the French Court has pushed hearing dates and that subsequent to the
 24 hearing dates that it would take six months to a year to sell the property, however,
 25 neither e-mail identifies the estimated net proceeds of the sale of the property.
 26 Evidentiary Basis identified in the Declaration of Christopher B. Good, ¶ 3.

27 Eade has sought no relief from this Order and has nowhere explained his
 28 systematic failure to comply.

B. Eade's Failure to Comply with Court Orders that he Provide Evidence of His Inability to Pay the September 27, 2011 Sanctions Order and Eade's Misrepresentations to the Court Regarding His Financial Situation

Throughout the last year and a half, Eade has continually failed to disclose or has misrepresented his financial situation to the Court in violation of the Court's Orders and in violation of Rule 11 of the Federal Rules of Civil Procedure. The record is clear, Eade has specifically failed to disclose assets to this Court, and only upon independent investigation and discovery of assets by Defendant and subsequent disclosure to the Court does Eade identify possession of certain assets.

On February 13, 2012, the Court Ordered Eade to "file supplemental evidence of his inability to comply with the Court's previous Order on or before March 5, 2012." In response to the Court's Order to provide supplemental information, Eade provided a declaration to the Court purportedly identifying his assets. (Docket 70, Plaintiff Kenneth Eade's Supplemental Declaration and Memorandum of Points and Authorities in Opposition to Motion for Contempt, dated March 19, 2012).

As identified in Defendant's Response, Eade withheld substantial financial information from the Court, not limited to but including his failure to disclose his ownership of in excess of 7 million shares of Independent Film Development Corporation ("IFLM"). The Court identified in its Order that Eade had not presented information regarding his ownership of 7 million shares of stock. (Docket 71, Defendant Investorhub.com, Inc's Response to Plaintiff Kenneth Eade's Supplemental Declaration, dated March 26, 2012; Docket 72, Court's Minutes of Defendant Investorhub.com Inc.'s Motion for Contempt and/or Sanctions Against Plaintiff for Failure to Comply with Courts Order Re Payment of Attorneys Fees, dated March 26, 2012.)

Subsequently, assets have been identified to the Court by Defendant that were not identified by Eade, identifications that Eade was required to provide to the Court

1 pursuant to the February 13, 2012 and March 26, 2012 Orders and pursuant to Eade's
2 obligations under Rule 11.

3 The Evidentiary Basis for Eade's contempt are the following: 1) the
4 Declaration of Eade filed on March 19, 2012 which purports to identify Eade's assets
5 (Docket 70); 2) the Response filed by Defendant which includes the 10-K Report of
6 IFLM filed on January 13, 2012, the 6-month historical price chart for IFLM, the 8-K
7 Report for IFLM filed on January 27, 2012, the 10-Q Report for IFLM filed on
8 February 17, 2012 and IFLM's Form 4 filed by Kenneth Eade on January 18, 2012
9 showing that Eade did not disclose this assets as required by the Court's February 13,
10 2012 Order; 3) the Court's March 26, 2012 Order which states that "Plaintiff had not
11 presented this information previously" 4) the Examination of Kenneth Eade in which
12 he confirms he had ownership of IFLM stock, stock which he identifies as
13 transferring to his wife, 5) the Form 4 Filed by Kenneth Eade on June 5, 2012, 6) the
14 subsequent declarations of Kenneth Eade wherein he identifies these assets, assets
15 that should have been disclosed the Court pursuant to the Court's Order, including his
16 June 28, 2012 Declaration (Docket 75), the August 13, 2012 Declaration (Docket 80),
17 the September 20, 2012 Declaration (Docket 84), the November 13, 2012
18 Declaration (Docket 91) the January 3, 2013 Declaration (Docket 95) and the March
19 15, 2013 Declaration (Docket 100), and 7) the Declaration of Christopher Good and
20 Exhibits attached thereto to the September 27, 2012 Status Report (Docket 85).
21 (Declaration of Christopher B. Good, ¶¶ 4-6.)
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IV.

CONCLUSION

The evidence required to find Kenneth Eade in contempt of Court is, for the most part, already a part of the Court's records and largely in the form of declarations signed by Eade himself. Based thereon, Investorshub.com, Inc. respectfully submits these Offers of Proof as required by the Court.

Dated: May 13, 2013

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